

Windsor Police Service Discipline Hearing
In the Matter of Ontario Regulation 268/10
Made Under the Police Services Act, R.S.O. 1990,

And Amendments thereto:
And
In The Matter Of

The Windsor Police Service

And

Constable Christopher Bernardon #11108

OFFICE OF THE INDEPENDENT
POLICE REVIEW DIRECTOR

JUN 18 2012

RECEIVED

Charge: Discreditable Conduct
(Two Counts)

Before:

Superintendent (Retired) M.P.B. Elbers
Ontario Provincial Police Adjudicator

Appearances:

Counsel for the Prosecution: Mr. David Amyot
Inspector Joseph Bachmeier
Windsor Police Service

Counsel for the Defense: Mr. Edward Parent
Windsor Police Association

Penalty Decision with Reasons:

The Hearing:

Constable Chris Bernardon # 11108 pled guilty on May 10, 2012 and was found guilty of two (2) counts of Discreditable Conduct pursuant to Section 2 (1) (a) (ix) of the Code of Conduct contained in the Schedule to Ontario Regulation 268/10 as amended.

The charges pertain to Bernardon's attendance at a gathering of individuals on a street in Windsor, Ontario. This occurrence was already being investigated by three officers of the Windsor Police Service. Bernardon attended without being dispatched by Communications or by being requested to attend by officers at the occurrence location. Bernardon's attendance and subsequent behaviour resulted in a change of mood of the individuals which resulted in heightened anxiety of all involved and disruptive behaviour specifically exhibited by Bernardon.

An agreed statement of facts was given in this Hearing by Counsel for the affected parties.

Background Information

1. The Windsor Police Service ("WPS") has employed Constable Christopher Bernardon ("Constable Bernardon") since October 12, 2004. Constable Bernardon currently holds the rank of Constable, 1st Class.
2. On or about June 8, 2011, a Complaint against Constable Bernardon was filed with the Office of the Independent Police Review Director ("OIPRD") by a female member of the public referenced as T.E. pertaining to events occurring on March 18, 2011.

3. The WPS conducted an investigation into T.E.'s complaint, which resulted in the issuance of two (2) counts of Discreditable Conduct against Constable Bernardon referenced as PSA #2011-06-03 and forming the basis of the within hearing.
4. On September 7, 2012, Constable Bernardon was served with a Notice of Demotion/Dismissal concerning allegations of misconduct.
5. Constable Bernardon does not have any prior disciplinary matters on record.
6. T.E. was advised that Constable Bernardon has accepted responsibility for his actions and has agreed to plead guilty to the two (2) below noted counts of Discreditable Conduct and has also agreed to a penalty of demotion from Constable 1st Class to Constable 2nd Class for a period of one (1) month. T.E. has agreed to this resolution.

COUNT #1 – DISCREDITABLE CONDUCT

IT IS AGREED that on March 18, 2011 Constable Bernardon used profane, abusive or insulting language or was otherwise uncivil to two (2) members of the public (referenced as “T.E.” and “S.M”) constituting an offence against discipline, Discreditable Conduct, as prescribed in section 2(1)(a)(v) of the Code of Conduct, Regulation 268/10, as amended and therefore, contrary to section 80(1)(a) of the Police Services Act, R.S.O. 1990, as amended by the Police Services Amendment Act, 1997.

AGREED STATEMENT OF FACTS

1. On March 18, 2011 Constable Bernardon was on routine patrol in the downtown area when he stopped in the 200 block of Ouellette Avenue, Windsor, Ontario.
2. Constable Bernardon observed a female seated on a park bench yelling at a group of bystanders. Three patrol officers were already present and were dealing with the situation.
3. Constable Bernardon stopped to assist, during which he engaged in a heated conversation with one of the female bystanders identified as T.E.

4. During the course of his conversation with T.E., Constable Bernardon made insulting and derogatory remarks regarding the parenting ability of the female seated on the park bench (S.M.). S.M. was a friend of T.E. and was, at the time, detained by the other WPS officers regarding a complaint of intoxication in a public place.

