

Durham Regional Police Service – Finding/Disposition Hearing

In the Matter of

Ontario Regulation 123/98

Made Under the Police Services Act, RSO, 1990c. P.15, as amended

And

In the Matter of

The Durham Regional Police Service

And

Detective Constable Paul Twiddy #3397

Misconduct: Discreditable Conduct

Before:

Superintendent Robert F. Gould M.O.M (Ret.)

Counsel:

Counsel for the Prosecution: Mr. A. Sinclair

Counsel for the Officer: Mr. W. MacKenzie

Hearing Date: May 16, 2024

Decision Date: June 4, 2024

Release Date: June 4, 2024

This decision is parsed into the following parts: PART I: OVERVIEW; PART II: THE HEARING; PART III: ANALYSIS AND FINDINGS; and, PART IV: CONCLUSION and DISPOSITION.

Finding & Disposition with Reasons

Part I – OVERVIEW

Introduction

Before commencing reasons for the decision in this matter, I wish to thank Mr. MacKenzie, Counsel for the Officer, and the Police Service Prosecutor, Mr. A. Sinclair, for their assistance in resolving this matter. The parties worked diligently to resolve this matter by way of a plea and agreed disposition.

Finding

Detective Constable Paul Twiddy, regimental number 3397, you have been found guilty of misconduct and the disposition so ordered is a twelve (12) month demotion from First Class Constable to Second Class Constable, addressing the misconduct before this Tribunal, subject to the conditions outlined in the Decision section of this report.

Overview Summary

This is a disciplinary Police Services Act [PSA] proceeding against Detective Constable Paul Twiddy [Twiddy], regimental number 3397, a sworn police officer with the Durham Regional Police Service [Service].

The Service initiated a misconduct allegation on February 22, 2024 with a Notice of Hearing [NoH]. An amended Notice of Hearing [ANoH] was put forward by the Prosecutor on April 4, 2024 via conference call and agreed to by Twiddy. The original notice was withdrawn on consent by the Prosecution.

Twiddy is alleged to have committed a count of misconduct, Discreditable Conduct, contrary to Section 2 (1) (a) (ix) of the Code of Conduct, *Police Services Act Ontario Regulation 268/10*.

It is alleged that Detective Constable Paul Twiddy #3397, on or between March 1, 2024, that you were guilty of a criminal offence that is an indictable offence, or an offence punishable upon summary conviction, thereby committing the offence of Discreditable Conduct, contrary to part V,

clause 80 (1) (a) of the Act as amended, and section 30, cause 2 (1) (a) (ix) if the Schedule Code of Conduct, O. Reg. 268/10, as amended under the Act.

On March 7, 2024, a first appearance was made by *Twiddy* with no reading of the misconduct in the Notice of Hearing. The matter was adjourned to an April 4, 2024 conference call and the Tribunal was advised that an amended *ANoH* was being presented on consent. The parties jointly requested an adjournment to May 16, 2024, without a reading of the misconduct.

The parties appeared in person on May 16, 2024 at Durham Reporting Services. *Twiddy* pled guilty to the misconduct outlined in the *ANoH* and was represented by Counsel, Mr. W. MacKenzie. The Prosecutor read an agreed joint statement of facts into the official record. *Twiddy* was found guilty of misconduct, Discreditable Conduct. A joint request for an agreed disposition was argued by the parties with reasons.

On June 4, 2024, the Tribunal determined that the joint disposition presented had merit and was reasonable.

Part II – THE HEARING

Twiddy pled guilty on May 16, 2024 at a PSA hearing conducted in Whitby, Ontario and was found guilty of one (1) count of misconduct, Discreditable Conduct, pursuant to Section 2 (1) (a) (ix), Ontario Regulation 268/10 as amended.

The misconduct involved a finding of the Ontario Court of Justice, dated March 1, 2024, identifying guilt to a Criminal charge of driving with over 80 mg of alcohol in 100 ml of blood, section 320.14 (1) (b) C.C.C. The circumstances involved a minor injury collision to a person occurring on September 8, 2023, in the City of Quinte West.

