

**ONTARIO PROVINCIAL POLICE DISCIPLINE HEARING
IN THE MATTER OF ONTARIO REGULATION 268/10**

**MADE UNDER THE *POLICE SERVICES ACT*, RSO 1990,
AND AMENDMENTS THERETO;**

**AND IN THE MATTER OF
THE ONTARIO PROVINCIAL POLICE
AND**

PROVINCIAL CONSTABLE ISHVERBHAI LAD, #8979

DISCREDITABLE CONDUCT

DISPOSITION WITH REASONS

**Before: Superintendent Greg Walton
Ontario Provincial Police**

**Counsel for the Prosecution: Ms. Sylvia Davis
Ministry of Community Safety & Correctional
Services**

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

Public Complainant: Ms. Chantel Welsh

Hearing Date: July 17, 2018

Parties to this Hearing

Parties to this Hearing included: Provincial Constable (PC) Ishverbhai Lad, represented by Mr. James Girvin; Ms. Sylvia Davis represented the Ontario Provincial Police (OPP); and the Public Complainant, Chantel Welsh. Ms. Welsh chose to not have legal representation. Ms. Welsh understood the hearing process and her role in it. Ms. Welsh engaged in resolution communication with Counsel and then, also participated in the hearing.

Background

A three-day hearing was scheduled to begin July 17, 2018. All parties attended on that date prepared for, and in anticipation of the commencement of the hearing at 10:00 a.m.. Counsel requested and was granted additional time prior to the commencement of the hearing to enter into and/or continue negotiations. In consultation with the Public Complainant, Counsel subsequently came to an agreement on a joint penalty position based on an anticipated guilty plea to particulars of allegations contained within a new Notice of Hearing.

The original Notice of Hearing alleged PC Lad had committed Neglect of Duty and Deceit. That Notice of Hearing was ultimately withdrawn at the request of the prosecution, replaced by a Notice of Hearing alleging one count of discreditable conduct. The particulars of allegations however went virtually unchanged. As a result of this late development, Counsel were not prepared to submit exhibits which might ordinarily accompany a guilty plea of this nature accompanied by a joint penalty position. For example, an Agreed Statement of Facts was not tendered as an exhibit, instead, the particulars of allegations were relied upon as a detailed articulation of the facts in issue. For this reason, this written decision does not contain the usual detailed analysis one might expect in a matter of this nature.

Plea/ Penalty

PC Lad entered a plea of guilty and acknowledged that the allegations as outlined in the Notice of Hearing are accurate. The evidence is clear and convincing; PC Lad is guilty of discreditable conduct.

Counsel submitted a joint penalty position of a demotion in rank for a period of six months, from first-class constable to third-class constable. Ms. Welsh supported the joint penalty position and I find no reason to deviate from this proposal; PC Lad will be demoted accordingly.

Allegation of Misconduct (amended)

Discreditable Conduct

PC Lad did act in a disorderly manner prejudicial to discipline or likely to bring discredit upon the reputation of the OPP, contrary to Section 2(1)(a)(xi) of the Code of Conduct contained in the Schedule to Ontario Reg. 268/10, as amended.

The edited particulars of allegations are as follows:

On or about January 4, 2016 while on duty, PC Lad responded to a call for service that involved the death of a family dog. PC Lad was advised the dog was located on a property adjacent to the dog owner's property and discussion with the dog owners included whether the dog had been shot. A minor wound was visible, but the cause of the wound at the time was unknown. A male residing on the property where the dog was located was approached and offered PC Lad an opportunity to view his weapons. It is alleged that PC Lad committed the following misconduct in relation to this call for service:

- PC Lad failed to conduct a proper investigation into this incident.
- PC Lad declined the offer from the male to view and record the weapons.
- PC Lad asked the question of the dog owner(s) words to the effect, "even if that is a bullet, what do you expect us to do about this?"
- Without conducting an investigation, PC Lad wrote in the police report, words to the effect, "Police observed no evidence of gunshot wounds on the dog - and - police believe that the dog was not shot... No further action."

PC Lad subsequently made entries into the police report; Notebook; Responded to a Duty Report; and was interviewed by the Professional Standards Bureau with respect to his entries and actions regarding this call for service. It is alleged PC Lad was less than forthcoming in the following areas:

- PC Lad indicated in his Duty Report he reviewed a "safety plan" with the dog owners.
- PC Lad indicated in his Duty Report that he asked the dog owners whether they had a camera or video.
- PC Lad indicated in the police report that he viewed weapons owned by a male residing on a property adjacent to the dog owners' property.
- PC Lad told the Professional Standards Bureau during his interview that he had not reviewed the weapons because the male indicated they were at the cottage.
- PC Lad told the Professional Standards Bureau he included the details of the weapons in his Duty Report in error and was unable to explain why he did so.

