

LONDON POLICE SERVICE
Applicant

And

CONSTABLE DARRYL HORAN
Respondent

Adjudicator:
Peter Lennox

Appearances:
D. Amyot, prosecutor
L. O'Hara, defense counsel

Heard:
February 7, 2025

Date of decision:
March 14, 2025

Length of decision:
29 pp.

Statutory citations:
Community Safety and Policing Act, 2019, S.O. 2019, c1, Sch 1, ss. 198, 202
O. Reg. 407/23, ss 4, 10, and 16; O. Reg. 404/23, ss. 20, 45 and 49
Police Services Act, R.S.O. 1990, c.P.15 (repealed)
Criminal Code, R.S.C. 1985, c. C-46, ss. 139 and 320
Highway Traffic Act, R.S.O. 1990, c.H.8, s. 128
Liquor Licence and Control Act, 2019, S.O. 2019, c.15, Sch 22

COMPLIANCE WITH LAWS - Criminal offences - Off-duty incident - Respondent officer pled guilty to charge of driving while impaired, contrary to s. 320.14(1)(b) of *Criminal Code* - Pursuant to s. 4 of O. Reg. 407/23, contravention of police officer code of conduct flowed from a finding of guilt under *Criminal Code* - Joint penalty submission accepted - Respondent demoted for period of 14 months.

INTERACTIONS WITH PUBLIC - Breach of public trust in policing - Off-duty incident of impaired driving - Respondent officer drove his motor vehicle while impaired, at high speed, with open alcohol in vehicle - Respondent's conduct likely to undermine public trust in policing - Breach of s. 10 of code of conduct acknowledged - Joint penalty submission accepted - Penalty of 14-month demotion imposed.

DISCIPLINARY PENALTIES - Demotion - Off-duty incident of impaired driving - Respondent officer pled guilty to two contraventions of code of conduct - Penalty of 14-month demotion was consistent with penalties imposed in other police officer impaired driving cases - Joint submission accepted.

DISCIPLINARY PENALTIES - Consistency - Respondent officer pled guilty to charge of impaired driving, contrary to *Criminal Code* and two disciplinary charges under code of conduct - Consistency of disposition an important element of penalty assessment - Review of comparator cases indicating demotion typically imposed for impaired driving offences by police officers - Joint submission of 14-month demotion reasonable, appropriate, and consistent with comparators.

SENTENCING - Aggravating factors - Off-duty incident of impaired driving - Misconduct serious - Other aggravating factors included public interest and damage to reputation of the service - Considering all relevant factors, 14-month demotion represented an appropriate penalty - Joint submission accepted.

SENTENCING - Mitigating factors - Off-duty incident of impaired driving - Respondent officer's recognition of the seriousness of his misconduct reflected in early guilty pleas in both criminal and disciplinary proceedings - Respondent accepted responsibility, expressed remorse, apologized, and sought treatment - Other mitigating factors included 13-year positive employment history, clean disciplinary record, and rehabilitative potential - Joint submission of 14-month demotion accepted.

SENTENCING - Deterrence - Off-duty incident of impaired driving - Deterrence an important objective - Parties suggesting 14-month demotion - Proposed penalty sufficient to address both specific and general deterrence - Joint submission accepted.

Summary of Reasons for Decision

The penalty decision in this matter was imposed under s. 202(9) of the new *Community Safety and Policing Act*. The penalty of a 14-month demotion from first class constable to second class constable was proposed jointly by the parties, and accepted by Adjudicator Lennox.

The penalty hearing was preceded by a pre-hearing conference, in accordance with O. Reg. 404/23. The pre-hearing conference was presided over by Adjudicator Labaky. Both the pre-hearing conference and the penalty hearing were conducted electronically.

This matter originated with an application for the appointment of an adjudicator, which was filed by the chief of the London Police Service to the Ontario Police Arbitration and Adjudication Commission pursuant to s. 202(1) of the *CSPA*. The application stated that the chief had reasonable grounds to believe that the respondent, Cst. Horan, had engaged in misconduct and the appropriate disciplinary measure was demotion. Specifically, Cst. Horan was alleged to have committed three disciplinary offences:

Allegation 1: Compliance with the Laws: Breach of s. 4 of the code of conduct for police officers, O. Reg. 407/23. The applicant alleged that on April 17, 2024 Cst. Horan, while off-duty, was: driving while impaired, with a blood alcohol concentration (>80 ml/100 mg), contrary to the *Criminal Code*; speeding 1-49 km/hour over the posted speed limit, contrary to the *Highway Traffic Act*; and driving with an open container of liquor, contrary to the *Liquor Licence and Control Act*.

Allegation 2: Interactions with the Public: Cst. Horan's speeding on the highway, while intoxicated, with open alcohol in his vehicle, violated s. 10 of the code of conduct, in that he conducted himself in a manner that was likely to undermine public trust in policing.

Allegation 3: Integrity: Cst. Horan used his position as a police officer to interfere with the administration of justice, contrary to s. 16 of the code of conduct, in that he displayed his badge, asserted that he should not be charged, and attempted to delay providing a breath sample.

At the penalty hearing, an Agreed Statement of Facts (ASF) was read into the record. According to the ASF, Cst. Horan had been employed with the London Police Service since January 2012. He had positive annual performance appraisals, and no discipline on his record.

