

Kingston 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 Kingston Police Service

And

Constable Harvey Kolff #253

Charge: Discreditable Conduct

Before:

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

Appearances:

**Counsel for the Prosecution: Mr. Joel Dubois
Kingston Police Service**

**Counsel for the Defense: Mr. Joseph Markson
Kingston Police Association**

Public Complainant: Ms. Mary Anne Kingston

Penalty Decision with Reasons:

The Hearing:

Constable Harvey Kolff #253 pled guilty on March 09, 2015 and was found guilty of One (1) count of Discreditable Conduct pursuant to Section 2 (1) (a) (xi) of the Code of Conduct contained in the Schedule to Ontario Regulation 268/10 as amended.

The charge pertains to Kolff's conduct on or around April 27, 2013 in which he altered his duty notebook pertaining to a search that was conducted on a residence in Kingston, Ontario while he was on duty.

An agreed statement of facts was tendered in this Hearing by Counsel and marked as Exhibit #3.

1. Constable Harvey Kolff has been a member of the Kingston Police since November, 2001. At all material times he was assigned to the patrol division.
2. On April 22, 2013, Constables Kolff and Parslow were working an evening shift (6:00 p.m. to 6:00 a.m.), in uniform.
3. Constables Kolff and Parslow received information concerning a female in possession of a quantity of cocaine for the purpose of trafficking (the "Female Suspect"). The Female Suspect had prior drug related charges and was bound by a recognizance of bail with conditions.
4. On April 23, 2013 at approximately 3:10 a.m., Constables Kolff and Parslow observed two females and one male walking towards the front door of 17 Eldon Hall Place, Kingston, the apartment building of the Female Suspect's last known address.
5. The officers called out to the three individuals at which time both females fled into the building. The officers believed that one of these females was the Female Suspect.
6. Constables Kolff and Parslow attended at Unit #209, the Female Suspect's last known address.
7. Bob Parslow is the Superintendent of 17 Eldon Hall Place and Constable Chad Parslow's father.
8. The officers gained admission into Unit #209 with a key provided by Bob Parslow. There was a male and female in the apartment. They proceeded to search the residence for the Female Suspect.

9. Constable Kolff entered his duty notes in relation to this incident on April 23, 2013.
10. Page 111, entry 315, of Constable Kolff's duty notes read: "*attended 209-17 Eldon (known address for ... in Kingston) – door open/ajar and entered residence – unknown male and female sleeping on couch.*"
11. Constable Kolff's duty notes also record that he attended the station at 1700 and reported off at 1800.
12. On November 14, 2013, pursuant to an investigation into a complaint made to the OIPRD, Constable Kolff submitted his April 22/23, 2013 duty notes. At page 111, Constable Kolff had added "*see intel*" and a single line through "*door open/ajar*", initialing the changes.
13. Constable Kolff was interviewed by Kingston Police Professional Standards on December 18, 2013.
14. During his Compelled Interview, Constable Kolff stated that upon returning to work after his regular days off on April 27, 2013, he began working on the outstanding criminal brief charging the Female Suspect with breach of recognizance and breach of probation.
15. Constable Kolff reviewed his notes which he discovered contained an inaccurate entry. He further stated that he deleted this entry and also added a note referring to the information received from a confidential informant.
16. Constable Kolff did not take any further measures to correct time inaccuracies for attending the station at 1700 and reporting off duty at 1800, which was in fact attending the station at 5:00 a.m. and reporting off duty at 6:00 a.m.
17. Kingston Police General Order, Vol. I-A-94, Note Taking and Notebooks, states: "*A member's notes pertaining to a particular tour of duty shall be complete in every respect before the member reports off duty.*"
18. The Order further states: "*Note-taking practices will be in accordance with procedures taught to police officers at the Ontario Police College. A copy of the Ontario Police College Student Study Guide pertaining to notebooks is attached to this order as Appendix A and is reproduced with the permission of the College.*" Appendix A refers to Errors and Additions to notes and states: "*Where an officer makes additions to his/her notes after the fact, and then the officer shall clearly mark these additional notes as "L.E" for Late Entry or add the words 'addendum'. The officer will make an entry under the current date and time cross-referencing any changes (page numbers along with the reasons why the additions were made at a time other than the original entry. This will allow the officer to fully explain why the notes are not in chronological order.)*."
19. As outlined above, Constable Kolff did not comply with the requirements of Kingston Police General Order, Vol. I-A-94, Note Taking and Notebooks.

20. The above actions of Constable Kolff have brought discredit to the reputation of the Kingston Police and constitute Discreditable Conduct pursuant to section 2(1)(a)(xi) of the Code of Conduct.

