

Ontario Provincial Police Discipline Hearing

In the Matter of

Ontario Regulation 123/98

Made Under the Police Services Act, RSO 1990

And Amendments Thereto

AND

In the Matter of the

The Ontario Provincial Police

And

Provincial Constable M. (Matthew) Kokot, #12474

OFFICE OF THE INDEPENDENT
POLICE REVIEW DIRECTOR

AUG 24 2011

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Charge: Discreditable Conduct

Before: Superintendent Robin D. McElary-Downer
Ontario Provincial Police

Appearances:

Counsel for the Prosecution: Inspector Charles Young
Ontario Provincial Police

Counsel for the Defence: Mr. James Girvin
Ontario Provincial Police Association

Hearing Date: August 10, 2011

REASONS FOR DECISION

Provincial Constable M. (Matthew) Kokot, (PC KOKOT) has been charged with one count of Discreditable Conduct contrary to ss. 2(1)(a)(xi) of the Code of Conduct contained in the Schedule to Ontario Regulation 123/98, as amended.

The particulars of the allegation are:

On or about March 6, 2010 you attended the Jukebox Bar in Pickering and acted inappropriately in that you:

-appeared intoxicated;

-identified yourself as a police officer;

-tried to persuade staff to allow yourself and another intoxicated male in, after they had refused entry;

-lunged at and grabbed a staff member around the neck; and

-yelled insults and obscenities at the staff, and challenged them to a fight.

Plea

PC KOKOT pled guilty to the allegation of misconduct.

Agreed Statement of Facts

A statement of facts was agreed to by Mr. Girvin, representing PC KOKOT, and Inspector Young, OPP Prosecutor in this matter. The agreed statement of facts has been filed as an Exhibit #8 and outlines the following:

On Saturday March 6, 2010, PC KOKOT attended at the Jukebox Bar in Pickering. He was off duty and accompanied by Durham Regional Police Service (DRPS) officer, Constable Dillon LALOO.

Upon approaching the bar at close to closing time, which had no line up, PC KOKOT and the DRPS officer showed their badges and warrant cards to the doormen.

***Note: It was common for emergency personnel to show identification. Staff knew the DRPS officer, but did not know PC KOKOT was a police officer until he showed his badge.**

The doormen indicated that PC KOKOT was too intoxicated to enter and refused him entry.

DRPS Constable LALOO became irate with the bar staff swearing and saying they should be allowed in.

PC KOKOT was calm initially, and attempted to use persuasion to get into the bar.

DRPS Constable LALOO was being loud and disrespectful so the doormen also declined him entry due to his attitude and directed them to leave.

For several minutes PC KOKOT continued to insist the bar staff were going to let them in.

The bar manager attended, and without provocation, PC KOKOT lunged between the doormen and grabbed the manager around the neck. The manager was not injured, but his shirt was torn.

The doormen pulled him away from the manager and escorted PC KOKOT to the parking lot, where he was yelling and screaming profanities at the bar staff.

Bar staff called the police, who attended. Management did not want charges laid.

The disturbance was over by the time police arrived.

PC KOKOT started an apology to the doorman just before leaving, but then went on to insult him.

Finding

As a result of the plea and the facts as agreed, PC KOKOT was found guilty of Discreditable Conduct on August 10, 2011, contrary to ss. 2(1)(a)(xi) of the Code of Conduct contained in the Schedule to Ontario Regulation 123/98, as amended.

Submissions

Both Inspector Young and Mr. Girvin agreed that the appropriate penalty in this case be a forfeiture of 24 hours pursuant to ss. 85(1)(e) of the Police Services Act.

Inspector Young began by reviewing the public interest consideration. He submitted the public needs to know the OPP expects officer's conduct, both on duty and off duty, to be above reproach. Inspector Young referred me to the OPP's Professionalism policy found in Police Orders as the guiding principle for police officer professionalism.

Inspector Young submitted PC KOKOT's actions represented serious misconduct and demonstrated poor decision making. He submitted PC KOKOT's actions undermined the public confidence in the OPP.

