

CANADA) IN THE MATTER OF THE *ROYAL CANADIAN MOUNTED*
) *POLICE ACT*, R.S.C., 1985, CHAPTER R-10, AS AMENDED
) BY 33-34-35, ELIZABETH II, CHAPTER 11

BETWEEN:

THE APPROPRIATE OFFICER "E" DIVISION

and

CONSTABLE LEANNE KELLY, REG. NO. 47996

BOARD MEMBERS: Superintendent A.K. Mathews, Chairperson
Inspector J. Knopp, Member
Inspector M. Sanche, Member

APPEARANCES: Mr. Tim Nixon
for the Appropriate Officer

Ms. Cheri Eklund
for the Member

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**DECISION OF THE ADJUDICATION BOARD
PURSUANT TO PART IV OF THE
*ROYAL CANADIAN MOUNTED POLICE ACT***
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Synopsis of the decision

Two allegations of disgraceful conduct were found to be established against the member, the first for inappropriately disclosing investigative detail, including the monitoring of phone lines, and the second for inappropriately querying PIRS and CPIC databases and disclosing certain results to an unauthorized recipient, the subject of the query. As sanction the Board imposed a reprimand and the forfeiture of ten days' pay.

[1] This decision stems from a hearing held by video conference on April 14, 2008 before an Adjudication Board in Ottawa, Ontario, connected with Vancouver, British Columbia. The Appropriate Officer of “E” Division initiated the hearing on April 2, 2007, alleging in a Notice of Disciplinary Hearing that Constable Kelly contravened the Code of Conduct as set out below. The Designated Officer appointed the present Adjudication Board in recognition of the fact that the parties wished to dispose of the matter expeditiously.

PRELIMINARY MOTION

[2] The Member Representative sought to correct an error in the allegations. The allegations in the Notice of Disciplinary Hearing named “at or near Vernon” as the location of the conduct, whereas in fact it would be better identified as “at or near Kelowna...”. The Board subsequently amended the allegations as set out below.

ALLEGATIONS

[3] The allegations read as follows (*verbatim*):

Allegation 1

Between and including the months of November 2005 and January 2006, at or near Kelowna, British Columbia, Cst. Kelly did conduct herself in a disgraceful manner that could bring discredit on the Force, contrary to section 39(1) of the *Royal Canadian Mounted Police Act Regulations, 1988*.

Allegation 2

Between and including the months of November 2005 and January 2006, at or near Kelowna, British Columbia, Cst. Kelly did conduct herself in a disgraceful manner that could bring discredit on the Force, contrary to section 39(1) of the *Royal Canadian Mounted Police Act Regulations, 1988*.

[4] Constable Kelly, through her representative, admitted the allegations.

[5] In support of the allegations, the parties presented an Agreed Statement of Facts (ASF) standing in place of the particulars (*verbatim*):

1. At all material times, Cst. Kelly was a member of the Royal Canadian Mounted Police, posted in “E” Division. Since the initiation of this hearing,

Cst. Kelly has married and changed her surname to MacMillan.

BACKGROUND

2. During the time period covered by these allegations, Cst. Kelly had been seconded from the Vernon Detachment G.I.S. to special project duties, operating out of Kelowna. Cst. Kelly's duties on this special project included monitoring intercepted private communications, as part of an investigation of several then-unsolved homicides in the Vernon area, the targets of which were a organized group known as the "Greeks".
3. Prior to the time period covered by these allegations, specifically, in September 2005, Cst. Kelly disclosed to a person on her sports team that she was monitoring phone lines on the Greeks (the "Previous Greeks' Disclosure"). This person passed the information on to her husband, a member of the RCMP, who in turn informed the commander of the operation, Sgt. Haslett.
4. Regarding the Previous Greeks' Disclosure, Cst. Kelly advised another member on the investigative team, Cst. Kim, about what she had told her sports team mate. Cst. Kim responded by telling Cst. Kelly of the importance of people not knowing of the wire's existence and that it is a criminal offence to talk to anyone about the existence of a wiretap, unless that person is directly involved in the investigation. Cst. Kim also told to Cst. Kelly that the smallest leak could compromise the investigation. Cst. Kim felt that Cst. Kelly had understood. Cst. Kim also advised Cst. Kelly to bring the matter to the attention of Sgt. Haslett.
5. Regarding the Previous Greeks' Disclosure, by October 2005, Sgt. Haslett had personally met with Cst. Kelly and talked to her about the necessity of maintaining confidentiality concerning her police duties and functions. Sgt. Haslett felt that Cst. Kelly had understood.

