

HALTON REGIONAL POLICE SERVICE 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 HALTON REGIONAL POLICE SERVICE
AND CONSTABLE JASON MATHERS #6160**

CHARGE: NEGLIGENCE OF DUTY

DISPOSITION WITH REASONS

Before: Superintendent Chris Perkins
Halton Regional Police

Appearances:

Counsel for the Prosecution: Mr. Ken Kelertas
Halton Regional Police

Counsel for the Defence: Ms. Sarah Diamond
Halton Regional Police Association

Hearing Date: 27 July 2015

THE HEARING

At the request of the Prosecutor, the matter at Count #1 was withdrawn. Constable Jason Mathers has pleaded guilty and has been found guilty of one count of Misconduct as specified at Count #2:

Count #1:

On January 8th, 2014, at the Town of Oakville in The Regional Municipality of Halton, while being a member of the Halton Regional Police Service and while on duty, it is alleged, that while affecting the arrest of D.K., you used unnecessary force, causing significant bruising and swelling to D.K.'s right neck and jaw, thereby committing the offence against discipline to wit: Unlawful or Unnecessary Exercise of Authority as specified in Section 2 (1) (g) (ii) of the Schedule, Code of Conduct, Ontario Regulation 268/10, and are thereby guilty of misconduct contrary to Section 80 (1) (a) of the Police Services Act, R.S.O. 1990, c. P.15, as amended.

Count #2:

On January 8th, 2014, at the Town of Oakville in The Regional Municipality of Halton, while being a member of the Halton Regional Police Service and while on duty, it is alleged, that you failed to keep sufficient notebook entries in relation to a criminal charge which you initiated against D.K., namely to articulate the presence of a "large butcher knife" in relation to her arrest, thereby committing the offence against discipline to wit: Neglect of Duty as specified in Section 2 (1) (c) (i) (A) of the Schedule, Code of Conduct, Ontario Regulation 268/10, and are thereby guilty of misconduct contrary to Section 80 (1) (a) of the Police Services Act, R.S.O. 1990, c. P.15, as amended

AGREED STATEMENT OF FACTS

On January 8th, 2014, at 12:53 pm, G.W. contacted the Halton Regional Police Service to request assistance in the removal of his sister, D.K. from his mother's residence in Oakville, Ontario. G.W. advised the police dispatcher that he and his mother, S.W., wanted D.K. removed from the

residence, as he observed that D.K. was in an agitated state and was becoming increasingly aggressive towards him and his mother to the extent that they were feeling unsafe within the residence.

Constable Mathers and another officer arrived at the residence shortly thereafter. While speaking to G.W., D.K. began walking down the stairs from an upstairs bedroom, and upon seeing the officers, she began yelling at her brother.

Constable Mathers took physical control of D.K. and guided her into the kitchen of the residence to speak with her. D.K. continued to be agitated and uttered a death threat against Constable Mathers. Constable Mathers informed D.K. that she was under arrest for threatening death and took physical control of her to affect the arrest.

On January 14, 2014, D.K. attended at the Ontario Court of Justice in Milton and pled guilty to the offence of uttering a death threat.

Subsequent to these events, S.W. initiated a public complaint regarding Constable Mathers' conduct during the course of the arrest of D.K..

Following the initiation of a Part V investigation into the events surrounding the arrest of D.K., Constable Mathers provided a written statement to Detective Marshall of the Professional Standards Bureau, which included the following narrative:

I told her repeatedly to calm down and that she was not going back into the living room. I quickly observed a large butcher knife left out on the counter within arm's reach of the [D.K.]. At [sic] I saw her glance at the knife, then turn directly towards me gritting her teeth in an expression of anger and violence and say "I'm going to fucking kill you, you fucking pig."

During an oral interview with Detective Marshall conducted on May 23, 2014, Constable Mathers repeated the allegation that prior to D.K.'s arrest, D.K. turned toward Constable Mathers, while looking at a large butcher knife on the kitchen counter, and uttered a death threat.

There was no mention of a “large butcher knife” in Constable Mathers’ duty notes regarding the arrest of D.K., a material fact relevant to the grounds for the arrest of D.K. and relevant to the subsequent criminal prosecution of D.K..

