

**IN THE MATTER OF**  
**Constable Shannon MULVILLE #2045**  
**And**  
**Constable Mykhaylo AZARYEV #1915**  
  
**OF YORK REGIONAL POLICE**

**APPEARANCES**

Mr. Jason Fraser	for	York Regional Police
Ms. Pamela Machado	for	Constable Shannon Mulville #2045 Constable Mykhaylo Azaryev #1915
SR		O.I.P.R.D. Complainant

**HEARING OFFICER**

Superintendent Graeme Turl #387

York Regional Police

**PENALTY DECISION WITH REASONS**

Before commencing with my decision in this matter, I wish to thank Mr. Jason Fraser, Prosecutor for York Regional Police and Ms. Pamela Machado, Defence Counsel, for the assistance they provided me over the course of the Hearing, including their submissions and exhibits tendered, all of which assisted me in reaching my decision.

## THE HEARING

On November 9<sup>th</sup>, 2015, as a result of an OIPRD Directed Hearing, Constable Shannon Mulville #2045 was found guilty on clear and convincing evidence for the offences listed below:

1. On or about September 15<sup>th</sup>, 2013, acted in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the police force of which the officer is a member and thereby engaged in **Discreditable Conduct** contrary to the *Police Services Act*, Ontario Regulation 268/10, section 2(1)(a)(xi).
2. On or about September 15<sup>th</sup>, 2013, without good and sufficient cause makes an **Unlawful or Unnecessary Arrest**, contrary to the *Police Services Act*, Ontario Regulation 268/10, section 2(1) (g)(i).

Additionally, on November 9<sup>th</sup>, 2015, as a result of an OIPRD Directed Hearing, Constable Mykhaylo AZARYEV #1915 was found guilty on clear and convincing evidence for the offence listed below:

1. On or about September 15<sup>th</sup>, 2013, without good and sufficient cause makes an **Unlawful or Unnecessary Arrest**, contrary to the *Police Services Act*, Ontario Regulation 268/10, section 2(1) (g)(i).

On December 14<sup>th</sup>, 2015 the Hearing continued with both Prosecution and Defence making submissions as to penalty, along with the complainant providing a written submission as to penalty.

The Prosecution submitted a Brief of Authorities [Exhibit #11] containing six (6) cases that are relevant to the case at hand.

1. Krugg and Ottawa Police, OCCPS, January 21, 2003;
2. Midland Police Service and Gregg, OCCPS, December 11, 2001;
3. Blowes-Aybar and Toronto, OCCPS, March 7, 2003
4. Turgeon and OPP, OCPC, July 20, 2012;
5. Sylvester and York, December 14, 2009;

6. Tighe and York, May 17, 2009.

Of the six cases, one – *Turgeon and OPP, OCPC, July 20, 2012* – was redacted from the Brief of Authorities on mutual consent from both counsels and the complainant.

SR, the complainant in this matter, submitted a 5 page written submission [Exhibit #12] as to his belief in what the penalty for the officers should be. This written submission was reviewed by both Prosecution and Defence and in consultation; two paragraphs were redacted from the submission:

- i. Last paragraph on page 2 and
- ii. First paragraph on page 4.

The Defence submitted a Document Brief [Exhibit #13] containing the following relevant cases:

1. *Wong and Toronto Police*, 2015 ONCPC 15;
2. *Ardiles and Toronto Police Service*, August 14, 2015;
3. *Elliot and King and the Durham Regional Police*, OCCPS, 0701, February 5, 2007;
4. *Penner and Niagara Regional Police Service*, OCCPS 0505, July 6, 2015;
5. *Gibbs and Toronto Board of Inquiry*, April 21, 1998.

Within the Document Brief are letters of support for both Constable Mulville and Constable Azaryev from their current Acting Staff Sergeant Brian Black #499. Additionally, in support of Constable Mulville and Azaryev, the Document Brief contains:

- 3 recognition documentations for Constable Shannon Mulville #2045
- 8 recognition documentations for Constable Mykhaylo Azaryev #1915

Constable Mulville also submitted a letter to the Tribunal regarding her experiences with the *Police Services Act* Hearing process and the effects it has had on her performance.