DISCLOSURE TO J.C.

6. In November 2005, Cst. Kelly met J.C. socially and maintained a personal relationship from November 2005 through January 2006. J.C. observed that Cst. Kelly worked in plain clothes.
7. A few days before Christmas 2005, Cst. Kelly disclosed the following to J.C.:

- she was working on investigation which involved the Greeks; and
- she monitors phone lines.

8. Prior to Cst. Kelly's disclosure about the Greeks' investigation, J.C. had never heard of the Greeks. J.C. performed internet searches on the Greeks, using Google, to find out more about them. There, he located police media releases about the Greeks.
9. J.C. did not disclose what he had learned from Cst. Kelly to anyone and there is no evidence to indicate that the investigation had been compromised.
10. Cst. Kelly was removed from the special project by Insp. Hayward, on the recommendation of Sgt. Haslett who had indicated that she cannot remain on the project, in light of the disclosure she had made. As a result, Cst. Kelly was returned to her former duties in the Vernon Detachment G.I.S.

DISCLOSURE TO J.C.'S PARENTS

11. A few days before Christmas 2005, Cst. Kelly was invited to have dinner with J.C. and his parents, at the residence of J.C.. This was her first and only meeting of J.C.'s parents. J.C.'s parents became aware that Cst. Kelly was a member. During dinner conversation, Cst. Kelly learned from J.C.'s parents that a relative of theirs worked for a police agency and listened to phone lines to which Cst. Kelly replied that she also listens to phone lines.
12. J.C.'s parents do not recall receiving this information and did not discuss it with anyone.

CPIC / PIRS

13. After Cst. Kelly received information which caused her concern that J.C. may be involved in the criminal element, she questioned whether it was suitable for her to be associated with him. In order to learn more about J.C.'s history, on January 18, 2006, Cst. Kelly queried J.C. on PIRS and CPIC using RCMP Information Technology. Cst. Kelly had no duty-related purpose for making such queries. From the PIRS entries, Cst. Kelly was alarmed to learn that J.C. was suspected to be involved in drug-related criminal activity. Cst. Kelly did not printout or download any of the information which appeared on the computer screen.
14. The information that Cst. Kelly had accessed from her PIRS query of J.C.,

included the following: 2006 Langley Det. file: complaint of marihuana trafficking; 2006 S. Okanagan Det.: complaint of marihuana trafficking; and 2005 Princeton Det. file: complaint of “criminal intelligence - other”.

15. Cst. Kelly immediately confronted J.C. about some of what she had learned and, in so doing, verbally disclosed to him that she had learned he had been under investigation for a grow-op in Princeton. J.C. admitted that he was the owner of a property in Princeton but denied any criminal involvement and provided explanations for each of Cst. Kelly’s questions. Cst. Kelly’s perspective was that J.C. was just giving her excuses.
16. On the same occasion, Cst. Kelly terminated her relationship with J.C.

OATH / AGREEMENT

17. The ability to access RCMP Information Technology is dependent upon a UserID which had been issued to Cst. Kelly, subject to certain terms and conditions detailed in a Statement of Agreement, dated November 20, 2000, which remained in effect at all material times. One of the terms and conditions was that the UserID may be used to access RCMP IT only in the manner authorized for the performance of duties and for no other purpose. A copy of the Statement of Agreement is attached hereto at Tab “A” and is intended as an exhibit.
18. On November 14, 2000, Cst. Kelly took an Oath of Secrecy, which remained in effect at all material times, swearing that she will not disclose or make known to any person not legally entitled thereto any knowledge or information obtained by her in the course of her employment with the RCMP. A copy of the Oath of Secrecy is attached hereto at Tab “B” and is intended as an exhibit.

[6] The ASF with attached Tabs “A” and “B” was marked as exhibit AO-1. No other evidence was tendered by either party.

