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Export date: Sat Oct 31 16:39:46 2026 / +0000 GMT

Judge in OPS trial gives their reasons for verdict

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The Ontario Court judge who acquitted former Orangeville Police Service (OPS) officer Stephen Fisher, has provided the reasons for her ruling.

In the court document released on Feb. 11, Justice Shannon McPherson cited the Crown not being able to prove a recorded conversation in an interview room was a private communication and the lack of credibility from a witness, as the reasons of her ruling.

Fisher was charged with disclosure of private communication and breach of trust by a police officer in December of 2018 by the Ontario Provincial Police (OPP), following an investigation into the release of a video which contained a conversation between two manager officers, allegedly harassing other OPS employees. Fisher was acquitted of both charges by McPherson on January 15.

Fisher, in mid-2018, viewed several minutes of an almost 40-minute long video which contained what McPherson called a ?troubling conversation? between former OPS officers Staff Sgt. Dave McLagan and Const. Andy May, in a ?soft? interview room. The ?soft? interview room is used to take statements from vulnerable witnesses and is built to record automatically via motion activation.

A publication ban has been placed on the contents of the video.

According to McPherson's decision, the prosecution failed to beyond a reasonable doubt prove the video was a private conversation, and based on the evidence it was not reasonable for either May or McLagan to expect the conversation would not be intercepted by another person.

Evidence during the trial showed McLagan played a key role in the creation of the ?soft? interview room which was designed to record on motion. At the time is was McLagan's responsibility to communicate technical issues with the room to other members of OPS. Evidence also showed there were signs posted advising the building was under video and audio recording, including on the outside and inside of the room.

McLagan initially testified at the trial that the conversation was between supervisors about return to work and not harassment under the workplace harassment policy, but later accepted the conversation was a violation.

May in his testimony said he assumed the room required ?deliberate action? to record and that he was not aware of the technical issues with the ?soft? room. Defence attorney Pamela Machado in cross-examination presented emails May had received regarding the technical issues.

McPherson in her decision for acquittal said she found May to be an unreliable witness based on a number of portions of evidence brought up in his testimony.

?At best, I place very little weight on the evidence of P.C. May. I find that he was neither a credible nor a reliable witness. The deficiencies in his evidence can either be attributed to him being a revisionist historian or to him being retaliatory,? wrote McPherson.

May, when asked to describe the conversation between himself and McLagan, said it was private but causal. McPherson on her review of the conversation said May's recount of the conversation was not accurate.

?This makes him either unreliable in his memory or incredible in his spin on the purpose and nature of the belittling conversation that [he] engaged in.?

May in his testimony denied that he laughed at or mocked another OPS employee's concern of being overworked in the video conversation, which McPherson said it was ?abundantly clear? that he did.

May also said his relationship with the employee discussed in the video had a ?minor? hiccup but a great working relationship.

?P.C May misled the court by failing to accurately provide the history between the two,? wrote McPherson.

Fisher and two other OPS employees had submitted individual harassment complaints against May in the past.

?In explaining the contents of the recording, P.C. May did his level best to minimize the derogatory aspects of the recording. He denied belittling a co-worker, he minimized speaking casually about a colleague who presented with suicide issues, he distanced himself from comments made by either forgetting the context or attributing the narrative of the conversation to others. These are true reflections of both an incredible and unreliable witness who is motivated to distance himself from the conduct.?

McPherson, in her final analysis of the evidence, said based on the unreliable testimony of May and the fact that the automatic recording in the room was not new to OPS officers including McLagan and May, it was unreasonable to expect the conversation was a private communication.

?In the end, [I] accept that P.C. May and S/Sgt. McLagan did not wish to have their troubling conversation overheard or recorded. However, asking this court to find that P.C. Fisher breached the trust and criminally disclosed a private communication in circumstances where the conversation was carelessly held in a broadcasted room would be to use the criminal law as a sword and not a shield.?

Fisher was been acquitted of all charges.