Twiddy is a sworn Police Officer with (18) eighteen years of service with Durham Regional Police Service and has no formal discipline record. *Twiddy* was charged on March 7, 2024 with one count of misconduct resulting from his conviction in a Criminal driving matter, *ANoH*.

Agreed Statement of Facts

The parties jointly agree to a plea of guilty to the count of misconduct, as identified in the *ANoH*, and further agree to the facts:

1. On September 8, 2023, members of the Ontario Provincial Police [O.P.P] were investigating a motor vehicle collision in the area of 912 Frankford Road, Quinte West. At approximately 8:40 pm, a motor vehicle, operated by *Twiddy*, drove north and struck a police officer who was obtaining statement at the collision scene. This officer received a minor injury to their hand.
2. Police investigated *Twiddy* at the roadside, detecting a faint odor of alcohol, and issued a demand for a sample into a Roadside Screening Device. *Twiddy* complied with the demand, and the result was a fail. *Twiddy* was arrested at 8:51 for impaired operation – Over 80mg, contrary to section 320.14 (1) (b) of the Criminal Code.
3. *Twiddy* complied with a breath demand, providing two samples of breath. The truncated readings were 120mg of alcohol in 100 ml of blood.
4. *Twiddy* was charged with three (3) Criminal driving offences on the 8th day of September, 2023.
 - a. *Charge 1 – Section 320.14 (1) (a), did operate a conveyance while their ability to operate it was impaired to any degree by alcohol, drug, or both.*
 - b. *Charge 2 – Section 320.14 (1) (b), did, within two hours after ceasing to operate a conveyance, have a blood concentration that was equal or exceeded 80 mg of alcohol in 100 ml of blood.*
 - c. *Charge 3 – Section 320.13 (1), did operate a conveyance in a manner that, having regard to all of the circumstances, was dangerous to the public.*
5. *Twiddy* appeared in the Bellville Ontario Court of Justice, before Justice Deluzio, and pled to charge number 2, receiving a \$2,500.00 fine and one-year driving prohibition.
6. Charges 1 and 3 were withdrawn by the Crown Attorney having jurisdiction.
7. In being found guilty of an indictable offence or criminal offence punishable upon summary conviction, *Twiddy* committed the offence of Discreditable Conduct, contrary to section 2 (1) (a) (ix) of the Schedule Code of Conduct, Ontario Regulation 268/10, and therefore, contrary to section 80 (1) (a) of the Police Services Act, R.S.O. 1990, c.P.15.

Detective Constable Twiddy, a sworn police officer of the Durham Regional Police Service, after you have been formally read the amended Notice of Hearing, and having had the opportunity to consider the notice, seek any advice and consider your position, you have made it known that you plead guilty.

I am fully authorized, exhibit 3, to adjudicate at this Hearing into a *PSA* misconduct allegation. I have received, read, and understood the facts, exhibit 5, in consideration of your plea, in keeping with the

standards set out in the *SPPA*. You have been afforded procedural fairness, natural justice, and you have been heard by this Tribunal.

I find on clear, convincing and cogent evidence, meeting the test of weighty and reliable, that I can with care and caution reasonably conclude that the misconduct has been proven particular to one (1) count of Discreditable Conduct as set out in the *ANoH*.

Exhibits

- Agreed statement of Facts – 5
- Prosecution Book of Authorities – 6
- Medical letter – 7
- Character Letter - 8

Part III – Analysis and Findings

I believe it is important to review the law and explain my position on joint submissions. This case is not particularly complex on its surface, given that the Discreditable Conduct arises from the Officer being found guilty in a Criminal matter. Proof of this misconduct is essentially contained in exhibit 5 and is acknowledged by *Twiddy* with his plea and agreement to the facts.

I find that the aggravating nature of the conduct includes a Criminal finding which involved a minor injury traffic collision.

The *Yakimishyn*¹ case, in paragraph 6, page 14, states, “... A joint submission on penalty ought to be accorded significant weight when deciding an appropriate penalty.”