Based on the foregoing facts, on 27 July 2015, Constable Mathers appeared before Superintendent Chris Perkins and pleaded guilty to the offence against discipline of Neglect of Duty as specified in Section 2 (1) (c) (A) of the Schedule, Code of Conduct, Ontario Regulation 268/10, and thereby guilty of misconduct contrary to Section 80 (1) (a) of the Police Services Act, R.S.O. 1990, c. P.15, as amended.

SUBMISSIONS ON DISPOSITION

Constable Mathers and the Prosecutor acting on behalf of Stephen J. Tanner, Chief of Police, agree that the appropriate penalty for the misconduct set out above is the forfeiture of twenty-four (24) hours of time off, to be removed immediately from Constable Mathers’ vacation bank.

DISPOSITION CONSIDERATION

In each discipline situation, it is proper for the Tribunal to consider, where relevant, a variety of elements in assessing disposition. They include the following:

1. Public Interest
2. Seriousness of the Misconduct
3. Remorse
4. Employment History
5. Ability to Reform or Rehabilitate the Officer
6. Need for Specific and General Deterrence
7. Damage to the Reputation of the Service
8. Handicap or Other Relevant Circumstances
9. Effect on the Officer and his/her Family
10. Management’s Approach to the Misconduct
11. Consistency in Penalty
12. Effect of Publicity

PROSECUTION

The prosecution and Constable Mathers are jointly recommending the imposition of a penalty of the forfeiture of 24 hours of time off. The loss of 24 hours is within the range of appropriate sanctions in the circumstances, taking into account all of the aggravating and mitigating factors associated with the misconduct.

The prosecution provided a summary of which factors to draw to the Tribunal's attention, and these were adopted by the defence. They are as follows:

AGGRAVATING FACTORS

Seriousness of the Misconduct

The seriousness of the misconduct is always a fundamental consideration. Constable Mathers has a duty to keep accurate, detailed and comprehensive notes. He has no lawful excuse for not performing his duty in accordance with the common-law and H.R.P.S. policy. The Prosecutor drew the Tribunals' attention to three cases dealing specifically with the issue of police officer's notes.

In the Supreme Court of Canada case, *Wood v. Schaeffer* [2013] 3 S.C.R. 1053, at paragraph 64 (et al), the 1993 Martin Report is referred to:

... the duty to make careful notes pertaining to an investigation is an important part of the investigator's broader duty to ensure that those who commit crimes are held accountable for them.... inadequate note-taking, while it can hamper the conduct of the defence, also risks hampering an investigation and/or a prosecution. In short, inadequate note-taking does a disservice to both an accused and the community, [which] is entitled to expect that innocent people will be acquitted and guilty people properly convicted.

Para. 65: In another instance, the Honourable R. E. Salhany considered the significance of police notes in the course of a public inquiry into a death caused by an off-duty officer. He explained the importance of notes in this way:

[Note-making] is not a burdensome task that police officers must reluctantly undertake because they were taught to do so at their police college. It is an integral part of a successful investigation and prosecution of an accused. It is as important as obtaining an incriminating statement, discovering incriminating exhibits or locating helpful witnesses. The preparation of accurate, detailed and comprehensive notes as soon as possible after an event has been investigated is the duty and responsibility of a competent investigator. [Emphasis added.] (*Report of the Taman Inquiry* (2008), at p. 133)

Para. 66: These conclusions, in my view, stand on firm ground. The importance of police notes to the criminal justice system is obvious. As Mr. Martin observed of properly-made notes:

The notes of an investigator are often the most immediate source of the evidence relevant to the commission of a crime. The notes may be closest to what the witness actually saw or experienced. As the earliest record created, they may be the most accurate. [p. 152]

Para. 67: Against that background, I have little difficulty concluding that police officers do have a duty to prepare accurate, detailed, and comprehensive notes as soon as practicable after an investigation. Drawing on the remarks of Mr. Martin, such a duty to prepare notes is, at a minimum, implicit in an officer's duty to assist in the laying of charges and in prosecutions - a duty that is explicitly recognized in s. 42(1)(e) of the Act.

