

**POLICE REGISTRATION AND SERVICES BOARD**  
**REVIEW DIVISION**

10 August 2015

REFERENCE NO: A200/2014

RE: An Application for Review pursuant to  
s.146(1)(m) of the Victoria Police Act 2013  
against a decision to dismiss him from  
Victoria Police.

APPLICANT: Senior Constable C. TOBIAS 34676

MEMBER  
REPRESENTED BY: Mr. J. GUNDY

CHIEF COMMISSIONER  
REPRESENTED BY: Senior Sergeant J. ZEBROWSKI 31876

DATE OF HEARING: 29 July 2015

HEARD BY: Mr L.C. ROSS QC – President  
Ms B. MASTERSON – Deputy President of  
the Review Division  
Mr R. BEAZLEY – Member of the Review  
Division

## **REASONS FOR DECISION**

This hearing arises from an Application for Review by former Senior Constable C. TOBIAS 34676 (the Applicant) under the provisions of Section 146(1)(m) of the Victoria Police Act 2013 (the Act).

Specifically, the Applicant seeks the Review of the sanction imposed in relation to a discipline charge of “improper conduct” pursuant to Section 69 (1) (e) of the then Police Regulation Act 1958. The Applicant was charged as follows:

*“Between 1 May 2013 and 5 January 2014, being a member of the force you were guilty of improper conduct.”*

A discipline hearing before Commander T. PURTON (the Hearing Officer) was conducted on the 10<sup>th</sup> of November 2014. On the 20<sup>th</sup> of November 2014 the Hearing Officer delivered his findings and sanction. The Applicant pleaded guilty to the charge. At the completion of the discipline hearing the Hearing Officer imposed the sanction of dismissal.

## **DOCUMENTATION EXAMINED BY THE BOARD**

The Board was provided with the following written and audio visual material for its examination prior to the Review hearing:

- The Discipline Brief prepared by the Professional Standards Command (PSC)
- A submission on behalf of the Applicant prepared by Mr J. GUNDY Discipline Advocate of The Police Association (TPA) including 4 references of support and letters of commendation
- A response to the Applicant’s submission prepared by PSC
- The personal file of the Applicant
- A transcription of the discipline hearing

- DVDs of the discipline hearing
- A probity report from PSC
- Professional Development Assessment Reports (PDAs)

The Applicant was a Senior Constable of Police aged 44 at the time of his dismissal. He graduated from the Police Academy in January 2005 and his initial period of service was at Northcote. He transferred to Warrnambool in 2007 and since 2009 he has been stationed at Koroit.

At the discipline hearing the Applicant was represented by Mr J. GUNDY, Discipline Advocate of the Police Association and he pleaded guilty to the charge that "between 1 May 2013 and 5 January 2014, being a member of the force you were guilty of improper conduct".

The misconduct alleged against the Applicant arose from his involvement with a young female identified as SM within these Reasons for Decision who was aged 17 when he first met her.

It appears that they met in a kebab shop in Warrnambool in May 2013. She was with friends and apparently addressed him in terms of familiarity and he responded and indicated to her that he was a police officer. The group spoke for a while and then the Applicant drove SM and her friends home from the shop. SM sat in the rear seat of the Applicant's car but when they reached her home the Applicant and SM came together and kissed one another. They exchanged telephone numbers and in the days following the Applicant commenced texting her.

On 6 August 2013 the Applicant conducted a LEAP check on SM and in a s.171 record of interview the Applicant conceded that he conducted that LEAP check and acknowledged "I would have been looking for SM's date of birth ..... just to confirm whether she was 18 or not". He conceded in that interview that he was sexually interested in her at that stage.

The next relevant incident occurred on 3 January 2014 when SM attended at the Warrnambool Police Station to report an allegation of telephone threats made against her by a male person. She initially spoke with a female member in the watch-house. The Applicant happened to be at the station at the time and he indicated that he would take responsibility to deal with SM's complaint. Commander PURTON took the view that his previous contact with SM gave rise to a conflict of interest in his handling of the matter.

The Applicant made a record of how he handled the complaint.

He recorded in his running sheet a reference to the fact that he had contacted the male by phone and recorded "requested to have no more contact with SM, apologised and agreed with request". It appears that on this day that the Applicant accessed LEAP in relation to the male and SM and did not record this access. Further no crime report of the offence of potential misuse of telecommunications was recorded.

Shortly after this event the Applicant and SM exchanged text messages some of which were directed to arrange a meeting for them to have sex. It followed that in the early hours of the morning of 5 January 2014 the Applicant whilst on duty arranged to pick up SM from a residential address. He then drove her in the police vehicle to the unit where he was staying at Kruger Street Warrnambool where they had consensual sex.

SM said before they entered the unit that the Applicant had logged off on the police computer. The time recorded was 1.45am.