- PC Lad knew he had never viewed the weapons in the first instance; much less place this false and misleading information in his Duty Report.

Submissions on Penalty / Analysis and Findings

Based on his admission that the particulars of allegations contained within the Notice of Hearing are truthful and accurate, PC Lad is guilty of discreditable conduct. Consequently, I must determine whether or not the proposed sanction is appropriate. Does a six month demotion in rank from first-class constable to third-class constable satisfy the penalty principles; does it strike a balance between community expectations, fairness to PC Lad and the needs of the organization?

In their submissions, Counsel relied upon some commonly held proportionality considerations applicable to this particular matter. The following penalty factors provide guidance in establishing an appropriate and fitting sanction.

Public Interest

The public expects any and all requests for police assistance to be taken seriously by their police service. The declaration of principles in the *Police Services Act* includes: the need to ensure the safety and security of all persons and property in Ontario, and; the importance of respect for victims of crime and understanding their needs. Furthermore, the core police services listed in the *Police Services Act* include: crime prevention; law enforcement, and; assistance to victims of crime. Misconduct of this nature breaches these principles and falls short of basic policing responsibilities.

The nature of this call for service presented a potential risk to area residents and warranted a thorough and exhaustive investigation. The fact that an unknown person used a firearm in a residential area created potential public safety concerns and subsequent liability should anything less than a thorough investigation be conducted.

PC Lad's response to the Public Complainant's request for help fell well short of what any member of the public might expect. His actions also failed to meet the expectations the OPP sets out for their members. It is imperative that a message be sent to the public demonstrating that this type of conduct will be taken seriously by the OPP and it will not be tolerated. Additionally, the Public Complainant must feel assured this type of misconduct will not be repeated.

The public has high expectations of the OPP and their trust in the Service is eroded when officer conduct fails to meet these expectations. When the public learns of PC Lad's misconduct, they will expect him to have been held appropriately accountable. A significant sanction will go a long way towards re-instilling public confidence in the OPP.

I find Public Interest to be an aggravating factor, but the sanction proposed by the involved parties sufficiently and appropriately addresses this issue.

Nature and Seriousness of the Misconduct

The call for service in this instance was in relation to the use of a firearm in a residential area which resulted in the death of a family pet. Obviously, a call of this nature ought to have been thoroughly investigated; failing to do so put the safety of members of the public at risk; an incident of this nature could have been repeated with the offender not being held accountable.

In his submissions, Mr. Girvin indicated two other police officers also attended the call for service along with PC Lad. Mr. Girvin acknowledged that the Welsh's at that time believed the dog had been shot, but none of the officers shared that belief. Within hours, a veterinarian determined the dog had been shot and it was then that the shooting was investigated thoroughly by another officer. I am not influenced by the fact other officers were involved and may have shared PC Lad's opinion on the injury to the dog; PC Lad was found guilty and admitted that he failed to conduct a proper investigation into this incident.

PC Lad was only involved in this matter for less than one hour, but that first hour could have been the most crucial; a time when evidence may have been fresh and more readily attainable. PC Lad declined the offer from a neighbour to view weapons at his residence. However, PC Lad documented in his police report that he viewed weapons owned by a male residing on a property adjacent to the dog owners' property. In his interview with the Professional Standards Bureau, PC Lad indicated he had not viewed the weapons because the male indicated they were at the cottage. He further stated during that interview he included the details of the weapons in his Duty Report in error and was unable to explain why he did so. I am troubled by PC Lad's inadequate investigation and more so by his subsequent attempt to mislead investigators.

PC Lad was also less than forthcoming when he indicated in his Duty Report that he reviewed a "safety plan" with the dog owners and that he asked them whether they had a camera or video.

Furthermore, PC Lad did not act in a professional manner when dealing with the public complainant, asking in words to the effect, “even if that is a bullet, what do you expect us to do about this?” This is unacceptable behaviour.

PC Lad’s investigation did not perform up to the most minimal expectations and the investigation remains unsolved. His subsequent attempt to mislead the Professional Standards Bureau investigators increases the seriousness of his misconduct. However, the seriousness of this misconduct is reflected in the significant sanction proposed by the involved parties.