The *Ontario Civilian Commission on Police Services* additionally noted in the above case that if a Hearings Officer is to reject a joint proposal, they must act fairly, impartially, and on solid evidentiary foundation and provide clear and cogent reasons to the parties so they can reply. The Prosecutor outlined for the Tribunal that I would need to let the parties know if the proposed disposition was not acceptable.

I find that I must trust that the parties have had fulsome discussions to offer a joint agreement and have contemplated the mitigating and aggravating circumstances in this case. As an Adjudicator in a case that involves an agreed upon disposition between the parties, often I do not have the depth of knowledge of

¹ *Yakimishyn v. Peel Regional Police Service*, 2008, ONCPC 5, OCCPS, p 13-15.

the facts and must rely on the understanding that the parties have negotiated the facts presented in exhibit 5.

I find a review of Ceysens' [Ceysens] *Legal Aspects of Policing* is warranted, particular to the eight (8) areas explained under Joint Submissions.

1. To constitute a joint submission, "the parties must adopt the same principle".
2. A tribunal with disciplinary authority is not bound by a joint submission.
3. The tribunal must review the joint submission to ensure that the proposed disposition is reasonable and takes into account the appropriate disposition considerations.
4. "Joint submissions should be accorded a high level of deference and are not to be discarded unless there are good and cogent reasons for doing so".
5. A tribunal which rejects an agreed submission should advise the parties accordingly, and permit representations on the propriety of a more serious penalty before rendering a decision.
6. The rule that a hearing officer must not stray from evidence, apart from "observations based upon common general knowledge or any specialized understanding of policing practices inherent in a hearing officer's senior rank", applies to agreed statements
7. A presiding officer's refusal to accept a joint submission does not in itself establish a reasonable apprehension of bias.
8. The threshold that applies to a criminal proceeding – a judge may reject a joint submission on sentence if it is contrary to public interest or would bring the administration of justice into disrepute – ought not to be applied in police disciplinary proceedings.²

Analysis of the case of *R v. Cook*³ and the instruction from the Supreme Court is helpful on the issue of joint submissions, as outlined by the Prosecutor and as found referenced in *Ceysens*, section 5-page 275-276.

The case of *Bennett and Ottawa, OCPC 12-16, 2012*, at paragraphs 56-58, was presented by the Prosecution and was helpful in reaffirming guidance of Joint Penalty submissions.

² Ceysens *Legal Aspects of Policing*, Earls Court, 2002, p. 5-273-275.

³ *R v. Cook*, 2016 SCC 43, par., 40,41.

I will keep the principles governing the determination of a just disposition in mind, as outlined in the Police Services Act and the Statutory Powers Procedure Act. They are simply cited in *Ceyssens Legal Aspects of Policing* (2002), as;

1. Compliance with purposes of the police discipline process.
 - a. Maintaining Discipline
 - b. Rights of the respondent police officer
 - c. Public interest
 - d. Protection of the Public if involved
2. Corrective dispositions should prevail, where possible.
3. Presumption of the lowest disposition possible.
4. Proportionality.
5. High standard applicable to the constabulary.⁴

The key elements in determining an appropriate penalty are the seriousness of the misconduct, the ability to reform or rehabilitate, and the damage to the reputation of the Police Service. These three factors are referenced in Williams and the Ontario Provincial Police (1994).

*“For this to be the case though, three elements must be considered with reference to these cases: the nature and seriousness of the misconduct, the ability to reform or rehabilitate the officer, and damage to the reputation of the police force that would occur should the officer remain on the force”.*⁵

This Tribunal’s mandate is to adjudicate the allegation of professional misconduct through the lens of employer and employee relationships.

I will keep all of these above concepts in my mind as I analyze the proportionality and agreement presented jointly by the parties when considering whether the agreed disposition is reasonable.

Joint Submission on Disposition

The parties acknowledged a list of aggravating and mitigating factors for consideration by the Tribunal in support of the recommendation of disposition.