5. Constable Bernardon's actions constitute Discreditable Conduct in that he used insulting language to T.E., contrary to section 2(1)(a)(v) of the Code of Conduct, Regulation 268/10, as amended.

6. Constable Bernardon pleads guilty to this Count based on this Agreed Statement of Facts.

COUNT #2 – DISCREDITABLE CONDUCT

IT IS AGREED that on March 18, 2011 Constable Bernardon acted in a disorderly manner or in a manner prejudicial to the discipline or likely to bring discredit upon the reputation of the Windsor Police Service, constituting Discreditable Conduct, as prescribed in section 2(1)(a)(xi) of the Code of Conduct, Regulation 268/10, as amended and therefore, contrary to section 80(1)(a) of the Police Services Act, R.S.O. 1990, as amended by the Police Services Amendment Act, 1997.

AGREED STATEMENT OF FACTS

1. On March 18, 2011, three (3) WPS officers were in the 200 block of Ouellette Avenue, Windsor, Ontario. The three (3) officers were dealing with a female identified as S.M., who was detained for being intoxicated in a public place.
2. One (1) of the three (3) officers was in a discussion with a group of friends of S.M., which revolved around the mental and physical wellbeing of S.M.
3. Constable Bernardon was on patrol, stopped, and inserted himself into the situation.
4. During the course of the incident, Constable Bernardon acted in an unprofessional manner, which escalated the situation and led to Constable Bernardon becoming confrontational with a female referenced as T.E., a friend of S.M.
5. Constable Bernardon's unprofessional behaviour incited T.E.'s behaviour, which escalated and subsequently led to T.E.'s lawful arrest.

T.E. was grounded by Constable Bernardon during the course of her lawful arrest. T.E.'s husband C.E. attempted to physically intervene during T.E.'s lawful arrest and was subsequently subdued and lawfully arrested.

6. Constable Bernardon's actions constitute Discreditable Conduct in that he acted in an unprofessional manner by: (a) inserting himself into a situation that was being properly handled by three (3) other officers; (b) acting in a manner and making derogatory statements that incited T.E. and escalated her behavior, which resulted in her being grounded and lawfully arrested; and (c) acting in a manner that incited C.E. and escalated his behavior, which resulted in him being subdued and lawfully arrested, contrary to section 2(1)(a)(xi) of the Code of Conduct, Regulation 268/10, as amended.

7. Constable Bernardon pleads guilty to this Count based on this Agreed Statement of Facts.

FINDINGS:

Mr. David Amyot representing the Windsor Police Service and Mr. Edward Parent representing Constable Bernardon #11108 have proposed a joint submission of demotion from First Class Constable to Second Class Constable for a period of one (1) month pursuant to section 85 (1) (c) of the Police Services Act.

Mr. Amyot or Mr. Parent was able to provide any cases to support their joint penalty disposition.

In Williams and the Ontario Provincial Police, the Commission identified three key elements a Hearing Officer must take into account when imposing a penalty. These include: the nature of the seriousness of the misconduct, the ability to reform or rehabilitate the officer, and the damage for the reputation of the police force that would occur if this officer remained on the Force.

Constable Bernardon is an eight (8) year member of the Windsor Police Service.

Accountability, ethical behaviour and conduct are at a standard much higher than the public we serve. It is generally known and an accepted fact that the law requires a higher standard of conduct with Police Officers in their lives than the ordinary citizen.

Credibility, honesty, integrity are characteristics that are earned. As one elevates him / herself through the ranks of this proud organization; those characteristics are more revered and treasured. It helps to create the professional image and excellence that the Windsor Police officers strive to maintain.

It is important to consider the Public Interest. As I have stated earlier, it is common knowledge that the public holds police in a position of high trust and accountability. The Windsor Police is constantly engaged in efforts to deal with rowdy behaviour by exiting patrons in the bar areas of the city onto the streets of the city. It compounds the situation when members of your own Service fuel the behaviour by acting improperly, unprofessional and speak using profane language. On the evening in question, Constable Bernardons' conduct toward the public will not be tolerated by this Service.

