

**North Bay 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 North Bay Police Service**

**And**

**Constable Steven Carleton #5571**

**Charge: Neglect of Duty**  
**Discreditable Conduct**

**Before:**

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

**Appearances:**

**Counsel for the Prosecution: Ms. Courtney March**  
**North Bay Police Service**

**Counsel for the Defense: Mr. Gary Clewley**  
**North Bay Police Association**

**Public Complainant: A.B. represented by her Mother**

## **Penalty Decision with Reasons**

### **The Hearing**

Constable Steven Carleton #5571 pled guilty on Wednesday November 11, 2020 in North Bay, Ontario and was found guilty of one (1) count of Neglect of Duty pursuant to Section 2 (1) (c) (i) of the Code of Conduct contained in the Schedule to Ontario Regulation 268/10 as amended. The Prosecutor, Ms. March withdrew a charge of Discreditable Conduct

The charge pertains to Constable Carleton's failure to conduct an adequate investigation of a criminal offence in regards to a member of the public constituting an offence against discipline as prescribed by the Ontario Police Act.

Exhibit #6, an Agreed Statement of Fact was filed at the Hearing.

### **BACKGROUND**

On December 9<sup>th</sup>, 2018, the complainant reported being the victim of a sexual assault at the Canadore College Campus. Constable Carleton was assigned the investigation. As part of his investigation, Constable Carleton interviewed the complainant on December 10<sup>th</sup> and 11<sup>th</sup>, 2018. Following this, Constable Carleton determined that the complainant was not credible and cleared the sexual assault occurrence as being unsubstantiated.

#### **Count ONE – NEGLECT OF DUTY**

You are alleged to have committed Neglect of Duty in that on or about December 9, 2018 you without lawful excuse, neglect or omits promptly and diligently to perform a duty as a member of the North Bay Police Service constituting an offence against discipline as prescribed in section 2(1)(c)(i)(A) of the Code of Conduct, Ont. Regulation 268/10, as amended.

#### **Negligent Investigation**

1. Constable Carleton failed to conduct a proper and complete sexual assault investigation. The OIPRD analysis of the investigation is set out at pages 51 to 74 of the Investigation Report. A copy of the report is attached as **Appendix A**.

2. The North Bay Police Service is guided in their sexual assault investigations by Standard Operating Procedure - Sexual Assault Investigations LE-034-3. A copy of this policy is attached as **Appendix B**.
3. The OIPRD investigation revealed that Constable Carleton took several initial steps in the course of the sexual assault investigation, including interviewing a suspect, reviewing campus video footage and arranging for a Sexual Assault Evidence Kit (“SAEK”) and blood work to be completed on the complainant. Constable Carleton drove the complainant to the hospital so the SAEK kit could be completed and he inquired whether or not she had a safe place in which to stay. These investigative steps were in accordance with the relevant policies and procedures of the North Bay Police Service and met with the approval of the OIPRD.
4. Constable Carleton failed to submit the complainant’s SAEK and blood samples to the Centre of Forensic Sciences for testing. This was contrary to policy. No in-depth forensic analysis of the evidence was ever completed preventing any opportunity to draw conclusions from this evidence. Additionally, Constable Carleton did not turn his mind to the possibility of obtaining a penile swab from Civilian Witness 5.
5. Constable Carleton indicated that he considered AB’s intoxication level and whether it impacted her capacity to consent. However, he chose not to have her blood – which had been seized at the hospital – tested to assess her blood alcohol content. By failing to submit the sample of AB’s blood for testing, Constable Carleton missed an opportunity to consider whether the level of alcohol in AB’s blood may have affected his decision on whether or not she could have consented to the activity in question.
6. Constable Carleton relied on a four second cell phone video taken by Civilian Witness 6 which showed what he believed to be AB’s consensual participation in an act of fellatio. Constable Carleton used this video to erroneously conclude that since AB appeared to be consenting to this brief sexual act, she necessarily consented to everything else that occurred that morning.
7. Constable Carleton failed to provide adequate updates about the investigation to the complainant as required by North Bay Police Service policy.
8. The OIPRD investigation found that some of the conclusions reached by Constable Carleton were reached very quickly before a review of all the evidence was undertaken. He erroneously used a “reasonable doubt” standard. Constable Carleton confused his role as an officer with that of the Crown.
9. The OIPRD investigation found that Constable Carleton inappropriately relied upon “rape myths” in terms of a complainant’s prior sexual activity supporting an inference of consent.
10. Constable Carleton also found that AB’s decision to lie to her boyfriend about going to the party was proof that she wanted to hide her true intentions which included the sexual arrangement she had made with Civilian Witnesses 5 and 6. There was no evidence to support such an inference.