FINDINGS:

Mr. Joel Dubois representing the Kingston Police Service and Mr. Joseph Markson representing Constable Harvey Kolff #253 has proposed a joint submission of Forfeiture of thirty six (36) hours from the officers vacation and /or banked time (excluding sick leave) pursuant to Section 85 (1) (f) of the Police Services Act.

Exhibit #4, the Agreed Joint submission by Counsel for Penalty was tendered to the Tribunal.

Mr. Dubois and Mr. Markson have not supplied me with any cases to assist me in determining an appropriate disposition. Legal Aspects of Policing was cited and entered as Exhibit #8 for the purpose of accessing Disposition factors to consider when rendering a Police Act Disposition.

Aggravating Factors

- a. **Public Interest-** It is common knowledge that the public holds police officers in a position of high trust and accountability. Constable Kolff is a police officer and the public expects him to make appropriate notes with the investigations that he is assigned or the enforcement activities he is engaged with while working on duty. If notes need to be changed due to oversight or correction there is a process as noted in Exhibit #5 which all officers of the Kingston Police Service are aware. The type of behavior demonstrated by Constable Kolff 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 Kolff betrayed the trust of his fellow officers, the community and the Kingston Police Service.
- c. **Need for Deterrence-** The Kingston Police Service must send the message to all members that completing your notebook must be done with accuracy and timely to the event that is being noted. Further, there must also be specific deterrence for Constable Kolff to send the message that this type of behavior is unacceptable.

- d. ***Damage to the Reputation of the Police Service***- The credibility of the Kingston Police Service as police agency is of paramount importance. The credibility of officers that make inappropriate or altered notes in their duty book and if reported or the media became aware through Court attendance or the attendance at this Police Act Hearing could result in the embarrassment to the Kingston Police Service.
- e. ***Management Approach to Misconduct***- The Kingston Police Service is a Professional and disciplined organization. The Kingston Police Service considers the actions of Constable Kolff to be serious in nature for this Service.

Mitigating Factors

- f. ***Recognition of Seriousness of Misconduct***- Constable Kolff has recognized and accepted responsibility for his behavior.
- g. ***Employment History***- To date, Constable Kolff has no previous disciplinary record prior to this occurrence. Constable Kolff has been a hardworking and diligent officer for the Kingston Police Service.
- h. ***Ability to Reform or Rehabilitate the Officer***- It is expected that Constable Kolff will be able to rehabilitate himself and will continue to be a useful member of the Kingston Police Service.

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 Kolff is a fourteen (14) year member of the Kingston Police Service.

To conduct oneself as he did is not conducive to team building, professionalism or harmony of a Police Service. The Kingston 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 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 Kingston Police officers strive to maintain.

I am reasonably confident that this experience through pleading guilty at this Hearing, that Constable Kolff has learned from his indiscretions and is prepared to take responsibility for his actions.

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 Kingston Police is constantly engaged in efforts to show the public that their Accountability Standards for their officers is changing the conduct of their members. It compounds the situation when members of your own Service fuels the behaviour by acting improperly, unprofessional and without due regard for the improper note taking that comes into the possession of the Police Service when completed by one of their own officers.

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

By pleading Guilty at the earliest opportunity I believe that Constable Kolff recognizes the seriousness of his misconduct. The actions exhibited by him in April of 2013 have affected his career.

Constable Kolff has had an excellent employment history with the Kingston Police Service while joining as a Constable through to the present, albeit for the above mentioned incident in 2013.

Constable Kolff acted in a manner not conducive to a member of the Kingston Police Service. His actions are clearly unacceptable. It is necessary to consider a general deterrence for all members. The penalty must reflect that the Kingston 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 Kingston 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.

Rehabilitation has been addressed. Constable Kolff through his Association Counsel 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 Kingston Police Service will not tolerate unacceptable behaviour by its members. The rank structure within the Kingston 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 Kolff through Counsel has indicated he will not behave like this again.

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

The Kingston 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 Kolff, as a senior 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 Kingston Police Service.

It was obvious to me with your quick plea at this Police Act Hearing 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 stringent with the penalty if it were not for the positive comments submitted by Counsel on your behalf.

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

Disposition:

In light of the seriousness of these allegations and bearing in mind all the evidence placed before me, Constable Harvey Kolff will forfeit thirty six (36) hours of time pursuant to Section 85 (1) (f) of the Police Services Act.

The forfeiture of hours will come from the officer's vacation and/ or banked time excluding sick leave.

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

**March 16, 2015
Date**