⁴ Ceyssens legal Aspects of Policing, EarlsCourt (1994), page 5-193 to 5-196.

⁵ OCCOPS Williams and OPP, December 4, (1995) p, 13.

Seriousness of the Misconduct

The seriousness of any misconduct can inform a disposition proportionate to the facts involved in the matter before the Tribunal. This understanding was described by the Commission in Krug and Ottawa Police Service (2003), where it is stated that the key factors in assessing the suitability of penalty are the seriousness of the misconduct, along with the ability to reform/rehabilitate, and the damage to the reputation of the service.

This case involves an alcohol driving offence with, albeit minor in nature, an injury to third party. The matter is a serious one, as outlined by the Prosecutor, particularly in consideration of the expectation that, as a Police Officer, accordance with the laws will be demonstrated at all times.

I find this factor to be aggravating but tempered by the cooperation and effort made by *Twiddy* to express remorse and cooperate with both the criminal and *PSA* processes.

Public Interest

As Police Officers are called upon to enforce the laws and are granted powers not afforded to ordinary citizens to effect that duty, they rightfully are held to a higher standard to obey such laws themselves. It is in the public interest and vital in upholding the *Service's* image within the community to demonstrate that the members of the *Service* are held to account for any breach. This public hearing exemplifies this understanding.

The Prosecutor has acknowledged that *Twiddy* has violated the public's trust and tarnished the image of the *Service* in the eyes of the Community with his actions. The lengthy demotion takes into consideration a need to not only repair the damage done, but to also assure that such an issue will not occur again with this Officer.

Any erosion of public trust must be seen to be repaired by any disposition made under the *PSA*.

Ceysens Legal Aspects of Policing states that when considering Public Interest, as referenced in *Schofield and Metro Toronto Police (1984)* and *Andrews and Midland Police (2003)*;

“the penalty must impress the public that...conduct on an officer's part attracts appropriate sanctions.”

“any penalty must ensure public confidence in its police force.”

I wish to note that the Prosecution, along with the Hearings Officer, has a fundamental obligation to act as the public voice and speak to the need for the interest of the community to be a principal consideration in discipline matters as set out in the *PSA*.

There are many more considerations that can, and must, impact any decision on disposition specific to the case before a Tribunal. There are also requirements under the *SPPA* that fairness and natural justice be considerations.

Misconduct matters are not often particularly sophisticated and can be seen as black and white on the surface without the benefit of having a fulsome understanding of the situation. The Community and I must trust that the persons with the most intricate knowledge of the situation, the involved parties, have the requisite understanding to agree to and recommend an appropriate disposition.

The *Service* has also been transparent with this misconduct and held a public Hearing with an outside Adjudicator in order to acknowledge the importance of public interest.

I find this factor is aggravating. However, the sincerity and acceptance by *Twiddy* of his misconduct, I find, is noteworthy.

Deterrence

There are two considerations here: deterrence for the officer, and deterrence of a general nature. Impaired driving offences are not limited to this Officer nor this *Service*. Prior jurisprudence establishes well a range of dispositions open to consideration in this matter on both accounts.

I have examined the facts, heard the arguments, and observed *Twiddy* during this Hearing. I am assured that *Twiddy* is deterred. He acknowledged his responsibility and voiced before the Tribunal that he will never again commit misconduct.

I find that this factor is aggravating as driving offences continue to affect policing organizations and their respective communities. Deterrence is necessary and appropriate.

Damage to the Reputation of *Service*

The Prosecutor outlined the circumstances involved in the driving offence. The involvement of a third party and minor injury are impactful considerations. Of note, the third party in this case was an on duty

officer with another Service, who was conducting a collision investigation. This is an aggravating circumstance, to be sure, with a driving offence involving injury.

All of the circumstances outlined are contrary to the expectation of the Community and have harmed the reputation of the *Service*.

