

**IN THE MATTER OF**  
**Constable Kirk Batson**  
**and**  
**Constable Patrick Lafreniere**  
**OF THE OTTAWA POLICE SERVICE**

**APPEARANCES**

Christiane Huneault for Ottawa Police Service  
Mark Wallace for Constable Kirk Batson and Constable Pat Lafreniere  
Denis Seguin Public Complainant

**HEARING OFFICER**

Superintendent Dan Delaney # 825  
Ottawa Police Service

**PENALTY DECISION WITH REASONS**

Before I commence with my decision in this matter I would like to thank Christiane Huneault, Prosecutor for the Ottawa Police Service, Mark Wallace, Counsel for Constable Batson and Constable Lafreniere and Denis Seguin who had standing as a public complainant. Over the course of this hearing each of you have provided me with assistance that has been extremely valuable and helped shape my decision.

I must also acknowledge the importance of the input of Bill Carroll on this hearing. Bill was a true friend to the members of the Ottawa Police Service and he will be missed.

## THE HEARING

On the 13<sup>th</sup> of January, 2016, as a result of an OIPRD Directed Hearing, Constable Kirk Batson # 1772 was found guilty of the following offence:

Unlawful or Unnecessary Exercise of Authority in that on September 1<sup>st</sup>, 2013 while on duty he effected the unlawful arrest of Denis Seguin on City of Ottawa Property , more specifically the sidewalk located outside the municipal address know as 73 Rideau Street , Ottawa , Ontario for the offence of “ Failing to Leave when Directed “ pursuant to the Trespass to Property Act , thereby constituting an offence against discipline as prescribed in section 2(1)(g)(i) of the Code of Conduct , Ontario Regulations 268/10, as amended and thereby contrary to section 80(1) of the Police Services Act .

On the 13<sup>th</sup> of January, 2016, as a result of an OIPRD Directed Hearing, Constable Pat Lafreniere # 1661 was found guilty of the following offence:

Unlawful or Unnecessary Exercise of Authority in that on September 1<sup>st</sup>, 2013 while on duty he effected the unlawful arrest of Denis Seguin on City of Ottawa Property , more specifically the sidewalk located outside the municipal address know as 73 Rideau Street , Ottawa , Ontario for the offence of “ Failing to Leave when Directed “ pursuant to the Trespass to Property Act , thereby constituting an offence against discipline as prescribed in section 2(1)(g)(i) of the Code of Conduct , Ontario Regulations 268/10, as amended and thereby contrary to section 80(1) of the Police Services Act .

On the 24<sup>th</sup> March, 2016 the prosecution and Constable Kirk Batson # 1772 jointly submitted for my consideration that the appropriate disposition for the finding of Unlawful or Unnecessary Exercise of Authority as follows:

Forfeiture of 8 hours ( 1 day ) in accordance with section 85(1)(f) of the Police Services Act and the officer attend the OPS Professional Development Center for arrest powers and articulation training in accordance with section 85(7)(b) of the Police Services Act.

On the 24<sup>th</sup> March, 2016 the prosecution and Constable Pat Lafreniere #1662 jointly submitted for my consideration that the appropriate disposition for the finding of Unlawful or Unnecessary Exercise of Authority as follows:

Reprimand the officer in accordance with section 85(1)(a) of the Police Services Act and the officer attend the OPS Professional Development Center for arrest powers and articulation training in accordance with section 85(7)(b) of the Police Services Act.

It should be noted that Denis Seguin (Public Complainant) was made aware and endorsed the joint submissions for Constable Batson and Constable Lafreniere.

On the 24<sup>th</sup> of March, 2016 Christiane Huneault and Mark Wallace made submissions as to the jointly submitted penalties for both the officers. Denis Seguin chose not to provide the hearing with submissions.

### **Submissions by Ms. Huneault**

The prosecution began by providing a definition for the goals and objective of a penalty in the context of the Police Services Act.

The prosecution identified 3 goals that must be met to satisfy:

1. Correct the behavior
2. Deter other from similar behavior
3. Reassure or restore public confidence in the Police Service

When determining an appropriate disposition the 13 key factors identified in KRUGG and Ottawa Police, (OCCPS No.03-01 decision) should be considered and in the context of the facts may be considered mitigating or aggravating.

Those 13 factors are as follows:

1. Public Interest
2. Seriousness of the misconduct
3. Recognition of the seriousness of the misconduct
4. Employment history
5. Need for deterrence
6. Ability to reform or rehabilitate the police officer
7. Damage to the reputation of the police service
8. Handicap and other relevant personal circumstances
9. Effect on the police officer and the police officer's family
10. Management approach to misconduct in question
11. Consistency of disposition
12. Financial loss resulting from unpaid interim administrative suspension
13. Effect of publicity

The prosecution submissions highlighted several of the abovementioned 13 factors for consideration.

### **Public Interest**

The public expect the sworn members of the Ottawa Police Service to follow the law as well as our own OPS internal policies and guidelines. Furthermore, the public expects police officers to understand and use their authority properly. The community in general would be disappointed to find that an officer made an

unlawful arrest because he or she did not understand their authorities or wasn't familiar with their assigned patrol areas.

### **Seriousness of the Misconduct.**

It is the prosecution's position that Constable Batson and Lafreniere's misconduct is serious in nature.

The officers failed to recognize the complainant was on a public sidewalk instead of the property of The Bay and consequently made an unlawful arrest of the complainant for trespassing. It is expected the officers would be cognizant of their authority given their familiarity with the location of the incident.