SUBMISSIONS ON THE ALLEGATION

[7] The Appropriate Officer’s Representative briefly noted that Constable Kelly’s conduct of disclosing the fact of an ongoing criminal investigation and of facts leading to the conclusion of the existence of a wiretap, is contrary to both RCMP policy and to Constable Kelly’s Oath of Secrecy. As well, the Appropriate Officer’s Representative stressed the confidential nature of the information

found within the PIRS and CPIC databases, which the RCMP is obliged to protect. Constable Kelly's accessing these databases for an inappropriate purpose and her disclosure of results to the subject of the query is prohibited by RCMP policy, the Information Technology (IT) agreement signed by Constable Kelly and her Oath of Secrecy.

[8] The Member Representative simply noted that Constable Kelly admitted to the disgraceful conduct.

DECISION ON THE ALLEGATION

[9] Constable Kelly faces two allegations of disgraceful conduct. To establish disgraceful conduct, even in cases in which a member admits misconduct, the Board must be satisfied that the identity of the member and the act or acts constituting the conduct have been proven on a balance of probabilities by the Appropriate Officer. Taking into account the admission of Constable Kelly and the ASF to which she has agreed, the Board is satisfied that these requirements have been met.

[10] Further, the evidence must be sufficient so as to allow a Board to conclude that the act or acts described are disgraceful and that they bring discredit on the Force. In addition, there must be some nexus between the disgraceful conduct and the member's employment in the RCMP.

[11] Applying the facts presented to the Board and Constable Kelly's admission to the allegations, the Board finds that a reasonable person with knowledge of all relevant circumstances, including the realities of policing in general and the RCMP in particular, would be of the opinion that the conduct of Constable Kelly telling "J.C." of the existence of the police investigation concerning the "Greeks" and of her monitoring phone lines, just weeks after being warned at least twice against unauthorized disclosure concerning this same investigation, amounts to disgraceful conduct that brings discredit on the Force.

[12] Similarly the Board finds that a reasonable person with knowledge of all relevant circumstances, including the realities of policing in general and the RCMP in particular, would be of the opinion that the conduct of Constable Kelly in carrying out confidential PIRS and CPIC checks on J.C. for a purpose unrelated to any duty she was required to perform, and her subsequently disclosing to J.C. the substance of the query results, amounts to disgraceful conduct that brings discredit on the Force.

[13] Furthermore, the Board finds there is a sufficient relationship between the conduct and the interests of the Force so as to warrant discipline against Constable Kelly. The Board, therefore, finds that the allegations of disgraceful conduct have been established.

SANCTION

[14] The parties submitted a joint proposal on sanction, recommending a reprimand and a forfeiture of pay of ten days.

EVIDENCE ON SANCTION

[15] The Appropriate Officer's Representative submitted a Performance Evaluation and Review Report (PERR) concerning Constable Kelly, signed by her on December 21, 2005. This was marked as exhibit AO-2.

[16] The Member Representative submitted a tabbed binder containing correspondence in support of Constable Kelly from peers, supervisors and citizens, as well as copies of Constable Kelly's PERR forms, including that of December 21, 2005. The binder was marked as MR-1.

SUBMISSIONS ON SANCTION

[17] The Appropriate Officer Representative noted that the appropriate sanction in this case depended on distinguishing between inappropriate disclosure cases which demonstrate a breach of trust on the part of the offending member, and those which demonstrate simply an error of judgement. He noted that there was no evidence of personal gain or corruption in the actions of Constable Kelly.

[18] The Appropriate Officer Representative suggested several factors in aggravation of the conduct, namely:

- that Constable Kelly's disclosures to J.C. had the potential to compromise a very serious investigation (involving homicides);
- that the inappropriateness of such disclosures had been brought home to Constable Kelly by Constable Kim and by Sergeant Haslett shortly before her misconduct;
- that the inappropriateness of such disclosures was also brought home to Constable Kelly by her supervisor in December 2005 in her PERR; and,
- that she not only contravened policy and her IT agreement by inappropriately querying PIRS and CPIC, but she also disclosed the substance of the query results to J.C., the subject of police investigations and identified as such in those results.