Counsel for the Officer outlined some details particular to the collision surrounding a complex prior accident scene requiring *Twiddy* to navigate around fire vehicles and having his attention drawn such that he did not see the officer and clipped the officer's hand. Although this may provide a plausible explanation, I note the impact of alcohol on the situation is inexcusable. *Twiddy* cooperated with the *O.P.P.* and reached out through Counsel to arrange to speak directly with the involved officer so he could apologize in person. This was done and I find it laudable.

I find this factor is aggravating but acknowledge that the *Service* is willing to accept the damage and work with the Officer to repair the harm done.

Meaningful Cooperation with the Discipline Process

The Prosecutor identified that *Twiddy* has co-operated with the discipline process and in doing so has acknowledged his responsibility. The plea and agreed facts and disposition are a testament to the desire by *Twiddy* to take responsibility and make amends.

The criminal matter giving rise to this misconduct was also agreed to by *Twiddy* with a plea and agreement to facts before the Ontario Court of Justice.

Twiddy addressed the Tribunal and provided a heartfelt and impactful apology to the Tribunal, the *Service*, and Community. His demenaour and language were impactful and I acknowledge the sincerity in the apology.

This factor is mitigating.

Employment History

The Prosecutor outlined that *Twiddy* is a (17) seventeen-year member of the *Service* with no prior formal discipline record. The employee records indicate a good employee with positive performance reviews.

I find that the record indicates that *Twiddy* is a good employee and the potential to rehabilitate is high, given what has been observed and identified. This includes the outline of the potential root cause of his

consumption of alcohol and the treatment which has been undertaken. I note that *Twiddy* was a Detective Constable in the Child Exploitation Unit for a period of time. I can acknowledge that policing in general is a difficult job, having given 37 years to this profession myself. A posting to this particular unit is uniquely difficult, and those who perform this assignment are worthy of understanding of the potential impact it can have on the person.

I find this factor to be mitigating.

Rehabilitation Potential

This factor is often related to employment history, cooperation with the process, and the circumstances of the misconduct. The Prosecution identified that *Twiddy* has cooperated with the *PSA* investigation, pled at the first opportunity, cooperated with the criminal matter, and has a good work history. All of which indicate good potential to reform. I agree.

Additionally, Counsel identified the degree of medical assistance and treatment that *Twiddy* has undertaken, as outlined in exhibit 7.

Counsel for the Officer outlined a character letter, exhibit 8, which contained a well-articulated acknowledgment of *Twiddy's* contribution to a child exploitation case. This letter was authored by an assistant Crown Attorney and was well-received by this Tribunal.

The *Service* has confidence that the Officer has demonstrated remorse and that his rehabilitation has commenced. The prospect is good with the completion of the Hearing.

The Prosecutor has recommended a penalty of the loss of class for this Officer in recognition of many factors. Who but the *Service*, through the Prosecutor, has better knowledge that the Officer can be rehabilitated and should continue? The proposed penalty recognizes that the Officer is still useful to the *Service* in consideration of the misconduct and the Officer's personal narrative.

In *Andrews and Midland Police*, the Commission stated;

*{R}ehabilitation is a very important and significant factor when considering an appropriate penalty...
{T}he Commission believes that unless the offence is so egregious and unmitigated the opportunity to reform should be a significant consideration.⁶*

In Guenette and Ottawa Carleton Regional Police Service, the Commission established that highly discreditable behavior warrants significant penalty and dismissal is a consideration in the most egregious of circumstances. The officer's ability to reform was a significant factor in the decision by the Commission to replace a finding of dismissal with a demotion in the Guenette case.

I find myself in a rare position to indicate that I do not believe that *Twiddy* could have done more than he has to indicate his acceptance of responsibility, to seek treatment to rehabilitate, and acknowledge how he harmed the *Service*, Community and *O.P.P.* The Commission, in the case of Toronto Police Service and Kelly, OJ 2006, identified this very concept;

"... However, he appears to have done everything in his power to make things right. He pled guilty to both his criminal and disciplinary charges. He accepted responsibility for his actions and taken meaningful steps to address his problems..."⁷

I find this factor very mitigating.