Para. 68: More generally, police manuals have long emphasized the importance of accurate, detailed, and comprehensive notes; see, e.g., R. E. Salhany, *The Police Manual of Arrest, Seizure & Interrogation* (7th ed. 1997), at pp. 270-78.

In *R. v. Schertzer* [2007] O.J. No. 3560, Nordheimer, J. states at Paragraph 16:

.....Police officers are given broad and extensive powers over their fellow citizens. It is important therefore that an accurate record of their use of those powers be made so that, among other things, at any later date, the manner in which they exercised those powers can be reasonably assessed. The requirement to make notes serves to protect

both the officer and the citizen by requiring a contemporaneous record to be made of the events in which the officer is involved. The notes also assist in the proper prosecution of criminal and other offences because they are intended to provide a reliable and timely record of the events underlying those offences.

In Constable Guido Cristiano and The Metropolitan Toronto Police Service, OCCPS, February 4, 1997, the Commission states at page 2:

...The purpose of an officer's notebook is to provide a clear, creditable record of the officer's activities and observations of various matters which may be of vital use later to refresh his or her memory.

The Prosecutor went on to refer to various sections of the Halton Regional Police Service Policy & Procedure OPS -004, "Notebooks":

C - General

All uniformed officers, escort officers, summons officers and other members, as required by duty, shall carry and maintain an issued notebook for the purpose of keeping an accurate, chronological record of police duties performed (as enumerated below).

D - Procedure for Completing Notebooks

2. Sufficient details shall be recorded in the notebook to enable an officer to give testimony in court, using the notebook if required to refresh their memory with the court's permission.

8. Entries in notebooks during a tour of duty shall be detailed and shall include:

- (e) record of arrests (including details of demands, Rights to Counsel, cautions, etc.);
- (h) record of observations regarding individuals, motor vehicles or questionable premises;
- (n) matters for which officers may be called upon to testify or be accountable;

Public Interest

The public interest in cases of misconduct must be considered in every instance. The omission of the presence of the knife in the officer's notes pertained to facts or observations that drove his actions and decision-making and was central to the laying of the criminal charge against D.K..

Employment History

This is the third time in the last two years that Constable Mathers has been disciplined for failing to keep complete or adequate notes. The Prosecutor referred to an incident in June of 2013 where Constable Mathers failed to properly investigate an allegation of criminal activity, including a failure “to record any of the material facts of the incident in (your) notebook”. In September of 2014, Constable Mathers forfeited 18 hours of time off for this offence.

The Prosecutor also referred to an incident in November 2013 when Constable Mathers failed “to make sufficient notes” after an incident at a house party attended by police in response to a concern about underage drinking. Constable Mathers was counselled by the Commander of Professional Standards about his misconduct.

Constable Mathers has been a member of the Halton Regional Police Service for over 15 years, and he has been a police officer for over 18 years. At the time of the misconduct before the Tribunal, he was often assigned to an Acting Sergeant’s role on his platoon. He is not a “rookie” officer, and quite simply stated, should know better. An officer with his level of experience ought to be a role model to younger officers

Specific and General Deterrence

Deterrence of the subject officer, as well as other members of the Service, is a legitimate objective of police discipline. It is important that conduct of this sort, if discovered and proven, should be denounced by the imposition of a significant sanction, with a view to discourage the subject officer, as well as other officers, from repeating it.

MITIGATING FACTORS

Remorse

Constable Mathers has pleaded guilty and in so doing, has accepted responsibility for his neglect, and for the appropriate penalty.

Potential for Reform or Rehabilitation

By accepting the sanction imposed, Constable Mathers now has the opportunity to move forward in his career and learn from his mistakes. The Prosecutor was anxious to stress that the Respondent has three instances of neglect of duty in the past 2 years involving poor or incomplete notes, and that this, therefore continues to be cause for concern. Notwithstanding this concern however, there is an understanding that Constable Mathers has been dealing with some serious health issues recently. Therefore, taking into account the officer's personal circumstances, it is hoped that this was a momentary departure from the norm.