[19] The Appropriate Officer Representative relied on the following internal decisions to establish the range of sanction and to distinguish breach of trust matters from those of errors in judgement: *The Appropriate Officer "O" Division and Constable Anderson*, (2005) 25 A.D. (3d) 137; *The Appropriate Officer "A" Division and Corporal Read*, (2002) 14 A.D. (3d) 172, (2003) 19 A.D. (3d) 131 (ERC), (2004) 20 A.D. (3d) 177 (Comm'r); *The Appropriate Officer "D" Division and Constable Prosper*, (2001) 13 A.D. (3d) 108, (2002) 16 A.D. (3d) 200 (ERC), (2003) 17 A.D. (3d) 65 (Comm'r); *The Appropriate Officer "F" Division and Constable Marr*, (2004) 21 A.D. (3d) 1, (2005) 25 A.D. (3d) 174 (ERC), (2005) 28 A.D. (3d) 193 (Comm'r); and, *Wildeboer*, Ontario Civilian Commission on Police Services, 2006.

[20] In particular, the Appropriate Officer Representative relied on the *Corporal Read* case for its compendious discussion of other relevant cases, including *The Appropriate Officer "C" Division and Constable Leblond*, (1999) 4 A.D. (3d) 23 (noted below).

[21] The Member Representative urged the Board to give weight to the correspondence found in MR-1, and briefly described relevant material at each tab. Using the PERR material at tab "5", the Member Representative noted that Constable Kelly has learned from her mistake and has corrected her conduct, in effect noting that remediation has already taken place through the experience that brought Constable Kelly before the Board. Constable Kelly has since arranged her personal situation so as to avoid the situation in which she found herself in 2005/2006. The Member Representative noted the following as suggested mitigating factors, some of which were subsequently disputed by the Appropriate Officer Representative:

- that Constable Kelly was never suspended as a consequence of her conduct and her security clearance never revoked;
- that Constable Kelly has continued to prove herself a valuable employee even in the face of the stress brought on by the internal discipline process;
- that the Early Resolution Process (ERP) was denied to Constable Kelly, thus causing a negative impact on her career as a consequence of using the regular discipline process;
- that Constable Kelly never acted for gain, thus character was never in issue; and,
- that Constable Kelly co-operated with the internal investigation and has apologized.

[22] The Member Representative relied on the following internal decisions: *The Appropriate Officer "E" Division and Constable Hayek*, (2007) 31 A.D. (3d) 234; *The Appropriate Officer "D" Division and Corporal Fox*, (2007) 32 A.D. (3d) 208; *The Appropriate Officer "C" Division and Constable Leblond*, (1999) 4 A.D. (3d) 23; and, *The Appropriate Officer "E" Division and Constable MacDonald*, (2001) 12 A.D. (3d) 1.

DECISION ON THE SANCTION

[23] The Board considers the appropriate sanction range for this conduct to be from a reprimand with a significant pay forfeiture to dismissal, for particularly egregious conduct.

[24] The Board found the following to be significant aggravating factors:

- Constable Kelly’s disclosures to J.C. had the potential to compromise a very serious investigation. The fact that no compromise occurred either with the disclosure of the “Greeks” investigation or the CPIC/PIRS information was a consequence beyond Constable Kelly’s control. For example, J.C. subsequently undertook Internet searches on the subject of Constable Kelly’s disclosure to him. This curiosity could easily have compromised a serious criminal investigation being conducted in what is, after all, a small city. Constable Kelly could have found herself in a situation similar to Constable Leblond, who was equally innocent, but less fortunate as to the consequences of his disclosures;
- Constable Kelly had been warned of the inappropriateness—indeed the near criminal nature—of her earlier disclosures just days before the disclosures that bring her before this Board. Constable Kim and Sergeant Haslett did so during the course of her duties, and her supervisor in her December 2005 PERR. While Constable Kelly has no prior discipline from which to learn, the equivalent lesson ought certainly to have been brought home to her immediately before her present misconduct;
- In the face of the same warnings, Constable Kelly not only inappropriately accessed CPIC and PIRS data, but disclosed the positive results to the subject of the query. While Constable Kelly may have had the Force interest at heart (avoidance of criminal associations) she nonetheless acted in direct defiance of warnings brought home to her and informed J.C., a suspect, of investigations concerning himself.

