

IN THE MATTER OF
ONTARIO REGULATION 123/89
MADE UNDER THE POLICE SERVICES ACT R.S.O. 1990.C.P. 15
AND AMMENDMENTS THERETO

AND IN THE MATTTTER OF
POLICE CONSTABLE CATHY McLEOD
AND THE
CITY OF KAWARTHA LAKES POLICE SERVICE

SENTENCE

APPEARANCES

Mr. Glenn P. Christie

for Kawartha Lakes Police Service

Mr. William R. MacKenzie

for Constable Cathy McLeod

Before:

Deputy Chief Terence Kelly

York Regional Police (Retired)

Hearing Officer

Sentence Date: July 18, 2017

SENTENCE

POLICE CONSTABLE CATHY McLEOD

July 18th, 2017

Deputy Chief Terence Kelly (Ret.) Before commencing with sentence in this matter, I wish to thank Mr. Glenn Christie, the Service prosecutor, and Mr. William MacKenzie, counsel for Police Constable Cathy McLeod, for their comments and exhibits entered, all of which have assisted me.

Police Constable Cathy McLeod, has pled guilty and been found guilty of two counts of neglect of duty under sections 2 (1)(c)(iii) and 2(1)(c)(i)(a) of the ***Police Services Act***.

The guilty plea was advanced with an Agreed Statement of Facts (***Exhibit #3***).

Agreed Statement of Facts

Count #1, Neglect of Duty

On July 14th, 2015, the Complainant's children, a son and a five-year-old daughter, were playing in the driveway of her home with two older boys. One of the boys, age fourteen (14) years, attended babysitter whose home was across the street from the Complainant's house.

Later that night, the Complainant's daughter disclosed to the Complainant that the fourteen-year-old had pulled her pants down earlier that day. The Complainant's daughter also stated that the boy had made sounds and gestures of a sexual nature. The Complainant's son stated that his sister had told him about the incident and he told his sister to tell their mother.

Later the same evening, there were discussions involving the Complainant, the Complainant's husband, the mother of the boy and the boy himself.

The Complainant decided to call the police to report the incident. She had a discussion with a family member (an OPP officer and sexual assault investigator). Based upon the conversation, she decided to let her child sleep through the night and call police in the morning. She did not bathe her child that night or the following morning.

In the morning of July 15th, 2015, the Complainant called the police. Police Constable Cathy McLeod of the Kawartha Lakes Police Service attended at the Complainant's residence. Constable McLeod is a trained sexual assault investigator.

During the course of July 15th and 16th, Constable McLeod conducted an investigation into the allegations.

Service policy requires that an officer ensure that Victim Services are made available to a child victim in accordance with policy 2200-001 Victim Assistance. The policy requires an officer to provide the victim with information regarding the various victim assistance groups that can be contacted if required.

Police Constable McLeod did not provide any information to the Complainant or the victim about Victim Services either at the Complainant's house during the initial investigation or while at the police station while taking the victim's statement.

On July 16th, 2015, the Complainant asked Constable McLeod about the telephone number for the Victim Assistance Program. Constable McLeod stated that she did not know what that was. Later that day, Constable McLeod attended at the Complainant's residence and provided the Program contact information.

Constable McLeod was required by Service policy to ensure that the victim was made aware of the services of Victim Services. Constable McLeod only provided this information after she was asked for it by the Complainant the day after Constable McLeod conducted the initial investigation.

Count #2, Neglect of Duty.

The Service policy of the Kawartha Lakes Police Service requires that the investigating officer ensure that the collection, handling and preserving of evidence in cases of suspected child physical or sexual abuse be performed in accordance with Service policy 2100-020 Collection, Preservation and Control of Evidence and Property.

Constable McLeod did not seize the clothing the child had been wearing while she was at the Complainant's house. After returning to the police station and being told by another officer to seize the clothing, Constable McLeod telephoned the Complainant and asked her to bring the child's clothing with her to the police station. The Complainant was not provided with any direction as to how to package the clothing and therefore put all of the clothing into one plastic bag.