Consistency of Disposition

The recommended penalty is in keeping with the principle of progressive discipline. The Prosecutor asserted that, in his submission, while the forfeiture of 24 hours is at the low end of the scale for repetitive misconduct, it is in keeping with an increased penalty over the last informal disposition. It was also noted that the finding of serious misconduct will remain in the officer's personnel file for 5 years.

The Prosecutor submits that, given all of the relevant facts and considerations, the Tribunal should accept the jointly recommended disposition.

DEFENCE

Ms. Diamond then addressed the Tribunal on behalf of Constable Mathers. She first wished to address the issue of the timing of the officer's misconduct, clarifying the three different negative incidents in the seemingly recent past. The three were dated June 2013, November 2013, and January 2014. Ms. Diamond indicated that during this relatively short period of time, Constable Mathers was suffering some serious personal health related problems, and since, has undergone a number of surgeries. Ms. Diamond advises that Constable Mathers has experienced intense pain, and has been taking powerful narcotic painkillers.

Ms. Diamond submitted that the officer has almost 15 years of Service, and a considerable amount of experience performing the role of Acting Sergeant. Constable Mathers has a Chief's Commendation for saving an individual's life. She asserts that his note keeping abilities are of a high standard and this is evidenced by his tenure in the Domestic Violence Unit, time as a CIB

investigator, and his secondment on the M.I.R. Team on three occasions. She stated to the Tribunal that Constable Mathers is a solid investigator.

Ms. Diamond draws the Tribunal's attention to the fact that Constable Mathers has been performing an Acting Sergeant's role since 2001, and the Service has relied on him to mentor and supervise other officers for some 13 years.

Constable Mather's Counsel closed by emphasizing that Constable Mathers immediately pleaded guilty at the first opportunity, and has taken full responsibility for his actions.

Mr. Kelertas was afforded the opportunity to reply with respect to the immediacy of the resolution in this matter and pointed out the length of time and number of appearances that have been required to get to the final disposition before the Tribunal.

Ms. Diamond countered that the officer was only notified of the plea arrangement two weeks prior to the Hearing date.

PUBLIC COMPLAINANT

The public complainant in this incident, S.W. (the mother of D.K.) was present at the guilty plea and therefore had standing at the Hearing. She was asked if she wished to address the Tribunal and did so. S.W. indicated that, in her opinion, Constable Mathers should have dealt with his medical issues, and these were not a valid excuse for his behaviour. She felt his personal circumstances should not interfere with him doing his job as a police officer and that he ought to have sought medical help and not been on regular duties. She indicated that neglect is a serious thing. She concluded by telling the Tribunal that the entire affair has been a nightmare for her and her daughter.

CONCLUSIONS & DISPOSITION

In determining a suitable disposition in this matter, the Tribunal has heard submissions representing the position of all three parties to the Hearing, and has given careful consideration to this material. After a finding of guilt, and in recording the reasons for the penalty decision, it is proper that the thought process followed in arriving at the decision be articulated. The actual misconduct relative to this charge has been adequately described by the Prosecutor and the Defence has acquiesced to its substance.

Constable Mathers has pleaded guilty to one count of misconduct, arising out of an incident involving the arrest of a person in crisis at a private residence. The incident occurred on 8 January 2014 in the Town of Oakville.

It is to Constable Mathers' credit that he has accepted responsibility, notwithstanding the delays along that journey. Although he suggested, through his counsel, that his admission of guilt was swift and immediate, some considerable time has elapsed since he was served a Notice of Hearing, and there have been numerous appearances. There may well have been a recent plea arrangement, but this does not equate to pleading guilty at the first opportunity. To be sure, Constable Mathers has suffered some serious health problems over the course of his travails with the Code of Conduct, and I am satisfied, that for the most part, it was his health that precluded a swift and agreeable end to this matter.

