

OTTAWA POLICE SERVICE DISCIPLINE
HEARING

In the Matter of Ontario Regulation

268/10 made under the *Police*

Services Act, RSO.1990, and

amendments thereto;

And in the
matter of

Police Constable Jerome Belanger
#1590

And the Ottawa Police
Service

Charge: Unlawful or Unnecessary exercise of
authority

DISPOSITION WITH
REASONS

Before: Superintendent Uday Singh Jaswal
Ottawa Police Service

Appearances:

Counsel for the Prosecution: Inspector Michel Marin
Ottawa Police Service

Counsel for the
Defence:

Mr. Michael Lamothe
Ottawa Police Association

Public
Complainant:

Ms. Shawna Noy

Decision Date:

April 4th, 2016

This decision is parsed into four parts: PART 1: OVERVIEW; PART II: THE HEARING; PART III: ANALYSIS/REASONS FOR PENALTY DISPOSITION; and, PART IV: DISPOSITION.

PART 1:

OVERVIEW Allegation of Misconduct

Police Constable Jerome Belanger (BELANGERL badge number 1590, being a member of the Ottawa Police Service (OPS), faces one count of misconduct which alleges unlawful or unnecessary exercise of authority as prescribed in Section 2(1)(g)(i) of the Code of Conduct contained in the Schedule to Ontario Regulation 268/10, as amended and therefore contrary to Section 80(1) of the *Police Services Act*.

An Agreed to Statement of Facts was presented at the Hearing and stated the following (verbatim):

- 1. The Subject officer, Constable Jerome Belanger (cadre #1590) is a sworn member of the Ottawa Police Service. Cst. Belanger has been a police officer with the OPS since 2002.*
- 2. On October 12, 2014 Cst. Belanger was assigned to uniform patrol, in a marked Police Cruiser.
Cst. Belanger was patrolling the area near the airport.*
- 3. On October 12, 2014 the Ottawa police attended the Ottawa Hospital, Civic Campus in regards to a female that had been stabbed. The female was uncooperative, however investigators believed the common law spouse of the victim was a suspect in the matter.*
- 4. It was also established, the stabbing occurred at an address on Craig Henry. Based on the information investigators had obtained, a call was place to Blue Line Taxi asking if any taxis had picked up passengers in the area of Craig Henry.*
- 5. The Taxi company advised the Ottawa Police that a taxi #2016 was on the way to the airport from the area of Craig Henry. The Taxi company could not provide a description of the passenger, but did provide a location for the Taxi using a GPS locator.*
- 6. Police records did provide a description of the suspect that may have been involved in this incident. According to call records Cst. Belanger it*

was possible the suspect they were attempting to locate was a male.

- 7. At 15:00 hrs Cst. Belanger observed a Blue Line Taxi #216 near the Airport property and initiated a traffic stop.*
- 8. Cst. Belanger was informed by his back-up officer that there was a woman and infant in the Taxi as he approached the vehicle. He ordered the driver out of the cab and then at gunpoint ordered the occupant of the Taxi to exit the vehicle and kneel on the ground with her hands behind her head.*
- 9. That occupant was the complainant in this matter, Ms Noy, was returning home to Winnipeg after a visit with family in Ottawa. Ms Noy was subsequently arrested, handcuffed and placed in the rear of a police cruiser. Ms Noy was read rights to counsel and cautioned by Cst. Belanger. Two other uniformed officers attended the area to assist Cst. Belanger.*
- 10. At the time of the arrest Ms Nay advised that she knew nothing of the incident Cst. Belanger was investigating and expressed concern for the safety of her infant in the rear of the taxi. One of the backup officers removed the infant from the cab and placed her in another police cruiser.*
- 11. Ms Nay was arrested and detained for approximately 18 minutes. Cst. Belanger established that Ms Nay was not a suspect in the stabbing being investigated and released her unconditionally. Her infant was returned to her and she continued her way to the airport to board her flight to Winnipeg.*
- 12. As a result of the actions of Cst. Belanger, in April 2015, Ms Nay filed a complaint with O/PRD.*
The matter was investigated and a hearing was directed. On October 7, 2015 Cst. Belanger was served with a Notice of Hearing.

Plea

On February 10th, 2016, Constable BELANGER pleaded guilty and was found guilty of misconduct, namely the unlawful or unnecessary exercise of authority. A joint penalty submission was offered.

Decision

After reviewing and weighing the evidence presented, I accept the joint submission. Constable BELANGER is ordered to forfeit 80 hours {10 days), excluding sick leave time banks and attend the OPS Professional Development Centre for training on the Charter of Rights and Freedoms and procedures with respect to the arrest and detention of persons, in accordance with Section 80(1)

of the *Police Services Act*.