Inspector Young advised PC KOKOT has acknowledged his conduct was unacceptable and of a serious nature.

Inspector Young tendered PC KOKOT's Career Profile as Exhibit #9 and Performance, Learning and Development Plan (PLDP) as Exhibit #10. Inspector Young acknowledged the Career Profile contained limited information and attributed this to PC KOKOT's limited time of employment with the OPP. He advised PC KOKOT joined the OPP in January 2008. Inspector Young highlighted a number of positive references on PC KOKOT's PLDP.

In regard to deterrence, Inspector Young submitted the penalty of 24 hours was within the range and will send the necessary message to all OPP members that conduct similar to PC KOKOT's is not tolerated. Inspector Young submitted PC KOKOT's early admission to his misconduct is indicative of his ability to reform and rehabilitate.

In regard to the damage to the OPP's reputation, Inspector Young submitted this was a significant consideration and police officers must know the OPP does not find the conduct of PC KOKOT acceptable. Inspector Young submitted the incident remained local so the publicity consideration had limited bearing. Inspector Young advised the proprietors of the Jukebox Bar did not wish to pursue the matter or attend the hearing.

Inspector Young submitted he is not aware of any personal circumstances that would have incited PC KOKOT's behaviour on the night in question.

Inspector Young advised there is no history of disciplinary issues with PC KOKOT.

Mr. Girvin submitted PC KOKOT was desirous to resolve this matter from the onset but OIPRD would not allow the matter to be dealt with informally. He advised PC KOKOT worked extra hours early on, in anticipation of resolving the matter. While the hours have since been re-credited to PC KOKOT, Mr. Girvin advised it speaks to his desire to resolve the matter.

Mr. Girvin submitted PC KOKOT has undertaken steps to address his anger management. Mr. Girvin advised PC KOKOT's performance evaluation reflects he is a performer. He pointed out PC KOKOT recently became certified as an Inspector for Dangerous Goods and Commercial Motor Vehicles.

Mr. Girvin acknowledged it was quite possible PC KOKOT showed his badge to the doorman in order to circumvent a cover charge and that PC KOKOT was inebriated at the time.

Mr. Girvin submitted this is a regrettable incident. PC KOKOT is personally embarrassed about the disrepute he has brought against the organization. PC KOKOT is very mindful this incident could have been much worse for him. PC KOKOT is further mindful of the resultant impact his misconduct has cast on his career.

PC KOKOT was invited to comment and accepted. He apologized for his conduct and accepted full responsibility for his action. He advised he is a father and husband, and his actions on the night in question were outside his family values and did not reflect the person he really was.

PC KOKOT advised that other than his supervisors, no one at his detachment was aware of the incident. Despite this, he was deeply embarrassed and ashamed of his conduct and felt he had let down his colleagues. PC KOKOT advised he has since transferred from the Caledon Detachment because he could no longer face his colleagues. PC KOKOT advised he did what he did and no amount of remorse will be adequate.

Findings on Penalty

I wish to thank Inspector Young and Mr. Girvin for their submissions in this matter. I also acknowledge PC KOKOT's comments and believe while they may have been difficult to express, they were truly genuine.

In deciding the appropriate penalty in police disciplinary matters there are key elements to be considered by a tribunal. They include the nature and seriousness of the misconduct, the ability to reform or rehabilitate the officer and the damage to the reputation of the police service. There are other factors that may also be considered by a tribunal in assessing recognition of the seriousness of the misconduct; the officer's employment history and public interest as well as general and specific deterrence.

PC KOKOT pled guilty and has been found guilty of Discreditable Conduct in that on or about March 6, 2010 he attended the Jukebox Bar in Pickering and acted inappropriately. Specifically:

He appeared intoxicated; identified himself as a police officer; tried to persuade staff to allow himself and another intoxicated male in, after they had been refused entry; lunged at and grabbed a staff member around the neck; and, yelled insults and obscenities at the staff, and challenged them to a fight.