Furthermore, the issue of his health was introduced by Ms. Diamond as being connected to the misconduct, during the time period of his three scrapes with proper procedure. The relationship between his medical issues and the misconduct was not expressed in any greater detail and therefore, I am unable to draw the nexus between the two. It was simply submitted that at the time, he may have been ill. In written submissions, it was suggested that Constable Mathers was under the influence of powerful narcotic painkillers, but it is unclear on the exact timing of this medication in relation to the misconduct. He has undergone several surgical procedures *since* the misconduct occurred, and this is certainly accepted.

The public complainant wished to focus her comments on the health of Constable Mathers and was resolute in her observations that a police officer's health problems ought not to interfere with professional behaviour, and the Tribunal takes particular note of this feedback.

Mr. Kelertas pointed out that this is the third incident of Neglect by Constable Mathers, and in all occasions, the element of neglect relates to the failure to keep adequate notes. At first blush, this would seem like a protracted level of negligence at the hands of the officer, but closer examination of the time line is warranted.

On 13th June 2013, Constable Mathers failed to properly make notes at a crime scene. An aggravating factor in this case was that he was performing the role of Acting Sergeant at the time. On 22nd November 2013, Constable Mathers failed to keep proper notes regarding a house

party he attended, again, aggravatingly, as an Acting Sergeant. The matter before this Tribunal occurred on the 18th January 2014. These transgressions then, occurred over an approximate seven month period. All of them stemmed from investigations of public complaints about Constable Mathers. It is clear then, in my view, that this is not a case of wrong doing; being found culpable; accepting a penalty; and then going on to commit the same offence again. The third incident of improper behaviour occurred before the first one was even identified. I find that this is more relevant than the issue of the officer's health, in relation to the span of time over which the offences occurred. The issue of "progressive discipline" then, is a moot point.

The loss of 24 hours is, in my view however, at the low end of the scale when considered in the same context. The matter before the Tribunal was the last of three incidents, and although seven months may be termed, as in the Defence submission a "relatively short period" of time, it is nonetheless, an "ongoing" contravention. It is all the more disturbing that the misconduct relates to the bread and butter of being a good police officer – keeping accurate notes.

Constable Mathers, through his Counsel, declares that his note keeping is of a high standard and this is inferred by his tenure in various investigative units. While this is accepted at face value, some definitive demonstration of this would have assisted the Tribunal in its wrestle with how this misconduct occurred in the first place. Constable Mathers is apparently a "solid investigator". How then is this reconciled with an abject failure to comply with one of the most fundamental duties of a police officer, and not just once, but on three occasions?

As previously commented, I'm finding it difficult to link the officer's health with the misconduct as there has been no evidence put before the Tribunal to support this, save that he had some medical problems. How these impacted his ability to keep notes or to perform as is expected of him is not clear.

The most troubling aspect of this unfortunate incident (and the preceding cases of misconduct) is that they all came to light as a result of public complaints about Constable Mathers. His behaviour and interaction at a scene gave rise to a complaint against police and during the investigation of those complaints, his failure to make proper notes surfaced. Although a "solid investigator" with some 15 years (or more) service, he failed in his duty. Whether it was laziness, incompetence, or a laissez faire approach that caused the failure has not been established.

Constable Mathers is a very experienced police officer, and at varying times has been entrusted with the role of Acting Sergeant. With that experience should come the recognition of what are, or what are likely to become, contentious dealings with citizens; the results of which should be documented meticulously. An accurate and complete recording of those incidents is what separates the seasoned patrol officer from the raw recruit.

Constable Mathers still has a great deal to offer the Police Service and the citizens of our community. He still has many years utilize his knowledge, skills and abilities as a police officer. Being mindful of this supports the notion that the fundamental premise of this process is to rehabilitate the officer, and not simply punish. Having now identified that he found himself afoul of the rules over a half year period, *in situations of conflict with others*, I'm confident Constable Mathers is ready to put this unacceptable behaviour behind him.

The prosecution and defence are jointly recommending the imposition of a penalty of the forfeiture of 24 hours from the member's vacation bank. The loss of 24 hours is appropriate in the circumstances, taking into account all of the aggravating and mitigating factors associated with the misconduct.



Superintendent Chris Perkins #3406
Hearing Officer
Halton Regional Police Service

19 August 2015