

**Niagara Regional 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 Niagara Regional Police Service**

**And**

**Constable Elyse Giosi #9631**

**Charge: Neglect of Duty  
Insubordination**

**Before:**

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

**Appearances:**

**Counsel for the Prosecution: Mr. Murry Segal  
Niagara Regional Police Service**

**Counsel for the Defense: Mr. Harry Black  
Niagara Regional Police Association**

**Public Complainant: Frank Rudge  
Self- represented**

## **Penalty Decision with Reasons:**

### **The Hearing:**

Constable Elyse Giosi #9631 pled guilty on January 6, 2021 via an electronic Hearing conducted through Microsoft teams and was found guilty of One (1) count of Neglect of Duty pursuant to Section 2 (1) (c) (i) and to One (1) count of Insubordination pursuant to Section 2 (1) (b) (i) of the Code of Conduct contained in the Schedule to Ontario Regulation 268/10 as amended.

The charge pertains to the attendance of Constable Giosi, a member of the Niagara Regional Police Service attendance at the Rudge residence in Welland, Ontario to investigate an occurrence on June 23, 2019. The officer failed to conduct a proper investigation and advise Mr. Rudge of the results of her investigation. She also failed to return messages left by Rudge where he was attempting to get follow up on the investigation conducted by Constable Giosi.

An agreed statement of facts was submitted to this Hearing by Counsel for the affected parties and marked as Exhibit Four (4).

### **Agreed Statement of Facts**

On June 23, 2019 at 9:21 am the Niagara Regional Police were contacted by Frank RUDGE, age 56, indicating that he had received threats from a male who identified himself as Paul PAPANONI, age 53.

Constable GIOSI was dispatched to the call and arrived at the complainant's address at 10:42 am. Other officers also arrived to look for the suspect.

Mr. RUDGE advised Constable GIOSI that a male who was walking down the street in front of RUDGE's house had threatened to kill him. He was loud, agitated and shaking his fists. The male identified himself to Mr. RUDGE as Paul PAPANONI. RUDGE reported that PAPANONI said "nice car for a dirty cop; I oughta kill you-I should just do you in now. You are officer Rudge who gave information to Skinny a motorcycle gang member." Mr. RUDGE was upset and wanted the matter investigated and protection from PAPANONI.

The Constable wrote the victim's phone number on the back of her notebook.

Constable GIOSI located and spoke with PAPANONI who admitted to engaging in a verbal altercation with Mr. RUDGE but denied threatening to kill him. PAPANONI confirmed that he had said RUDGE was a crooked cop who had given information to organized crime and that he was upset about that. She advised PAPANONI not to communicate with RUDGE and stay away from him.

Constable GIOSI submitted a report documenting the allegations made by Mr. RUDGE. Before closing out the file she performed a CPIC check on PAPARONI and found he was under charge for assault bodily harm, threatening and breach of probation.

Constable GIOSI did not obtain a formal statement from Frank RUDGE or Paul PAPARONI. No charges were laid in this matter. A senior officer accepted that because there were conflicting accounts, as reported by Constable GIOSI, and that RUDGE only wished the matter to be documented, as reported by Constable GIOSI, and agreed that no further action ought to be taken. The senior officer did not appreciate how Constable GIOSI came to her conclusions or that she had never got back to RUDGE.

Constable GIOSI did not record any witness information regarding this event. She did not try to resolve conflicts in the accounts nor seek out other witnesses although RUDGE said there were neighbours who heard or saw the ruckus.

On June 23, 2019 at 3:27 pm RUDGE tried several times to make contact with the Constable ultimately leaving a voicemail for Constable GIOSI through the Niagara Regional Police Service's voice mail system. Mr. RUDGE asked what was going on with respect to his call for service and stated that he had googled the name Paul PAPARONI and located information indicating PAPARONI had been charged two years ago for Assault Causing Bodily following an incident in which he accosted someone in their driveway with a crow bar and a golf club.

In his message Mr. RUDGE requested that the officer get back to him and he provided two phone numbers where he could be contacted.

This voicemail generated an automatic email into the Inbox of Constable GIOSI'S N.R.P.S. Microsoft Outlook account containing an attached audio file of the voice mail recording.

The automatic email notification of the voice mail message was later said by Constable GIOSI to have been inadvertently deleted. The email was located and retrieved from Constable GIOSI'S deleted folder on November 22, 2019 by N.R.P.S. I.T. personnel. RUDGE waited a month before lodging a complaint with the OIPRD on July 23, 2019. He had seen PAPARONI walking in the neighbourhood a number of times. The two men did not live far apart. Unfortunately, NRPS was not made aware of the complaint by the OIPRD until October 28, 2019.

On August 20, 2019 at 8:35 pm the Niagara Regional Police received a 911 call from Mr. RUDGE's residence and other callers indicating a male was armed with a bat and chasing a group of people.

The investigation determined that at 8:35 pm the victim, Frank RUDGE was inside his home located in the City of Welland. He observed Paul PAPARONI swinging a homemade club, constructed of an axe handle, destroying the garbage cans placed at the curb of his home.