The nature and seriousness of the misconduct are relevant to the facts of this case and have significant weight in my penalty decision. PC KOKOT attended a premise while off duty and was refused entry due to his level of intoxication. Following a verbal altercation between PC KOKOT's friend and bar staff, PC KOKOT lunged at the manager and grabbed him around the neck. The manager's shirt was torn. On a scale of seriousness, PC KOKOT's misconduct was very serious in that he physically assaulted an individual without provocation. While PC KOKOT's state of inebriation may offer some explanation, it by no means excuses his misconduct. The seriousness of the matter is not diminished by the Jukebox Bar management's desire not to pursue charges. PC KOKOT's misconduct was of a very serious nature and I consider this a significant aggravating consideration.

To aggravate the seriousness of the misconduct further, I take note that the agreed statement of fact stated it is common practice for emergency personnel to show their identification at the Jukebox Bar. It goes on to state PC KOKOT showed his badge to the doorman. I can think of no reasonable explanation for PC KOKOT to do this, other than for the purpose of receiving some kind of preferential treatment. This practice cuts to the very heart of ethics in policing and is deeply disappointing to those who take tremendous pride in refusing any type of gratuity or advantage due their position. PC KOKOT is an OPP officer and ought to have known that his actions and behaviour at the Jukebox Bar were morally and ethically wrong. I consider this a serious aggravating consideration and it will weigh heavily in my penalty disposition.

Public interest and damage to the reputation of the OPP considerations are necessary in this matter. The public must have confidence that OPP officers will conduct themselves above reproach at all times, both on duty and off duty. In this case, PC KOKOT did not. He utilized his badge to gain entrance to a bar and when refused, he assaulted the manager. In order to maintain public confidence, the penalty must reflect the OPP does not tolerate this type of behaviour and significant sanctions will follow those who engage in this type of misconduct.

General and specific deterrence considerations are necessary in this matter when determining the appropriate penalty disposition. The disposition must send a clear message to all officers that they must conduct themselves in an ethical and professional manner at all times and those who do not will face serious sanctions. In this case, I understand an effort was made to have this matter dealt with informally, however, OIPRD denied this course of action. This serves as an important reminder to all officers, that they are held to a higher level of standard and when their conduct compromises public confidence, they will be held accountable. I am hopeful that other officers will learn from PC KOKOT's misconduct.

I am satisfied specific deterrence for PC KOKOT can be limited. Evidenced by his desire to plead guilty from the onset, I believe he fully appreciates his behaviour was unacceptable and has

taken full responsibly for the misconduct. I believe PC KOKOT sincerely regrets his action and has learned from this experience. Based on the comments PC KOKOT made, I believe this matter has and will for some time, weigh heavily on his mind. This finding will serve as a significant mitigating fact in the penalty disposition.

To assist in determining PC KOKOT's ability to reform, I have reviewed Exhibits #9 and #10. PC KOKOT is early in his career with 3.5 years of OPP service. He has no prior history of discipline. During PC KOKOT's submission, I took note that he made no attempt to offer excuses or lay blame on anyone but himself. I give credit to PC KOKOT and believe he is genuinely disturbed and ashamed by his conduct. His comments were indicative of an individual who appreciates the magnitude of his misconduct and I sincerely believe he will go to great lengths in the future to avoid a situation even remotely close to the one he found himself in on March 6, 2010.

Taking all into consideration, I am hopeful PC KOKOT can move past this matter and be a valuable employee and service provider to the people of Ontario. I consider PC KOKOT's positive employment record coupled with his comments made during the hearing significant mitigating facts which have weighed heavily in my disposition consideration.

Disposition

I have carefully considered the facts presented in this matter and conclude there is clear and convincing evidence to support a finding of guilty of Discreditable Conduct against PC KOKOT. In light of the mitigating and aggravating considerations, the seriousness of this allegation and bearing in mind all the evidence placed before me, PC KOKOT is ordered to forfeit 24 hours. Specifically, he will be required to work an additional 24 hours and this will be completed within the next two months, pursuant, to ss. 85(1)(e) of the Police Services Act, R.S.O. 1990.



Robin D. McElary-Downer
Superintendent
OPP Adjudicator

Dated: August 17, 2011