Constable McLeod should have seized and properly labelled and packaged the clothing at the house, or arranged for a forensic officer to go to the scene and gather the clothing properly.

The clothing was sent to the Centre of Forensic Science and as a result, a male saliva profile was detected. Semen DNA was also detected but it was insufficient quantity to generate a profile. Since the clothing had not been seized by Constable McLeod or a trained forensic investigator, there was no way to determine where the clothing was or what the clothing may have come in contact with prior to the Complainant placing the clothing in a plastic bag.

There were concerns regarding Constable McLeod's statement taking from the victim. She asked no clarifying questions, obtained insufficient background information, and ceased the interview, which was very short, as soon as the child said the fourteen-year-old boy had licked her genital area.

Constable McLeod admitted that when taking the statement from the accused, she offered him an inducement to tell the truth by telling him that no one besides her and him would know what he was confessing to.

The manner in which the statement had been obtained by Constable McLeod was a factor that impacted the prosecution of the accused. Constable McLeod did not properly provide the accused his rights to counsel, she told him the judge would treat him harshly if he did not tell the truth, and told the boy the judge would be angry if he did not provide a DNA sample.

The Crown was unable to proceed with these statements due to the way Constable McLeod obtained them during the course of her investigation.

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

Due to the circumstances surrounding this misconduct, notwithstanding the guilty plea and the Agreed Statement of Facts, I believe the allegations when taken in the broader context of employee/employer relations it is prudent to provide written reasons for my findings.

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 public cannot be expected to respect the law if it does not **respect** and believe in the dedication and integrity of the Police Service.

Police Constable MacLeod's investigations were wilfully neglectful and fell well below the performance standards expected from a police officer of any level of experience, and especially a senior constable trained as a sexual assault investigator.

A police officer's conduct ought to set an example for the community to follow and thus any shortcomings in their conduct will colour the image of the Police Service in the eyes of the public.

Seriousness of the Misconduct

The seriousness of the offence is, of course, the primary considerations. In this particular case the actions of Police Constable MacLeod, or lack thereof, were clearly inappropriate and an embarrassment to the City of Kawartha Lakes Police Service.

The repercussions of this officer's conduct in this instance not only effected the complainant and her family, but also sent a ripple effect through the community.

The evidence presented to this Trier of Fact clearly demonstrated that the public interest was not first and foremost in the mind of Constable McLeod. Professionalism and Integrity cannot be compromised. The public is entitled to have high expectations of a Police Service and its members. To retain this trust and confidence, they must be professional and ethical in everything they do. It is incumbent upon Police Services to ensure only those members who have exhibited self-discipline in adherence to the policies and procedures of the Service are entrusted to perform their duties within the Service.

It is unfortunate that when faced with this situation Police Constable McLeod would not utilize her training as a sexual assault investigator to guide her investigation and responsibility.

I am reminded that no one need choose to be a police officer or to bear the public trust; but those who choose to do so must acquire the excellence of character necessary to live up to it. In this case, Police Constable McLeod has allowed her actions in this investigation to impinge her professional ethics and integrity by conducting an investigation that was wilfully neglectful, which resulted in unnecessary suffering to the Complainant and her family.

I can only hope that Police Constable McLeod, together with all serving members of this Police Service, will take heed of the circumstances of this case and learn the consequences of such misconduct.

Police Constable Cathy McLeod no doubt regrets her behaviour and I feel assured that should a similar situation arise in the future she will conduct herself in the manner of a sworn police officer.

In addition to the Agreed Statement of Facts also submitted was a Joint Submission on Penalty.

I am content to confirm the position put forth by counsel for both sides and assess a disposition of **Sixty (60) Hours to be served (worked) at the discretion of her unit commander in accordance with Section 85 (1) (f) of the Police Services Act for the finding of guilt on two counts of Neglect of Duty.**

Terence Kelly

Deputy Chief (Retired)

York Regional Police Service.

Hearing Officer.

Sentence Date: July 18th, 2017 (sent electronically)