11. Constable Carleton relied on irrelevant information to bolster his conclusion that the sexual assault allegation was unsubstantiated. He relied on a September 2018 incident to question why AB would continue to associate with Civilian Witnesses 5 and 6.
12. Constable Carleton relied on further irrelevant information regarding the fact that AB had sexual intercourse with her boyfriend after the alleged sexual assault as evidence that she was not a true victim.
13. Constable Carleton erroneously determined that AB's lack of memory of the sexual assault could not be attributed to her level of intoxication. Instead of considering the role trauma and memory loss may have played in AB's ability to recount her version of events, Constable Carleton chose to treat AB as an accused and investigated her for public mischief.

#### **Negligent Interview of Complainant (AB)**

14. Constable Carleton conducted an improper interview with the Complainant (AB). Once Constable Carleton came to believe that no sexual assault had occurred, he re-interviewed the complainant in an unacceptable manner.
15. The complainant reported being a victim of sexual assault. In a short period of time Constable Carleton determined that she had lied about the sexual assault and treated her as a suspect in a public mischief investigation.
16. The North Bay Police Service Policy on sexual assault investigations provides guidance to police officers regarding the needs of victims during a sexual assault investigation. The policy mandates that investigations be conducted in a fashion that is effective, sensitive to the needs of the victim and engenders confidence in the police.
17. During the second interview, Constable Carleton appeared to endorse a common myth about women and sexual assaults. In *R. v. Seaboyer*, the court provided examples of the common myths and stereotypes, such as the "female under surveillance myth". With this myth, it is assumed that a female's sexual behavior is under the surveillance of her parent or her partner. Thus, if a woman says she was sexually assaulted, it must be because she consented to sex that she was not supposed to have. The woman got caught and is now wanting to get back into the good graces of whoever's surveillance she is under.
18. Constable Carleton made the following statements in the second interview of the complainant that were in line with the "female under surveillance myth":
  - a. We're past the point that this was something that you were taken advantage of. There is more to the story and the only reason I wanted to talk to you now is to find out why. I think the only reason...is because I think you got put into a bit of an awkward situation when you met with your boyfriend the next morning and he suggested you go to the police.

- b. You did lie....You got caught up in a situation where you were caught not being faithful to your boyfriend.
- c. I just want to know why you decided to do it, to point the finger...and it's either because you got caught up in the situation or [Civilian Witness 3] forced you to make this complaint.

19. The above-listed statements are inappropriate and promote a culture in which female victims choose not to report sexual assaults for fear of being stigmatized.

20. Constable Carleton made states to the complainant AB suggesting that she did not look like a true victim of sexual assault:

**Constable Carleton.....**How did this whole thing make you feel after this happened? Did it make you feel disgusted? Did it make you feel violated?

**AB:** Yeah

**Constable Carleton....**So why is it that you went home afterwards and wanted to engage in sex with your boyfriend....?

.....

**Constable Carleton:** True victims of sexual assault that have been violated like that don't even like to be touched...

**AB:** yeah by another guy I don't want to be touched.

.....

