

IN THE MATTER OF
ONTARIO REGULATION 123/9
MADE UNDER THE *POLICE SERVICES ACT* R.S.O. 1990, C.P. 15
AND AMENDMENTS THERETO

AND IN THE MATTER OF
POLICE CONSTABLE MATHEW KEATING BADGE #311
AND THE
SAULT STE. MARIE POLICE SERVICE.

SENTENCE

APPEARANCES

MR. JOEL DUBOIS

for the Sault Ste. Marie Police Service

MS. PAM MACHADO

for Police Constable Mathew Keating

BEFORE:

Terence Kelly, Deputy Chief (Ret)

York Regional Police

Hearing Officer

Sentence Date

SENTENCE

August 31st, 2020

Deputy Chief Terence Kelly (Ret.) before commencing with sentence in this matter, I wish to thank Mr. Joel Dubois, the Service prosecutor, and Ms. Pam Machado, counsel for Police Constable Mathew Keating, for their comments and exhibits entered, all of which have assisted me.

Police Constable Mathew Keating #311 has pled guilty and been found guilty of one count of Discreditable Conduct, and one count of Neglect of Duty, laid under the *Police Services Act*.

The guilty plea was advanced with an Agreed Statement of Facts (Exhibit 15).

Agreed Statement of Facts

Discreditable Conduct

While interacting with Mr. Timothy Mitchell at the police station on March 26th, 2016. Constable Mathew Keating made remarks and gestures to Mr. Mitchell that were antagonizing, threatening, and insulting, including:

- a. stating “if you don’t smarten up, we’re gonna go again and I don’t wanna do that”;
- b. stating that Mr. Mitchell “ought to be” scared;
- c. referring to Mr. Mitchell as an “old man”; and
- d. making a gesture using his outstretched hand opening and closing so as to imply that Mr. Mitchell was talking too much.

Further, while at the station, Constable Keating forcefully pulled Mr. Mitchell to his feet and escorted him to the cells with more force than was reasonably necessary.

As a trained police officer, Constable Keating ought to have responded more effectively rather than aggravating the situation.

The totality of Constable Keating's interaction with Mr. Mitchell at the police station was unprofessional and overly aggressive.

Neglect of Duty

Pursuant to section 10(b) of the *Canadian Charter of Rights and Freedoms*, arrested individuals have the right to "retain and instruct counsel without delay and to be informed of that right;..." The latter portion of this right is commonly referred to as the obligation to provide the "Right to Counsel".

The obligation to provide the Right to Counsel was triggered immediately upon Mr. Mitchell's arrest.

As the arresting officer, it was Constable Keating's responsibility to provide Mr. Mitchell with the Right to Counsel.

Mr. Mitchell was entitled to receive the Right to Counsel immediately following his arrest.

Constable Keating failed to provide Mr. Mitchell with the Right to Counsel despite having multiple opportunities to do so on March 26th, 2016.

I accept the pleas based on the facts in this case. These facts stated and agreed to, provide clear and convincing evidence of the alleged misconduct strongly supporting Police Constable Keating's plea of guilty. If not for the guilty plea before this Tribunal, which I take into account as a mitigating factor and recognition of his misconduct, I would consider a greater penalty.

Due to the circumstances surrounding the alleged misconduct, notwithstanding Constable Keating's guilty pleas and the Agreed Statement of Facts, I believe it is prudent to provide written reasons for my findings

Analysis and Decision

Both the Service prosecutor and defence counsel spoke to a number of relevant factors to be taken into consideration when assessing penalty. When assessing what might be the appropriate penalty for such behaviour, a Hearing Officer is obliged to take into account a number of factors. In *Williams and Ontario Provincial Police (1995) 2 O.P.R. 1047 O.C.C.P.S.*, as it was then known, the Commission identified three key elements. These include: the nature and seriousness of the misconduct in question; the ability to reform or rehabilitate the officer; and the damage that would occur to the reputation of the Police Service. The Counsel also noted other factors that can be relevant, either aggravating or mitigating the penalty depending on the misconduct in question. These include the officer's employment history and recognition of the seriousness of the transgression.

Public Interest

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

It is appropriate to consider public expectations as one of the considerations in the determination of an appropriate penalty. The penalty must impress the public that the misconduct on an officer's part attracts appropriate sanctions. The public confidence in the provision of Police Services is affected by the actions of its police officers.

The disciplinary system of any organization is designed to ensure compliance with the rules and regulations that represent the minimum requirements of good standing. How effectively and fairly the disciplinary system does its job is one measure of organizational integrity

These obligations can only be discharged by the strictest attention to duty, a high standard of conduct and the subordination of personal considerations to the interest of the Service and the community on the part of all ranks. In a service such as policing it is essential that a high standard of discipline should be maintained, and those irregularities of conduct that would not be noticed in other employment should be subject of disciplinary treatment.

An informed police officer possesses a sense of responsibility to the service of which he or she is part, and the community, which they serve. It is unfortunate that when dealing with this situation that Constable Keating would not have permitted himself to be guided by his better judgment and responsibility.

Defence counsel spoke to the excellent service record of Police Constable Keating and his ongoing community involvement over his years of service with the Sault Ste. Marie Police Service.

Police Constable Keating, no doubt, regrets his conduct on that day. The behaviour of Police Constable Keating was a mistake, actions that were not thought out and error on his part. It is clear from the comments of the Service prosecutor, and the officer's defence counsel, that Constable Keating throughout his 11-year career with the Sault Ste. Marie Police Service has acted in a professional manner. This alone would have me lean towards a less severe penalty than I would otherwise contemplate.

Given all the information that was provided to me regarding the Officer's service with the Sault Ste. Marie Police Service, I am left with the distinct impression that Constable Keating is a well thought-of, capable and respected member of the Service, one who is engaged in the community in which he

serves. It would appear that this is an isolated incident and that he will use this experience as an opportunity for learning and growth.

This disposition is not trifling, and reflects to an appropriate degree the impact or at least the potential impact that the Officer's actions had upon the Sault Ste. Marie Police Service and its relationships with its communities. It also reflects to an adequate degree the impact of his behaviour upon the relationship with his employee.

In addition to the Agreed Statement of Facts submitted at the hearing, there was an agreement that the appropriate disposition for the finding of one count of Discreditable Conduct and one count of Neglect of Duty the following penalty will be imposed.

To reflect the seriousness of the offence, and as a general and specific deterrent, it is the decision of the Tribunal that **Police Constable Mathew Keating, badge #311 for the finding of one count of Discreditable Conduct is a forfeiture of 12 hours off; and for the finding of one count of Neglect of Duty is a further forfeiture of 12 hours off to be served at the discretion of the designated unit commander.**

The above penalty is submitted in accordance with section 85(1) (f) of the *Police Services Act*.

Terence Kelly, Deputy Chief (Retired)

York Regional Police

Hearing Officer

August 31st 2020