On April 17, 2024 while off-duty Cst. Horan was driving his personal vehicle on highway 401. He was pulled over by an OPP officer for travelling 135 km/hour in a 100 km zone. The OPP officer found open alcohol in Cst. Horan's vehicle. He determined that Cst. Horan showed signs of impairment. The OPP officer arrested Cst. Horan and charged him with a number of offences under the *Criminal Code*, including driving while impaired – blood alcohol concentration (80 plus), contrary to s. 320.14(1)(b); also speeding over the posted limit, contrary to s. 128 of the *Highway Traffic Act*; and driving with an open container of liquor, contrary to s. 42(1)(a) of the *Liquor Licence and Control Act*.

Cst. Horan attended a one-week treatment program for alcohol dependency at a specialized treatment facility. On June 17, 2024 he pled guilty to operation while impaired (>80). The Crown prosecutor withdrew all other charges. Cst. Horan was fined \$4000 and sentenced to 18 months' probation.

Cst. Horan was subsequently charged with three disciplinary offences, contrary to ss. 4, 10 and 16 of the code of conduct, O. Reg. 407/23. Section 4 states that a police officer violates the code if found guilty of an offence under the *Criminal Code*. The parties agreed that in light of his guilty plea, Cst. Horan was guilty of misconduct under s. 4. The parties further agreed that he violated s. 10 of the code, because his conduct was likely to undermine public trust in policing. Cst. Horan acknowledged that his conduct on April 17, 2024 was the subject of media news reports and that it was harmful to the service's reputation. The remaining count of breach of integrity, contrary to s. 16 of the code, was withdrawn.

Held, joint recommendation on penalty accepted; respondent demoted from first class to second class constable for a period of 14 months.

In light of his pleas, there was clear and convincing evidence that Cst. Horan was guilty of two acts of misconduct. While the adjudicator was not bound to accept a joint submission, in this case, there was no reason to reject the penalty recommended by the parties.

According to the established case law on misconduct by police officers, a number of relevant factors were typically considered in determining appropriate disciplinary penalties. Although the parties jointly recommended a penalty of demotion under s. 202(9) of the *CSPA*, they made separate submissions on the weight to be afforded various sentencing factors.

The list of accepted factors included:

- **Seriousness** of the misconduct
- **Public interest**/confidence in police service
- **Recognition** of the seriousness of the misconduct
- Presence of a **disability** or other personal circumstances
- **Provocation**
- **Procedural fairness**
- **Employment history**
- **Rehabilitative potential**
- **Impact** on officer/**undue hardship**
- **Consistency** of disposition
- **Deterrence** (specific and general)
- **Systemic/institutional failure**
- **Damage** to the **reputation** of the police service
- Effect of **publicity**
- Income lost from **unpaid administrative suspension**

The relevance of these factors varied from case to case.

Here, in terms of aggravating factors, the respondent's actions amounted to serious misconduct. This characterization was underscored by the chief's application under s. 202 of the *CSPA* for a hearing, which, under the new legislation, occurs when a chief considers the appropriate penalty to be demotion or dismissal. Moreover, a criminal conviction was, in and of itself, a serious matter for a police officer. The penalty of demotion was typically imposed for police officers who drove while intoxicated, with the length of the demotion falling between 9 and 20 months.

Another aggravating factor was public interest. As the prosecutor suggested, ensuring a high standard of conduct on the part of police officers was critical to public confidence in policing. In this case, the respondent's actions risked undermining public trust in policing.

Also aggravating to the penalty was negative publicity – two unflattering media articles about Cst. Horan which named him, the service, and details of the offences. This publicity damaged the reputations of the service, Cst. Horan, and his fellow officers.

There were a number of mitigating factors in Cst. Horan's favour. As the early guilty pleas in both criminal and disciplinary proceedings suggested, he recognized the seriousness of his actions. He accepted responsibility, expressed remorse, and apologized.

The respondent also recognized that he had a problem with alcohol dependency and immediately sought treatment for it; and he continued to undergo counselling.

Cst. Horan had 13 years of service with LPS, no prior discipline, and very positive performance ratings. It was clear, therefore, that the behaviour in question was uncharacteristic for him.

As the prosecutor conceded, the respondent's potential for reform or rehabilitation was significant; this rehabilitative potential was reflected in his recognition of wrongdoing, early admissions, his apologies and remorse, and his commitment to overcome his problem.

A number of accepted sentencing factors were either not relevant in this case, or were not raised by the parties: provocation, procedural fairness considerations, undue special or economic hardship, institutional failure. In addition, there was no evidence of any unpaid administrative suspension in this case.

Consistency of disposition was an important element of fairness in sentencing. Prior cases submitted by the parties provided some useful guide posts as well as some useful points of distinction or departure. A review of the range of penalties in those cases indicated that the joint penalty proposed here fell within the range for cases involving similar misconduct, i.e. driving offences involving alcohol consumption and impairment.

Another important consideration was deterrence. The joint penalty submission of a reduction in rank for 14 months would address both specific and general deterrence.

Having regard for the various factors relevant to this case, the submissions of the prosecutor and defense counsel, as well as the documentary material, the joint penalty proposed was accepted as the appropriate disposition. Accordingly, and pursuant to s. 202(9) of the *CSPA*, Cst. Horan was demoted from first class to second class constable for a period of 14 months.

Authorities cited

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