Effects on the Officer

The impact on *Twiddy* has been extensive, of that I'm confident. The twelve (12) month demotion is significant financially, and the circumstances involved in this matter have impacted *Twiddy* as a person and a Police Officer. I have seen this for myself during the Hearing.

I wish the Officer all the best and a speedy recovery as he builds his credibility and confidence with himself, the *Service*, and Community.

Consistency

Cases were referenced by the parties and the highlights identified for the Tribunal.

In Schofield vs. Metro Toronto Police (1994), the Commission stated:

⁶ Andrews and Midland Police, *Ibid*, at 19-20 OCCPS, 1 May 2003.

⁷ Toronto to Police Service and Kelly, 2006, OSCJ, para, 77.

“Consistency in discipline process is often the earmark of fairness. The penalty must be consistent with the facts and consistent with similar cases that have been dealt with in earlier occasion”⁸

The case of *Browell v. Durham Regional Police Service, 2016* [unreported] involved a similar alcohol related driving offence with a minor injury collision. This case also exposed a number of similar cases that were analyzed by the Hearings Officer. The disposition reached was a (9) month demotion.

In the case of *Duffy and Durham Regional Police Service, 2023*, [unreported], a similar alcohol related driving offence was involved with no collision and similar aggravating and mitigating factors. The disposition was a nine (9) month demotion.

Issues to be decided

As the facts are not in dispute, I can narrow my analysis to the reasonableness of the joint penalty submission armed with a good sense of the scale open to me in this case.

To turn my attention now to the issue at hand:

1. Does the proposed disposition of a demotion adequately fit the goals of discipline, public interest, and the circumstances in this case?

When I turn my mind to the joint submission, I find that the proposal outlines a penalty that is within the scale and is reasonable.

This conduct should never have occurred and any disposition in this matter must be significant to denounce and deter future incidents, not only for *Twiddy* but any other officer considering such behavior. The consumption of alcohol and driving is not tolerated in society.

When I examine all that I heard on May 16, 2024, in concert with what I read and researched, I can conclude that this was a serious matter and the Discreditable Conduct of *Twiddy* does warrant a significant disposition subject to any mitigation.

⁸ Schofield and Metro Toronto Police (1984), 2 OPR 613 at 615 (OPC).

The disposition as offered by Counsel is a serious penalty and should send a clear message of deterrence. The public should be impressed and reassured by such a finding. Additionally, the disposition should lessen the tarnish to the *Service* and assist in rebuilding the trust of the Community.

I find that a reasonable person in society, with knowledge of all of the relevant circumstances, would agree that *Twiddy's* actions were discreditable.

In examining the cases presented by the parties, and my knowledge of similar cases, it is apparent that the scale of the dispositions in those cases is varied and generally includes demotion.

If I consider the mitigation as outlined in the proportionality section of this report, I can with reasonable and prudent thought determine that the proposed joint submission meets the test for appropriateness and reasonableness, as required by the law.

The *Service* knows full well the consequence to their reputation that this Officer has caused. The *Service* is willing to allow this discipline to have a chance to succeed.

The extent of the information detailed before the Tribunal is limited to what is listed in the Agreed Statement of Facts, exhibit 5, and any submissions made by the Prosecution and Defence. I can offer some assurance to the public that this matter has been carefully and fully reviewed and analyzed. This case involved very competent and experienced Counsel, who were aware of all the details involved in this case, working to agree upon and propose a joint disposition. I find the proposed joint disposition appropriate in the circumstances.

Part IV – DISPOSITION

Decision

I conclude that the proposed joint disposition has merit and is reasonable.

In accordance with section 85 (1) (c) of the PSA:

- D/Cst. Twiddy shall be demoted from first class Constable to second class Constable for a period of twelve (12) months. Following that period of time, he will return to first class Constable.
- Any promotion thereafter shall be in accordance with the *Service's* promotional process.

- The demotion will take effect when Constable Twiddy returns to work from his current medical leave.

Robert F. Gould

June 4, 2024

Superintendent Robert Gould (ret)
Hearings Officer

Date