

OFFICE OF THE INDEPENDENT
POLICE REVIEW DIRECTOR

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SENTENCE

POLICE CONSTABLE NANCY BEHAN

BADGE NUMBER 2108

OTTAWA POLICE SERVICE

TUESDAY, JUNE 3, 2014

DEPUTY CHIEF TERENCE KELLY (RET.)

Before dealing with Sentence, I wish to thank Mr. Pradeep Chand, Defence counsel, and Ms. Christiane Huneault, the Service prosecutor, for their able submissions and exhibits tendered, all of which have assisted me in this matter.

Police Constable Nancy Behan, Badge Number 2108, has pleaded guilty, and been found guilty, of One Count of Neglect of Duty and One Count of Discreditable Conduct, laid under the *Police Services Act*.

The entry of the guilty plea was advanced with an Agreed Statement of Facts (**Exhibit Number 6**).

On May 25th of 2011, Constable Behan was working as a patrol officer in Central Division. On that date she was dispatched to a shoplifter call at the Sears store in the Rideau Centre. Enroute to the call she was provided with the name and particulars of the arrested party.

Upon arrival the Sears Loss Prevention officers who had made the arrest met her. She was provided with the identification of the arrested person, Jonathan Paradis (Date of Birth **birth date 1** 1976) of no fixed address. Mr. Paradis was described as male, white, 5 feet 8 inches tall, 145 lbs, black hair and brown eyes. Constable Behan was also provided with the Loss Prevention Report and video evidence of the offence.

Constable Behan arrested the male who verbally identified himself as Jonathan Paradis with a date of birth **birth date 1**. This individual did not possess any identification to confirm his identity.

A check of this individual on CPIC revealed outstanding warrants outside the Province of Ontario for theft and a criminal record for property offences. CPIC provided a description for Mr. Paradis: Date of Birth **birth date 1**, male, white, 5 feet 9 inches tall, 130 lbs, brown hair and green eyes.

Constable Behan prepared her duty book notes of the arrest. She did not note any physical description of the accused, however, her notes contained the date of birth of Mr. Paradis as being **birth date 1**.

Constable Behan issued Mr. Jonathan Paradis an Appearance Notice to attend court on July 6, 2011, and to attend the police station on June 19, 2011 for fingerprints. She failed to indicate the incident number on the Appearance Notice, as required by the Ottawa Police Service Policy 6.11.

It was agreed that Constable Behan failed to take reasonable measures necessary to ensure the male subject's identifiers and ensure his attendance at court.

In addition, it was agreed that Constable Behan should have ensured fulsome notes were captured in her duty book, as required by the Ottawa Police Service Duty Book/Note Taking Policy 2.02 and, further, Constable Behan should have notified the police of the originating jurisdiction of the warrant Mr. Paradis was arrested under, as required by the Ottawa Police Service Arrest Policy 6.01.

Following the release of Mr. Paradis, Constable Behan completed an Occurrence Report. The report failed to indicate that police records revealed the accused was wanted on outstanding warrants outside the Province of Ontario for theft and that he had a criminal record for property offences.

The Police Occurrence Report was transmitted electronically to a report analyst for transcription and review. Due to an error, the cause of which remains undetermined, the actual complainant in the herein matter, Mr. Jonathan Paradis, was linked electronically to the report.

The male subject arrested and released on the Appearance Notice by Constable Behan subsequently failed to appear for fingerprinting, or his court date, and an Arrest Warrant was issued.

As the complainant, Mr. Paradis, was now linked to the Police Occurrence Report, and had the same actual name as the accused, the Arrest Warrant was issued against **him** and not the male subject to whom Constable Behan had issued the Appearance Notice.

On January 12th of 2013, the complainant, Mr. Jonathan Paradis, was returning to Ottawa on an international flight together with his then pregnant wife. They were returning from a family vacation.

Canada Border Service agents discovered the Arrest Warrant and promptly arrested and detained Mr. Paradis (Date of Birth **birth date 2** **██████**.) He was subsequently transported to the cellblock of the Ottawa Police Station at 474 Elgin Street, Ottawa.

The complainant, Mr. Paradis, adamantly professed his innocence to such an extent that the Sergeant in Charge of the cellblock became suspicious that the wrong person was in custody.

Constable Behan, who was on duty at the time, was requested by the Sergeant to attend the cellblock to confirm the identity of the person in custody. Upon her arrival at the cellblock, Constable Behan spoke to Mr. Paradis and she also reviewed some of the video footage of the initial theft incident provided by the Sears Loss Prevention officers. After reviewing a number of reports Constable Behan advised the Sergeant in Charge of the cellblock that she thought the person in custody was the

same person she had arrested. She wrote in her notebook: "Looks like male in 2011 video review. Satisfied same male."