### **Potential to Reform or Rehabilitate the Officer**

Cst. Lafreniere is a 13 year veteran of the OPS with no previous instances of discipline. There is no reason to believe that his behavior would ever be repeated with an appropriate penalty and training on powers of arrest.

Cst. Batson is a 10 year veteran of the OPS. Cst. Batson has been subject to previous informal discipline, however due to the passage of time the incidents have been expunged from his employment record. There is no reason to believe that his behavior would be repeated with an appropriate penalty and training on powers of arrest.

### **Specific and General Deterrence.**

Police officers are held to a higher standard. The Ottawa Police Service does not condone the actions of Cst. Batson and Lafreniere.

The penalty in this case should send a clear message to the public and all officers in the service that this type of conduct is not acceptable and will not be tolerated. The public must have the confidence in knowing that they will be dealt with by the officers that have a proper understanding of the law and police authorities.

The penalty in this matter must send a message to the officers that they must be more responsible when exercising their authority as police officers and the impact their actions have on members of the community.

### **Reputation of the Police Service.**

The misconduct exhibited by Cst. Batson and Lafreniere has come to the attention of the public and the other Ottawa Police Service members. The media attending parts of the hearing and have reported on the outcome.

The prosecution submits that the behavior of the officers will no doubt tarnish the reputation of the Ottawa Police Service in the eyes of the public. This has an adverse effect on all members of the Ottawa Police Service.



## **Consistency of Disposition**

When imposing a penalty, it is important to take into account prior disciplinary cases dealing with similar types of misconduct. This is to ensure consistency.

A review of the cases internal to the OPS and other Police Services within Ontario where officers have been found guilty of Unlawful or Unnecessary Exercise of Authority relating to an unlawful arrest has been conducted. The recent case on point is Cst. Mulville and Cst. Azeryev and the York Regional Police Service dated January 11, 2016. This case involved officers who pursued a group of youths into a private residence. A determination was that the officers had no grounds to enter the residence and the arrest was unlawful. The lead officer received a penalty of a forfeiture of 12 hours for the unlawful arrest and a written reprimand for the discreditable conduct and the secondary officer received a written reprimand for the unlawful arrest. This case has since been appealed to OCPC.

The prosecution submits that the appropriate penalty is a forfeiture of 1 day and training on arrest powers is sought with respect to Cst. Batson and a penalty of a reprimand and training on arrest powers is sought with respect to Cst. Lafreniere. The distinction rests primarily on their individual involvement in the incident. Cst. Batson was the primary officer and took the lead, whereas Cst. Lafreniere assumed the role of secondary officer and was less engaged in the incident.

## **Submissions by Mr. Wallace**

Mr. Wallace challenged the seriousness of the misconduct and the level of the erosion in the public trust and confidence this situation will have. He cautioned the hearing in regards to the connection or assumption that if members of the Ottawa Police Service make an unlawful arrest, therefore the public confidence goes down.

The defense talked about the confidence of an educated public, a public who takes the time and effort to understand what the facts are and then passes judgment on the officers involved, not simply what the allegations were and what the finding was.

The defense concedes that there would be some loss in public confidence and trust as a result of the officers' actions but after this educated public looks at the situation from a holistic lens it would, in his opinion, not reach that serious threshold.

Mr. Wallace wanted to bring to the attention of the hearing that he did not think that it would take an extensive amount of training to ensure that the officers understood the mistakes that were made that day. He felt that the officers were wrong about the spatial limits of their powers of arrest, not the broad concept of they did not understand their powers of arrest.

Defense stated that “this is not a deep seeded misunderstanding of the law “and that “it is an easily corrected mistake from the point of view of the service “

The defense also wanted to ensure that actions and reactions of Mr. Seguin were given consideration when assessing penalty, at the same time acknowledging that members of the Ottawa Police Services are expected to always deal with the public in a professional manner.

### **ANALYSIS:**

On the 24<sup>th</sup> of March 2016 the parties involved came to me asking to consider a submission on penalty that all involved felt was reasonable and that addressed all of the principles of sentencing that are applicable in the Police Services Act.

The parties argued that the agreed upon disposition clearly met the goals and objectives of:

1. Correcting the behavior
2. Deter other from similar behavior
3. Reassuring or restoring public confidence in the Police Service

Rault v. Law Society of Saskatchewan, 2009 concluded that this hearing has the duty to consider the joint submission. Rault states that if I were to view this joint submission on penalty as not an appropriate disposition then I would be required to give good or cogent reasons as to why it is inappropriate.

The submissions I heard on the 24<sup>th</sup> of March, 2016 were sound and have put me in a position where I cannot provide an argument or good or cogent reasons why this joint submission of penalty is inappropriate.

### **DECISION:**

My disposition as to the penalty is as follows:

Constable Kirk Batson # 1772

Forfeiture of 8 hours ( 1 day ) in accordance with section 85(1)(f) of the Police Services Act and the officer attend the OPS Professional Development Center for arrest powers and articulation training in accordance with section 85(7)(b) of the Police Services Act.

Constable Pat Lafreniere # 1661

Reprimand the officer in accordance with section 85(1)(a) of the Police Services Act and the officer attend the OPS Professional Development Center for arrest powers and articulation training in accordance with section 85(7)(b) of the Police Services Act.

Superintendent Dan Delaney # 825  
Ottawa Police Service