PART II: THE HEARING

Exhibits

The following exhibits were tendered:

Exhibit #1: Hearing Officer's

Designation Exhibit #2:

Prosecutor's Designation

Exhibit #3: Notice of Disciplinary

Hearing Exhibit #4: Notice of

Increased Penalty Exhibit #5:

Amended Charge

Exhibit #6: Agreed Statement of Facts

Exhibit #7: Joint Submission on Penalty

Positions on Penalty and Submissions

Inspector Michel Marin and Mr. Michael Lamothe submitted a joint penalty for Constable BELANGER which required the forfeiture of 80 hours (10 days), excluding sick leave time banks and attend the OPS Professional Development Centre for training on the Charter of Rights and Freedoms and procedures with respect to the arrest and detention of persons. The public complainant in this matter, Ms. Shawna NOV was consulted on this joint submission and also agreed with the penalty. The following is a summary of the submissions presented.

By the Prosecutor

Inspector Michel Marin noted that, Constable BELANGER has been a member of the Ottawa Police Service since 2002. He has an excellent

employment record, with no previous history of disciplinary issues. Over the last 3 performance reviews Constable BELANGER has received 15 exceeds expectations ratings from his supervisors. Constable BELANGER was recognized for excellent attendance five times and has received 3 letters of commendation from members of the public for professionalism. He has also received 5 internal letters of congratulations for his hard work and professionalism during the course of his duties.

Prior to joining the OPS, Constable BELANGER served in the military. In addition, to serving his country and this city, Constable BELANGER served under the United Nations as a peacekeeper to Haiti for one year.

Constable BELANGER's misconduct in this case is serious in nature. Constable BELANGER arrested an individual that was not the right race or sex as the person being sought in the initial incident. Furthermore, this action prevented Ms. Shawna Nay from accessing her 10 month old daughter for 18 minutes.

Constable BELANGER's conduct fell short of what can reasonably be expected by the public and the Ottawa Police Service. It is imperative that the public maintain their faith in the police service in order for the police to effectively carry out our function. There is an expectation from the public that police officers exercise good judgment and conduct themselves in an appropriate manner. This is a primary concern when police use of force is involved.

Constable BELANGER has expressed genuine remorse for his actions and looks forward to moving forward, as demonstrated through his plea of guilty.

With regards to the issue of deterrence, it was noted that OPS has had a several cases of misconduct where members exercised unlawful or unnecessary authority against members of the community. The penalty therefore needs to send a clear message to the public and all police officers that this type of misconduct is not acceptable and will not be tolerated.

The disciplinary decision will be posted on the OPS webpage for members of the public to read.

Two case law decisions were submitted for consideration, namely *Blowes-Aybar v. Toronto Police Service* (OCPC 2003) and *Vogelzan v. Ontario Provincial Police* (OCPC 2012).

Inspector Marin suggested that this case presents several mitigating and aggravating factors.

The **mitigating** factors in this case are as follows:

- *The officer's positive employment history, lack of previous similar misconduct and the recognition of misconduct. That the officer pleaded guilty to this matter [before you today]. His plea has eliminated the need for a trial in this matter.*
- *Cst Belanger's plea has eliminated the need for a trial that would have involved the complainant and his fellow officers being called to testify.*
- *Another mitigating factor is his positive employment history, lack of previous similar misconduct and the recognition of misconduct.*

Regarding the **aggravating factors**.

- *Constable Belanger, is an experienced member of this police service, he should simply have known better that to engage in this type of misconduct.*
- *The case law in this type of matter is clear; it is very serious to infringe individuals Charter rights.*
- *Not only was the complainant impacted adversely but she was also separated from her infant daughter.*
- *Prosecution believes that it is important for the public and the membership to see that the Ottawa Police Service will dispense discipline in line with other jurisdictions in Ontario.*
- *The other aggravating factors in this matter are the damage to the reputation of the Police Service, the public interest and the seriousness of the misconduct, as I have outlined previously.*

By the Defence

Mr. Michael Lamothe noted that Constable BELANGER accepted full

responsibility for his actions. Constable BELANGER cooperated with investigators and plead guilty to the charge.

Constable BELANGER has made a verbal apology to Ms.

Shawna Noy. The penalty is appropriate for the nature of the misconduct.

By the Public Complainant

Ms. Shawna Noy offered no comments.