It is agreed that Constable Behan did not consult her notebook, did not consult the Appearance Notice, did not consult the CPIC printout on file, nor did she consult with the Loss Prevention officers. The Sears video of the incident is fifteen (15) minutes long; it is contained in five (5) video files. The final file contains video of the suspect committing the theft and contains close-up video, which clearly shows it is NOT the Complainant, Mr. Jonathan Paradis.

Had Constable Behan consulted the said reports and watched the entire video when trying to confirm the identity of the complainant, Mr. Paradis, the mis-identification would likely have been detected and corrected.

Constable Behan was negligent in investigating this matter incorrectly; confirming for the Sergeant in Charge of the cellblock that the complainant, Mr. Paradis, was in fact the same male subject she arrested and released on an Appearance Notice at Sears on May 25, 2011.

The complainant, Mr. Paradis, spent the night in the cellblock and was transported to the Ottawa courthouse the next morning where he was released on a Recognizance. He spent approximately twenty-six (26) hours in custody before being released in court.

Mr. Paradis contacted the Ottawa Crown Attorney's office and the Ottawa Police Service further investigated the matter and ultimately confirmed his identity. At the next court date all criminal charges were withdrawn against Mr. Paradis.

During the interview with Professional Standards investigators, Constable Behan indicated on several occasions that she confirmed the identity of the shoplifter using the Ottawa Police Service digital mug shot system. **However, no mug shot existed.**

I accept the guilty plea based on the facts relating to this case. The facts stated and agreed to in **Exhibit Number 6** provide clear and convincing evidence of the misconduct, strongly supporting Police Constable Behan's plea of guilty.

If not for her guilty plea, which I take into account as a mitigating factor, and the recognition of her misconduct, I would consider a greater penalty.

Due to the nature of the misconduct, notwithstanding Police Constable Behan's guilty plea and the Agreed Statement of Facts, I believe the nature of the allegations when taken in the broader context of police/community relations, as well as the context of employee/employer relations, indicates it is prudent to provide written reasons.

The duties the police have to perform are varied and exacting; they are

increasing and probably will increase in variety and complexity, and a person cannot make a good officer unless their general intelligence; memory and powers of observation are distinctly above average.

Their character should be unblemished; they should be humane and courteous and, generally, possess a combination of moral, mental and physical qualities not ordinarily required in other employment. Further, when they become police officers they are entrusted with powers which may gravely affect the liberty of the subject, and they must be ready at all times to act with tact and discretion and, on their own initiative, responsibility in all sorts of contingencies. The burden of individual discretion and responsibility placed upon a police officer is much greater than that of any other public servant of subordinate rank.

Police Constable Nancy Behan failed in this respect by not properly investigating the matter of the theft at the Sears store and allowing the continued incarceration of Mr. Paradis when evidence was available to her showing that the person in custody was clearly not the individual responsible for the theft.

Constable Behan's investigations were willfully neglectful and fell well below the performance standards expected from a police officer of any level of experience, and especially a senior constable with over twelve (12) years experience in policing.

The police officer is the person most responsible for initially setting the wheels of administration of justice in motion and, therefore, the public cannot be expected to respect the law if it does not respect, and believe in, the dedication and integrity of the Police Service and its members.

With regard to penalty, I direct my mind to the traditional areas of proper consideration and they are; general deterrence, specific deterrence and the likelihood of rehabilitation.

I have considered all of these principles and, in addition, have directed my mind to the principle that the primary purpose of the disciplinary process is to correct errant behaviour. The standards are high, and rightly so, if respect from the community is to be obtained.

The seriousness of the offence is, of course, of primary consideration. In this particular case the actions, or inaction, of Police Constable Behan was clearly inappropriate and an embarrassment to the Ottawa Police Service.

The repercussions of this officer's conduct in this instance not only affected the complainant, Mr. Paradis, and his family, but also sent a ripple effect throughout the community.

I can only hope that Police Constable Behan, together with all serving members of this Police Service, will take heed of the circumstances of this case and learn the consequences of such misconduct.

Police Constable Behan no doubt regrets her behaviour and I feel assured that should a similar situation arise in the future she will conduct herself in the manner of a sworn police officer.

In addition to the Agreed Statement of Facts also submitted was a Joint Submission on Penalty (**Exhibit Number 7**).

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I am content to confirm the position put forth by counsel for both sides and assess a disposition of **One Hundred and Twenty-Eight Hours in accordance with Section 85 (1) (f) of the Police Services Act for the finding of Neglect of Duty.**

The disposition for the finding of **Discreditable Conduct will be Demotion from First-Class Constable to Second-Class Constable for a period of Eight Months in accordance with Section 85 (1) © of the Police Services Act.**



Terence Kelly
Deputy Chief (Retired)
York Regional Police
Hearing Officer