**AB:** No, he's different because I know him, like I've known him for a long time.

**Constable Carleton:** AB this is insulting my intelligence, in my experience as a police officer.

21. Throughout the interview, Constable Carleton continually challenged AB on her version of events. It was evident to the OIPRD that AB was confused by some of the questions. When she offered plausible answers, Constable Carleton rejected them. AB could recall parts of the evening in question but failed to give answers to the satisfaction of Constable Carleton who believed that she had selective recall. Constable Carleton refused to consider that AB's failure to recall all the details could be explained by other factors, short of an outright lie:

**Constable Carleton:** Were you falling over intoxicated?

**AB:** No but I was kind of like blacking out, because some parts I clearly don't remember.

**Constable Carleton:** I think you remember all the important parts and you just don't want to be honest with me.

22. Constable Carleton also revealed his bias when he told AB that there was no reason to subject Civilian Witnesses 5 and 6 – even though one was arrested – to a polygraph when she was the only one that seemed to think that she was telling the truth.

23. The above-described actions of Constable Carleton constitute Neglect of Duty.

## **FINDINGS:**

Ms. Courtney March representing the North Bay Police Service and Mr. Gary Clewley Representing Constable Steven Carleton #5571 has proposed a joint submission of forfeiture of sixty four (64) hours of time to be worked at the discretion of the Divisional Commander pursuant to Section 85 (1) (f) of the Police Services Act. AB's mother who attended the proceeding agreed with the hours to be worked and understood that the Discreditable Conduct charge that was withdrawn on the Hearing date that the facts of that count were rolled into the Neglect of Duty charge. She commented that she would have preferred the Discreditable Conduct charge to remain. The issues were explained and resolved prior to the Hearing commencing with Counsel, AB's mother and the Adjudicator.

Counsel have provided the Tribunal one case marked as Exhibit #8 to assist me in determining an appropriate disposition to support their disposition position in this case. The case is an OPP case rendered on August 12, 2019. (Quemby)

## **Aggravating Factors**

- a. **Public Interest**- It is common knowledge that the public holds police officers in a position of high trust and accountability. Constable Carleton is a police officer and as such the public expects him to obey the laws of the country, investigate occurrences and the policies of the North Bay Police Service.  
It is the communities' expectations, that a police officer more so than the general public, would know and understand the Criminal Code of Canada.  
He would also understand the repercussions of improper conduct and behavior as a sworn police officer. This type of behavior is not tolerable.
- b. **Seriousness of the Misconduct**- Abhorrent behavior displayed by a police officer in any service is extremely serious. This situation is compounded when the member is expected to be trusted by the community and his fellow officers. Constable Carleton betrayed the trust of his fellow officers, the community and the North Bay Police Service.
- c. **Need for Deterrence**- The North Bay Police Service must send the message to all members that conduct displayed and portrayed by Constable Carleton cannot be tolerated. Further, there must also be specific deterrence for Constable Carleton to send the message that this type of behavior is unacceptable.

Mr. Clewley apologized for his client and has advised the Tribunal that Constable Carleton has accepted and acknowledged that his behaviour was inappropriate.

- d. **Damage to the Reputation of the Police Service**- The credibility of the North Bay Police Service as police agency is of paramount importance. The credibility of officers that ignore the laws of the land and ignore the policies of the Service can damage the Service. This is particularly damaging to the remaining members of this Service who are out doing their jobs in a proper manner and meeting the public. Further, I am not aware if this incident was reported in the media. If it was reported it would have resulted in further embarrassment to the North Bay Police Service.
- e. **Management Approach to Misconduct**- The North Bay Police Service is a Professional and Disciplined organization. The North Bay Police Service considers the actions of Constable Carleton to be serious. The misconduct is serious in nature and was conducted by a senior member of the Service. Because of the seriousness of the behavior, I have not given undue consideration to this issue. There is truly no flexibility in this manner in which management of the North Bay Police Service could approach or condone this type of behaviour by a member of their Service.