Mr. RUDGE exited his home and yelled at Mr. PAPARONI to stop. At that time Mr. PAPARONI began chasing Mr. RUDGE with the club and yelling "*I'm going to fucking kill you!*" Mr. RUDGE feared for his life and attempted to flee from Mr. PAPARONI. Mr. PAPARONI swung the homemade club and struck Mr. RUDGE numerous times leaving deep bruising on his back, and legs. Mr. RUDGE was injured and was forced to miss work as a self-employed barber.

Mr. PAPARONI was subsequently charged with Assault with a Weapon, Utter Threats and Breach of Probation relating to the earlier beating he had administered.

By not responding to Mr. RUDGE'S voice-mail left on her Microsoft Outlook account on June 23, 2019 Constable Elyse GIOSI was insubordinate to N.R.P.S General Order 239.02, Telephone and Voicemail Systems Protocol, section 3.9 which states;

*Members who are assigned a voicemail account shall:*

*(a) access and check their assigned voicemail account at least once per shift to receive any new messages;*

*(b) respond to legitimate voicemail messages in a timely manner, preferably within the customary work day or within one day of returning to duty. Misdirected voicemails shall be redirected to the intended recipient or in the alternative, the caller shall be contacted if possible and assistance offered.*

Additionally, Constable GIOSI is expected to conduct a thorough and complete investigation which would include but is not limited to taking formal statements and canvassing for witnesses. Constable GIOSI committed Neglect of Duty when she failed to take these investigative steps in relation to Mr. RUDGE's initial call for police assistance regarding a male threatening to kill him while out front of his residence.

### **Findings:**

Mr. Segal, the Prosecutor and Mr. Black representing Constable Giosi #9631 have proposed a joint submission of Eight (8) Hours forfeiture of pay for the Neglect of Duty count pursuant to Section 2(1)(c)(i) and Four (4) hours forfeiture of pay for the Insubordination count pursuant to Section 2 (1)(b)(i) to be worked at the discretion of her Divisional Commander on her rest days or annual leave pursuant to Section 85 (1) (c) of the Police Services Act.

The public complainant, Mr. Frank Rudge has left the disposition to the Hearings Officer for a just disposition keeping in mind that he lost twenty days of work because he was unable to perform at his business due to the injuries that he incurred from Mr. Paparoni.

Counsel has not offered any cases to support their positions on penalty in this case.

Mr. Segal in his submission to the Tribunal to support his position of penalty indicated that Constable Giosi is a new officer. She has two years' service and has no prior disciplinary record. She has pled guilty to both counts in an expeditious manner and has remorse for her actions on the day in question.

Mr. Black in his submissions advised the Tribunal that there were conflicting statements in relation to the events of the day and that Constable Giosi did not have the belief or grounds to lay a charge against Mr. Paparoni.

She advised a senior officer of her investigation and of the conflicting statements. Mr. Black has indicated that Constable Giosi has learned from this experience. He advised that Constable Giosi did not deliberately call back Mr. Rudge as the message was deleted. She was not aware of the message that Rudge had left.

Mr. Black commented that the senior officer should have assisted Giosi and this should be taken into account due to her junior service.

Constable Giosi addressed the Tribunal and apologized to Mr. Rudge for her inaction and lack of a proper investigation. She has learned from this experience and she will do better in the future.

In considering a proper disposition the Tribunal must consider a number of issues. The Disposition should agree with the purpose of affecting a proper discipline process where it meets the standard for the Service in employing discipline in the workplace and the responsibility to treat the respondent officer fairly and also the actions incurred if a public complainant is involved to assist in their reconciliation of the matter.

The overall purpose of the discipline process is to apply corrective measures to correct improper behaviour according to the standards of the discipline process and that of the affected Police Service in accordance with their policies and procedures that all officers are to adhere to in their policing duties.

Through disciplinary jurisprudence, a number of mitigating and aggravating considerations have emerged that affect disposition.

These include:

- Public interest.
- Seriousness of misconduct.
- Recognition of the seriousness of the misconduct.
- Handicap or other relevant personal circumstances.
- Provocation.
- Procedural fairness considerations.
- Employment history.
- Potential to reform or rehabilitate the police officer.
- Effect on police officer and police officer's family.
- Consistency of disposition.
- Specific and general deterrence.
- Employer approach to misconduct in question.
- Damage to the reputation of the police force.

Not all of these factors are relevant to the present case before the Tribunal.

Many of these factors stem from the decision of Williams and Ontario Provincial Police (1995), 2 O.P.R. 1047 (OCCPS)

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.

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 private 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 Niagara Regional Police officers strive to maintain.

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.”*

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 Niagara Regional Police Service.

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

Members of the Niagara Regional Police Service are expected to investigate criminal activity in a professional and thorough manner. General Orders of the Service are expected to be adhered to forthwith as policy dictates. In this case, we have a public complainant which was directly affected by Constable Giosi’s 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 Niagara Regional Police Service.