After leaving the unit the Applicant drove SM back to her address. He then drove to Koroit and signed off at 2.30am.

Mr GUNDY conceded that the Applicant's conduct and been "less than satisfactory" but he made a number of submissions by way of mitigation.

He relied on the Applicant's plea of guilty, frank admissions in his s.171 interview and the Applicant's own written submission as evidence of remorse. He argued that the access to LEAP should not be seen in context as a serious breach of discipline.

He referred to the 4 supporting references from work colleagues and the several letters of commendation for good police work that the Applicant had received.

He also referred to the dysfunctional aspects of his personal life centred around the ongoing conflict that was occurring between the Applicant's first wife over access to his children of that marriage,

Mr GUNDY also tendered a psychological report of Mr Murray KINGSLEY who saw the Applicant on 9 occasions between July and November 2014.

Mr KINGSLEY said that stressors associated with a lack of supervision of his work at Koroit and the ongoing conflict with his divorced wife had caused the Applicant significant emotional distress and the Applicant told Mr KINGSLEY that he had considered suicide.

Commander PURTON noted the report of Mr KINGSLEY and the conclusion reached where he stated "The writer observes a level of stuckness in his behaviour which will presumably only be resolved by a wholesale change in his life circumstances. Again from a perspective, the noxious relationship with his wife remains a most powerful force in his life."

It is noted that there was a significant gap between the Applicant's first contact with SM and his access to LEAP however it appears that the Applicant had sent numerous text messages to her in the interim to which she did not reply.

When she came to the Warrnambool Police Station in January 2014 following the Applicant's intervention on her behalf, arrangements were made to meet

and to have sex. The Applicant's stated concession in his s.171 interview that he was sexually interested in her when he made the LEAP enquiry in August 2013 confirms Commander PURTON's view that he was seriously conflicted when he intervened to manage her complaint about telephone harassment.

Commander PURTON considered that the combination of the unauthorised access to LEAP in the circumstances of this case, the questionable intervention to deal with SM's complaint which was not subject to a crime report and the decision to use a police vehicle for the purpose of a sexual assignation whilst on duty were factors which amounted to a serious example of the offence of improper conduct.

Commander PURTON considered that the Applicant's conduct had seriously compromised his ability to effectively work in the Koroit District and had the potential to diminish community confidence in the local Police Force.

The Review hearing was conducted on 29 July 2015. The Chief Commissioner was represented by Senior Sergeant J. ZEBROWSKI and Mr J. GUNDY appeared for the Applicant.

Senior Sergeant ZEBROWSKI relied on his written submission which referred to the Applicant's conduct which constituted the offence of improper conduct. His submission categorises the Applicant's conduct in using the LEAP data base to determine SM's age. It "portrayed the Applicant as being more interested in achieving his own sexual gratification than upholding his oath of office". He submitted that having regard to the public interest of maintaining the integrity of the community confidence in Victoria Police the Hearing Officer's decision was not harsh.

Mr GUNDY relied upon the submissions he made in mitigation to Commander PURTON which emphasised his plea of guilty, frank admissions made during his s.171 interview, good record of service and supportive reference material.

Mr GUNDY also informed the Board that the Applicant's troubled domestic problems had been substantially resolved. His wife had moved to Phillip Island and he was living a more settled existence and if he was reinstated it was not essential that he be stationed in the Warrnambool area.

The Applicant addressed the Board and expressed remorse for his actions.

Having considered all of the relevant material the Board finds that a combination of admitted behaviour by the Applicant constitutes a serious example of the offence of improper conduct.

To access LEAP for the admitted purpose of potential sexual contact with SM is serious misconduct.

Further it appears not to be coincidental that within 48 hours of his questionable intervention to deal with SM's complaint of telephone harassment that he had arranged to have sexual intercourse with her.

His misconduct is compounded by the fact that he used his police vehicle to collect SM and to return her after they had sex. He was on duty, turned off his police vehicle computer some 45 minutes before the end of his shift thereby preventing him maintaining contact with the network.

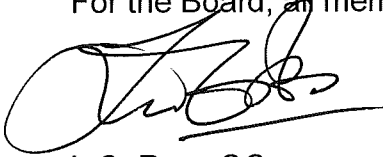
Further it is accepted that whilst the sexual contact was consensual the Applicant's conduct promoted complaints from SM's mother which reflected poorly on the Applicant and by implication of the local Police.

The Board is obliged in its decision making to weigh the balance of the public interest as defined in the Victoria Police Act and the interests of the Applicant.

Having considered the matter the Board has concluded that Commander PURTON's opinion that the actions of the Applicant have the potential to diminish public confidence in Victoria Police is correct.

For the foregoing reasons the Board finds that in the circumstances of the case that the sanction of dismissal was not harsh, unjust or unreasonable and the Hearing Officer's decision is confirmed.

For the Board, all members concurring.



L.C. Ross QC  
President