Constable Bernardon has no prior disciplinary issues on file. He has three (3) tributes on file as presented by Mr. Amyot in Exhibit # 4, Tab # 2.

He has pled Guilty to the charges of Discreditable Conduct before this Tribunal.

By pleading Guilty at the earliest opportunity I believe that Constable Bernardon recognizes the seriousness of his misconduct. The actions exhibited by him in March of 2011 have affected his career.

The Tribunal recognizes that Constable Bernardon has been involved in some marital issues. It is unknown if the home situation was a contributing factor in his behaviour on the date in question and this consideration can be seen as a mitigating factor in my decision.

Constable Bernardon has had an excellent employment history with the Windsor Police Service while joining as a Constable through today, albeit for the above mentioned incident in 2011.

Constable Bernardon acted in a manner not conducive to a member of the Windsor Police. His actions are clearly unacceptable. It is necessary to consider a general deterrence for all members. The penalty must reflect that the Windsor Police Service will not tolerate unacceptable behaviour. There must be specific deterrence for the member to send a message that individuals will be held accountable for their conduct. The Windsor Police Service must deliver a penalty that not only prevents a recurrence, but also adequately protects the public.

The Discreditable Conduct displayed by this officer has the potential to damage the reputation of this organization. The city where he resides is not a large community. It is unknown if the community at large is aware of his indiscretions.

I am confident this experience, pleading guilty at the first opportunity, that Constable Bernardon has learned from his indiscretion and is prepared to take responsibility for his actions.

Rehabilitation has been addressed. Constable Bernardon through his Association President, has indicated to the Tribunal, that he would not appear before this Tribunal with similar conduct in the future.

Specific and general deterrence must be considered when assessing an appropriate disposition for Police Act offences.

The Windsor Police Service will not tolerate unacceptable behaviour by its members. The rank structure within the Windsor Police Service is the backbone of the organization. It must be respected. The proposed joint submission as submitted I believe sends a message to the organization and its members.

Specific deterrence has been addressed as Constable Bernardon through Counsel has indicated he will not behave like this again.

The proposed penalty offered by Counsel poses a hardship to Constable Bernardon and his family. He has accepted this and wishes to move on with his life and put this incident behind him.

The Windsor Police Service views this misconduct as serious and is cognizant that a penalty must be imposed to protect the interest of the public we serve.

Constable Bernardon, as a junior member of this organization, you have conducted yourself with a total lack of professionalism, judgement and courtesy, which is expected of all members of the Windsor Police Service.

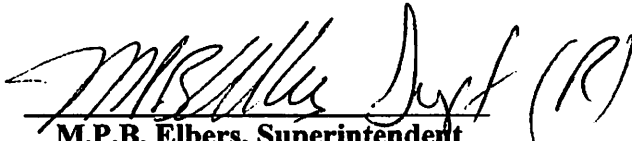
I commend you for attending your Hearing in Windsor on May 10, 2012 with Association representation as your Counsel. It was obvious to me that you wished to put this situation behind you. I will take into consideration your forthright manner in assessing the appropriate disposition.

I may have been more inclined to administer a more stringent penalty if it were not for the positive comments and observations relayed to me by Counsel and the supporting documentation that was presented by Counsel.

I will deal with the two counts of Discreditable Conduct as one disposition for both charges.

Disposition:

In light of the seriousness of these allegations and bearing in mind all the evidence placed before me, Constable Christopher Bernardon #11108 will be demoted from his position of First Class Constable to Second Class Constable immediately for a period of one (1) month and will return to First Class Constable in the normal manner that a Constable within the Windsor Police Service according to their Collective Agreement advances from Second Class Constable to First Class Constable pursuant to Section 85 (1) (c) of the Police Services Act.


**M.P.B. Elbers, Superintendent
(Retired)**

May 23, 2012
Date