Seriousness of the misconduct is a fundamental consideration. Constable Giosi’s conduct certainly can be considered as serious misconduct. As a police officer, one of Constables Giosi’s primary duties is to assist victims of crime.

In assisting victims of crime, an officer needs to be sensitive to the position he/she holds as a police officer and the vulnerability of the victim(s) he/she are assisting.

In *Krug*, the Commission reflects this fundamental role by citing Section 1(4) of the PSA and noting the general principles that govern the provision of policing as follows at page 12:

1. *Police services shall be provided throughout Ontario in accordance with the following principles...*
  4. *The importance of respect for victims of crime and understanding their needs.*

*Further section 42(1) (c) of the Act imposes on every police officer the clear legal duty and responsibility for "assisting victims of crime".*

These statements from *Krug* reflect the principle that police officers' conduct in relation to victims of crime are held to a higher standard and police officers have a duty to be sensitive to victims of crime and investigate those occurrences thoroughly and professionally.

Constable Giosi has learned from this experience. She was a junior officer at the time of this occurrence. She has learned from her mistakes and has taken it upon herself to receive more training and education to assist her in her policing duties. I believe through her apology to the Tribunal that she was forthright and sincere and she has learned from her indiscretions with this incident. It is my firm belief she has acknowledged her failure and that her actions will not bring her back to this Tribunal again with similar behaviour.

Pleading guilty to disciplinary allegations constitutes recognition of the seriousness of the misconduct, which is a mitigating factor for the Tribunal to consider.

Constable Giosi through her guilty pleas to the disciplinary charge of Neglect of Duty and Insubordination demonstrates her recognition of the seriousness of her misconduct

As I have stated earlier in this disposition Constable Giosi has apologized for her actions directly to Mr. Rudge at the Hearing which was conducted on January 6, 2021 via electronic means.

Her guilty pleas, apology and cooperation in this proceeding demonstrate her recognition of the seriousness of his misconduct and are mitigating factors in consideration of an appropriate penalty.

Consideration of an officer's employment history is a standard factor to consider. It can serve as both a mitigating and aggravating factor. Constable Giosi as previously stated does not have any prior discipline on record. She has served for three years now with the Service. Her short length of service and lack of discipline on record all serve as mitigating factors in this file.

It is commendable that Constable Giosi recognizes and accepts that her actions were irresponsible and unacceptable as a police officer. My only hope now is that Constable Giosi follows through on her promise to the Tribunal to uphold the core values of a police officer, polices of the Service and conduct herself accordingly.

An officer's potential to rehabilitate is an important consideration. As already indicated, Corrective Dispositions should prevail, where possible. Police Service Act case law has held that unless the offence is so egregious and unmitigated, the opportunity to reform should be a significant consideration

By pleading guilty it must be viewed that Constable Giosi is accepting responsibility for her actions and as such, the Niagara Regional Police Service acknowledges that the potential to rehabilitate exists and she should be given the opportunity to reform.

Although the proposed penalty will result in a loss of salary for Constable Giosi, I do not believe that the proposed penalty will not create an undue or special hardship on her or her family

The Conduct exhibited by this officer while on duty in Niagara Region will cause damage to the reputation of the Niagara Regional Police Service.

It is unknown to me to what the extent of publicity or the knowledge of the events is to the residents of Niagara Region. To some degree it does not matter as the incident has affected all involved and has caused damage to the organization.

It is our commitment and the Public's expectation that we the Niagara Regional Police Service conduct ourselves 24-7, three hundred and sixty five days of the year with a degree of professionalism and commitment for policing excellence. Nothing less is acceptable.

I believe that the submissions made by Counsel and the agreed statement of fact in this matter that Constable Giosi has learned a great deal from this experience. Proper and thorough investigations are to be conducted at all times and it is important to provide feedback on their investigations to victims of crime always. It is very important to keep everyone in on the loop of an investigation. It is also very important to return calls or messages to victims.

I believe this addresses the specific and general deterrence for officers of the Service and the need to show the Public that the Service has their interest in mind to make officers accountable for their actions. The Service has treated this incident in a serious manner and the proposed penalty suggested by Counsel will serve the needs for the Service and to Constable Giosi.

The Niagara Regional Police Service will not tolerate unacceptable behaviour by its members. The rank structure within the Niagara Regional 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.

The Niagara Regional 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 Giosi as a junior member of this organization, you have conducted yourself with a total lack of professionalism, judgment and courtesy, which is expected of all members of the Niagara Regional Police Service.

I commend you for attending your Hearing on January 06, 2021 via electronic means with your Counsel Mr. Black and pleading Guilty to the misconduct charges as quickly as you have done. 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.

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

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.

**Disposition:**

**In light of the seriousness of these allegations and bearing in mind all the evidence placed before me, Constable Elyse Giosi #9631 will forfeit twelve (12) 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 twelve (12) hours have been accomplished. The timeline to complete these hours will be issued by your Divisional Commander. I would recommend four months to complete.**

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**M.P.B. Elbers, Superintendent**

**January 16, 2021**