### **Mitigating Factors**

- a. **Recognition of Seriousness of Misconduct**- Constable Carleton has recognized and accepted responsibility for his behavior. It is my hope that this officer sees clearly how his actions and lack of professionalism has dictated the shortcomings that bring him before me today. The public observes and evaluates the Police 24-7. We, as individuals and as a professional organization must be mindful of this fact. Our members, while on patrol and off duty, must conduct themselves in a professional manner at all times.
- b. **Employment History**- Constable Carleton is a twelve year (12) year veteran of the Service. Constable Carleton I understand has been a hardworking and diligent officer throughout his career and has been an asset to the Service.
- c. **Ability to Reform or Rehabilitate the Officer**- It is expected that Constable Carleton will be able to rehabilitate himself and will continue to be a useful member of the North Bay Police Service. I believe with his quick decision to plea to this charge at the first opportunity this officer will reform and not place him into jeopardy again.

- d. **Effect on the Police Officer and his Family**- There is no doubt that Constable Carleton will suffer from the penalty position to be imposed. A penalty such as dismissal, demotion or forfeiture of hours will have a significant impact on Constable Carleton.

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 Carleton is a twelve (12) year member of the North Bay Police Service. To conduct one-self as he did is not conducive to team building, professionalism or harmony of a Police Service. The North Bay Police Service takes great pride in the professionalism exhibited by its members.

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 police officers in their lives than the ordinary citizen.

I must be guided by the OCCPS decision of Schofield and Metropolitan Police Service. *“Consistency in the disciplinary process is often the benchmark of principles. The penalty must be consistent with the facts, and consistent with similar cases that have been dealt with on earlier occasions.”*

As Counsel have presented in their submissions the penalty disposition recommended to the Tribunal and further exemplified by the Quemby decision is appropriate for the actions displayed by this officer in the investigation he conducted. He is a twelve year member of the Service without any prior disciplinary issues. It was addressed by Counsel that Constable Carleton did not have any sexual assault training which may have contributed to his lack of attention to detail of this case and his interaction with AB. Defense Counsel, Mr. Clewley contends that Constable Carleton did an investigation that was appropriate however he could have conducted himself more professionally when interacting with AB and her mother.

AB’s mother also presented submissions to the Tribunal. She was polite and cordial in her presentation. I have considered her submissions in the disposition presented by Counsel. I think it is fair to comment that her mother was not satisfied in the least by the investigation by this officer. She pointed out a number of inconsistencies in the investigation and pointed out to the Tribunal she or her daughter did not receive an apology from Constable Carleton. She did outline that she spoke with Chief Tod of the Service and this was beneficial to her.

It was also presented to the Tribunal that the investigation conducted by the North Bay Police Service is being reviewed and investigated by the Ontario Provincial Police.

In Legal Aspects of Policing at pages 6-87, the author (Paul Ceyskens) states the following in relation to guidance in Neglect of Duty counts:

In Ontario, a peace officer commits Neglect of Duty when he or she “without lawful excuse, neglects or omits promptly and diligently to perform a duty as a member of the police force.”

The leading judicial decision concerning failure to promptly and diligently discharge duty is P.G. v. Police Complaints Commissioner (1996) 90 O.A.C. 103 (Div. Court). This case considered the provisions of the Ontario scheme as stated above.

In P.G., the Divisional Court ruled that either of two situations **is required** in order to establish neglect of duty:

1. “there was some element of willfulness” in the police officer’s neglect; or
2. “there was a degree of neglect which would make the matter cross the line from a mere performance consideration to a matter of misconduct”.

The Ontario Civilian Commission on Police Services as it was known at that time has ruled that the employer must establish that the police officer was required to perform a duty, and that he or she failed to perform this duty because of neglect, or did not perform the duty in a prompt and diligent manner. If these two burdens are established, the police officer bears the burden of establishing lawful excuse.