PART III: ANALYSIS/REASONS FOR PENALTY DISPOSITION

It is widely accepted that the goals of the discipline process are to:

1. Correct errant and unacceptable behaviour or misconduct;
2. Deter others from similar behaviour or misconduct;
3. Reassure the community of the professionalism of the police.

There must be a balance between the expectations of the community, the needs of the organization and the fairness of the process and disposition to the subject officer. Based on the evidence presented, I must determine if the jointly proposed sanction achieves this balance and fits the goals of the discipline process.

To arrive at a decision in this matter I have reviewed the evidence with due attention to the following considerations:

- Public interest
- Nature and seriousness of the misconduct
- Recognition of the seriousness of misconduct
- Employment history
- Need for deterrence
- Ability to reform or rehabilitate the police officer
- Damage to the reputation of the police service
- Effect on the police officer and his family
- Consistency of disposition

I will summarize the most compelling aspects of my findings as follows.

Public Interest

At the heart of all police disciplinary matters is the consideration for public interest. As per the Declaration of Principles in the *Police Services Act*, the purpose of the *Act* is to protect the people and property of Ontario. The objective of the police discipline process is to ensure that the public's confidence is maintained in their police services to perform these functions lawfully, professionally, competently and in a bias-neutral manner. The legislation therefore recognizes the need for the public to have trust and confidence in those chosen to protect and serve them, and without this, a free, lawful and democratic society cannot exist. It therefore follows that when those who are chosen to protect and serve the public fall short of the public's *legitimate* expectations, they must be held accountable.

As a sworn police officer, the public holds Constable BELANGER to a high standard. He is expected to carry out his duties with honesty and integrity and without prejudice. His conduct in this case falls short of this expectation and he must be held accountable.

In the public interest, the OPS must send a clear message to the public that conduct of Constable BELANGER is unacceptable.

I therefore find the public interest factor an aggravating consideration in this matter.

Nature and seriousness of misconduct

Constable BELANGER's misconduct is serious. It is clear from the Agreed Statement of Facts that Constable BELANGER demonstrated poor judgement and as a result, an innocent citizen was arrested at gun-point, detained for 18 minutes and prevented access to her 10 months old daughter.

Recognition of the seriousness of misconduct

Constable BELANGER has demonstrated his understanding of seriousness of this misconduct throughout the process. Through his cooperation with PSS investigators, his verbal apology to Ms. Noy, his guilty plea and his acceptance of the proposed joint penalty (which have all saved the time and expense of a

hearing), he has demonstrated this recognition.

I consider Constable BELANGER's recognition of his misconduct a mitigating consideration in this matter.

Employment history

Constable BELANGER has an excellent and unblemished police service record. I also recognize Cst. BELANGER for his military service. Both Constable BELANGER's police and military service demonstrate a long-standing commitment to duty and service to Canada and Canadians.

I consider BELANGER's employment history a mitigating factor in this matter.

Need for deterrence

The need for specific deterrence is limited in my view as the circumstances and context in this matter appear unique. Furthermore, Constable BELANGER has recognized the seriousness of his misconduct and given his positive service record and the supplementary training being ordered, I am confident that he has learned from this experience and will not commit similar misconduct in the future.

With respect to the need for general deterrence, I would distinguish this matter from the examples of misconduct presented by the prosecution, namely the G20 Summit and recent incidents in the United States. Having said that, I do wholeheartedly agree that in order to protect and maintain the profession of policing, our members must be held to account when they fall short of expected standards of conduct. Furthermore, police officers must know and understand that *there will be consequences* should they fall short of these expectations. This serves not only to promote a culture of professionalism, excellence and accountability, but helps ensure that the public's trust and confidence in our police services and members is maintained.

The requirement for general deterrence is an aggravating factor in this case.

PART IV: DISPOSITION

Conclusion

It is clear that Constable BELANGER's performance fell short of expectations in this matter and that he therefore committed misconduct. I have weighted the aggravating and mitigating factors presented in the evidence and find that the jointly submitted penalty submission is fair and measured and will serve as a strong deterrent for other OPS members in the future.

Final Disposition

In the totality of all the evidence and in light of the mitigating and aggravating circumstances and the seriousness of the misconduct, Constable BELANGER shall forfeit of 80 hours (10 days}, excluding sick leave time banks and attend the OPS Professional Development Centre for training on the Charter of Rights and Freedoms and procedures with respect to the arrest and detention of persons, in accordance with Section 80(1) *Police Services Act*, R.S.O. 1990.

The forfeiture of time will take place at the earliest opportunity possible and prior to June 1st, 2016. The directed training must be completed by September 1st, 2016.



Uday S. Jaswal

Superintendent, Ottawa Police Service