[25] The Board found the following to be mitigating factors:

- Constable Kelly is a good—indeed superior—performer and a valued member of “E” Division;
- she has regained the trust and support of her peers, supervisors and Division; and,
- Constable Kelly did not act for personal gain nor was there evidence of corrupt purpose or fundamental character flaw.

[26] The Board did not accept as mitigating the fact that Constable Kelly was not suspended. As the Appropriate Officer is not seeking dismissal the question of suspension does not arise, and she already gets credit for her good performance and support from superiors. Similarly, with the Appropriate Officer's contention that what is at issue is a mistake in judgement rather than a fundamental character flaw, the issue of security clearance does not arise either. As well, the Board is reluctant to recognize as mitigating the fact a member continues to work well during the discipline process. While we recognize discipline brings stress, members undergo stress from a wide variety of sources throughout their career and are expected to work consistently through it. Except in the most serious of cases, supported by evidence, the discipline process is not some *carte blanche* for failing to perform in the manner of which the member is demonstrably capable, and Constable Kelly already gets credit for her good performance. The negative impact of the denial of the ERP process to Constable Kelly is a function of the administrative parameters of that process, and a consequence of her conduct, not a mitigating factor. Finally the Member Representative noted that Constable Kelly had apologized. We heard no such apology nor was their evidence of any.

[27] Like all members, Constable Kelly has agreed to live, both on and off duty, by a Code of Conduct, and must keep in mind these obligations. She and all members are expected to act in an exemplary manner. In recent years much of this expectation has been summarized in our Core Values, of which professionalism and accountability are particularly relevant here. The nature of our profession, as peace officers, and the public scrutiny to which our conduct is subject, more so now than ever, demand that we meet a high standard of conduct. This expectation has been endorsed frequently by both courts and Boards for many years and is not new.

[28] The Board recognizes, to some extent at least, the distinction made in the decided cases between disclosures which amount to breaches of trust and those which signify errors of judgement, rather than of character. This distinction is not absolute, however, and certainly 'unthinking' disclosures whose consequences are catastrophic may well result in a member's dismissal. Certainly on the facts of the *Leblond* case, in which a naive member made disclosures of sensitive police investigations and techniques which unintentionally (on his part) ended up in the hands of a nationally significant organized crime group, could easily have led a Board to dismiss rather than save the member simply because of the ultimate recipient of the information. Indeed *Leblond* ought to be recognized as a unique, high-water mark in favour of a member in the face of unintended consequences. Malign intent is, after all, not a requirement to establish disgraceful conduct, and should be seen simply as a matter of context, or as an aggravating factor.

[29] The Board was particularly troubled that Constable Kelly acted as she did in the face of repeated, near contemporaneous admonishments not to do so. These warnings, and the near criminal conduct of disclosing communication intercepts, more so than the more general prohibitions inherent in her IT agreement and Oath of Secrecy, raise Constable Kelly's case to the higher end of the sanction range. But for the joint submission on sanction the Board would have considered dismissal

as a possible sanction.

[30] The primary purpose of internal discipline is correction. As well Boards have recognized the role of deterrence in sanction choices. We find the *Leblond* case the closest to the facts before us, although much more serious in its unintended consequence, and in that case, too, the Board was dealing with a joint submission on sanction. Taking into account the agreement between the parties, and the deference due to such agreements, we are satisfied that the joint proposal submitted by the parties is a reasonable one. Consequently the Board imposes the following sanction:

- a reprimand; and,
- a pay forfeiture of ten days.

[31] The parties may appeal this decision by filing a statement of appeal with the Commissioner within the limitation period set out in subsection 45.14(4) of the *RCMP Act*.

ORAL DECISION RENDERED the 14th day of April 2008.

Written decision dated at Ottawa
in the Province of Ontario
this 23rd day of May 2008.

Superintendent A.K. Mathews
Chairperson, Adjudication Board

I AGREE:

Dated at Ottawa
in the Province of Ontario
this _____ day of _____ 2008.

Inspector M. Sanche
Member, Adjudication Board

I AGREE:

Dated at Ottawa
in the Province of Ontario
this _____ day of _____ 2008.

Inspector J. Knopp
Member, Adjudication Board