In determining disposition, I must give due consideration for the public interest. It is common knowledge that the public holds Police Officers in a position of high trust. It is therefore extremely important that the North Bay Police Service demonstrate that members will be held to that standard. There is no doubt that the charge of Neglect of Duty has been proven by the guilty plea entered by this officer and the supporting joint submission of the Agreed Statement of Fact.

Members of the North Bay Police Service are expected to investigate criminal activity in a professional and thorough manner. Reports are expected to be filed forthwith as policy dictates with this Service and investigations are to be thorough and complete conducted in a professional manner. In this case, we have a public complainant AB and her mother which were directly affected by Constable Carleton actions. The public must be confident that the police will strive to set the example for those in the community. Anything short of this will be seen as a contradiction and serve no other purpose but to undermine the efforts of all serving officers and the explicit goals of the North Bay Police Service.

I feel relatively confident that this experience, pleading guilty at the earliest opportunity that Constable Carleton has learned from his indiscretion and that he is fully prepared to take responsibility for his actions. I believe this also sends a strong message to all police officers that you must consider when investigating sexual assault that you do so in an honourable, thorough, understanding, ethical, compassionate and professional manner.

It is commendable that Constable Carleton through his lawyers comments and submissions recognizes and accepts that his actions were irresponsible and unacceptable as a police officer. My only hope now is that Constable Carleton follows through on his promise made by his Counsel to the Tribunal to uphold the core values of a police officer and conduct himself accordingly.

He has pled Guilty to the charge of Neglect of Duty before this Tribunal and I believe he has learned from the process he has endured throughout this investigation by the Professional Standards Unit of the North Bay Police Service and the Office of the Independent Police Review Director and understands the position as submitted by AB through her mother.

You are accountable for your actions and any deviance from those actions, the North Bay Police Service will hold you accountable. This is what the public expects of the management of this Police Service.

The Police Services Act and the policies and procedures of the respective Police Service are meant to hold officers accountable for their actions and correct the undesired behaviour where possible.

The proposed joint penalty submission submitted by Counsel in this matter suggests to me that the officer can be rehabilitated and once again be useful to this proud organization.

There is no doubt that Constable Carleton will suffer from the proposed penalty disposition. Dismissal, demotion, forfeiture of hours, will have a significant impact on Constable Carleton. I have given this situation serious consideration in determining an appropriate disposition.

I concur with the comments made by the Adjudicator in the Quemby disposition when he stated the following: *“This disposition should serve as a reminder to Constable Carleton and all members of the North Bay Police Service members that we have an obligation, indeed a duty to investigate crime with all of the investigative techniques, avenues and resources available to us. We cannot allow our hunches or speculation regarding outcomes to result in shortcuts being taken and to miss collecting valuable evidence through error or omission”*. **(Carleton and North Bay Police Service was substituted by me as opposed to the officers name and Police Service)**

I believe the statement above sums up the comments and beliefs of AB’S mother in her submission to the Tribunal.

As was stated by Counsel sexual assault investigations are under reported by victims to police services and we must make the victims feel comfortable as we know they are reporting or attending the Service with fear and with a distrust of the judicial system. AB’s experience with the Service through Constable Carleton made her feel re-victimized and not believed by the officer. I hope Constable Carleton has learned and also has listened to the comments made by AB’s Mother at the Hearing. Those words spoken by her will make him a better Police Officer.

The proposed penalty, as submitted jointly by Counsel I believe sends a message to the organization and its members. 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.

I have considered the submissions by Counsel, the agreed statement of facts and the joint penalty submission agreed to by Counsel and Constable Carleton.

**Disposition:**

**In light of the seriousness of these allegations and bearing in mind all the evidence placed before me, Constable Steven Carleton #5571 will forfeit sixty four (64) hours pursuant to Section 85 (1) (f) of the Police Services Act.**

**This means you will attend your office on either rest days or annual leave days and work the prescribed hours until sixty four (64) hours have been accomplished. The timeline to complete these hours will be issued by your Divisional Commander. I would recommend six months to complete.**

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

**November 27, 2020  
Date**