Recognition of the Seriousness of Misconduct / Ability to Rehabilitate

The OPP looks to its members to take responsibility for their actions. Unfortunately PC Lad was late to accept accountability; he did not take responsibility for his behaviour until the last possible instant, by entering a guilty plea moments before his hearing was about to commence. Before then, PC Lad entered inaccurate information in his reports and was then less than forthcoming with the Professional Standards Bureau. This is concerning behaviour.

PC Lad’s behaviour is mitigated somewhat by his ultimate guilty plea and his acknowledgement of misconduct. He is also to be credited for what appeared to be a genuine apology. PC Lad apologized to the Public Complainant and to her husband about the loss of their dog while recognizing the bond between pets and their owners. PC Lad also apologized to the OPP and to this tribunal specifically for his behaviour.

I am comforted by the fact this is PC Lad’s first formal misconduct. His guilty plea demonstrates an acknowledgement of responsibility and his apology seemed sincere. I am hopeful PC Lad has learned from this experience and it will not be repeated in the future. PC Lad must understand that further behaviour of this nature would likely result in an increased sanction.

PC Lad’s recognition of the seriousness of his misconduct and his ability to rehabilitate are mitigating factors.

Employment History

Counsel did not submit annual evaluations for my consideration due to the last minute guilty plea; they did not have access to the file with such late notice. I was advised that PC Lad had no previous history of misconduct over his 23 year career with the OPP.

Damage to the Reputation of the OPP

Media agencies in Ontario consistently acquire *Police Services Act* Code of Conduct decisions and therefore, the public will become aware of the details of PC Lad's misconduct. The OPP works diligently to build trusting relationships based on professionalism and integrity, but this negative media attention will adversely affect the OPP's reputation and can be expected to negatively affect the relationship between the OPP and some members of the public. Damage to the Reputation of the OPP is an aggravating factor which is appropriately addressed by the proposed sanction.

Specific and General Deterrence

PC Lad has 23 years of policing experience; he ought to be very capable of conducting a proper and thorough investigation; he ought to know how to treat complainants and victims of crime; and, he ought to know better than to mislead Professional Standard Bureau investigators. Furthermore, PC Lad must know misconduct of this nature will result in a sanction of corresponding significance. PC Lad must understand further misconduct of this nature will result in a sanction greater than the one imposed in this instance.

Members of the OPP must understand conduct of this nature will not be tolerated, that the OPP takes this type of behaviour seriously; officers will be held accountable.

Specific and general deterrence are aggravating factors.

Consistency of Disposition

Counsel made reference to other discreditable conduct cases not precisely on point and also a neglect of duty case. They were referenced as general instances of penalties which ranged from loss of hours to demotion. Counsel indicated they had reviewed jurisprudence and ensured the proposed penalty is well within the penalty range for similar misconduct. Counsel did not submit cases for consideration, but suggested the joint penalty proposed is reasonable considering all of the circumstances.

Mr. Girvin also made reference to the case of *R. v Anthony-Cook*, 2016 SCC 43. It was not presented to me for consideration as an exhibit, but Mr. Girvin made reference to it, submitting that I accede to the joint penalty proposed. I am familiar with this decision which provides guidance regarding the issue of joint penalties. The Court stated:

Hence, the importance of trial judges exhibiting restraint, rejecting joint submissions only where the proposed sentence would be viewed by reasonable

and informed persons as a breakdown in the proper functioning of the justice system. A lower threshold than this would cast the efficacy of resolution agreements into too great a degree of uncertainty. The public interest test ensures that these resolution agreements are afforded a high degree of certainty.

Anthony-Cook does not suggest that I am unequivocally bound by this joint submission however, in order to reject this proposed sanction; it must be outside the reasonable range of available penalties. Furthermore, I would have to find that accepting the joint penalty position would bring the administration of justice into disrepute. I do not find that to be the case in this instance.

Conclusion

An appropriate and fitting disposition must strike a balance between community expectations, fairness to the officer involved and the needs of the organization. I find the proposed sanction satisfactorily addresses these issues. I cannot find any reason to deviate from the sanction proposed; it is fair and balanced.

Disposition

PC Lad pleaded guilty and was found guilty of discreditable conduct. After weighing all aggravating and mitigating factors, I find the proposed sanction provides a fair and balanced approach; I see no reason to depart from it.

I order PC Lad demoted from first-class constable to third-class constable for a period of six months. Upon the expiration of that term, PC Lad is to be reinstated to the rank of first-class constable. This order is made pursuant to section 85(1)(c) of the *Police Services Act*, R.S.O. 1990.



Greg Walton
Superintendent
OPP Adjudicator

Date electronically delivered: September 10, 2018