### **Prosecution:**

The Prosecution began by identifying that neither Constable Mulville nor Constable Azaryev had any prior discipline during their tenure with York Regional Police (YRP). Constable Mulville has been with YRP since April of 2010 and Constable Azaryev has been with YRP since 2008.

Mr. Fraser stated that with Constable Mulville's convictions for Unlawful/Unnecessary Arrest and Discreditable Conduct he is seeking a forfeiture of 40-48 hours and for Constable Azaryev a forfeiture of 12-24 hours. Mr. Fraser is also seeking training for both officers, as per Section 85(7) (b) of the *Police Services Act*, regarding powers of arrest and lawful entry into dwellings.

Mr. Fraser identifies the need to ensure the principles of discipline are captured as it pertains to ensuring administrative vs. employment concerns. Mr. Fraser stipulates the need to incorporate the four (4) pillars of the discipline process:

1. Public;
2. Complainant;
3. Officers;
4. Service.

This will be done through reviewing several of the key 13 factors that were identified in the *KRUGG and Ottawa Police, OCCPS No. 03-01* decision, as it is one of many decisions that adopt the list identified by Paul Ceysens, at page 5-129 of "Legal Aspects of Policing" (Salt Spring Island: Earls Court Legal Press, 1994) summarized the factors which may be either mitigating or aggravating as follows:

1. Public interest;
2. Seriousness of the misconduct;
3. Recognition of the seriousness of the misconduct;
4. Employment history;
5. Need for deterrence;
6. Ability to reform or rehabilitate the police officer;
7. Damage to the reputation of the police force;
8. Handicap and other relevant personal circumstances;
9. Effect on police officer and police officer's family;
10. Management approach to misconduct in questions;
11. Consistency of disposition;
12. Financial loss resulting from unpaid interim administrative suspension;
13. Effect of publicity.

#### Public Interest:

The public has an expectation that police officers will conduct themselves with integrity. There is a significant interest on the part of the public that all members of York Regional Police are fully conversant with their authorities regarding powers of arrest and the law as it pertains to the expectations of privacy. There is also an expectation that its members will comply with the procedures of the service.

#### Seriousness of the Misconduct:

In this situation the matter is of a higher degree of seriousness due to the fact that it was an arrest of a young person verses an adult, combined with the language used and behaviour of Constable Mulville which makes it more aggravating. It is apparent that Constable Mulville was acting out of frustration and anger as opposed to bad faith. There is an expectation that this will be corrected.

#### Recognition of the Seriousness of the Misconduct:

The fact that this Hearing went through the trial process is not an aggravating factor, as it is the officers' right to do so. It has, however, been identified that pleas to misconduct matters are seen as a mitigating factor which was not seen in this matter.

#### Employment History:

This is a neutral factor as both officers are relatively young in tenure and there is no prior discipline for either.

#### Ability to Reform or Rehabilitate the Officer:

This is a positive factor as the officers will be greatly aided through training which will assist them as well as the Service. This is the most important factor.

#### Consistency of Disposition:

Mr. Fraser advises the Tribunal that it is difficult to find a similar case but there is a range of possible outcomes from other cases that deal with the identified misconduct. Mr. Fraser then went through the cases previously identified in the Brief of Authorities. These cases provide a range of penalty for consideration. Mr. Fraser stipulates that their request on penalty for

Constable Mulville is a bit above the identified range within the presented cases and that Constable Azaryev's is a bit below.

The cases provided by the Defence, are mostly from the G20 misconduct cases. These cases are from a series of unprecedented extraordinary events and as such should have minimal application.

Need for Deterrence:

This will be addressed in the misconduct penalty identified for both Constable Mulville and Constable Azaryev.

Damage to the Reputation of the Police Service:

There is no doubt that there has been damage to the reputation of the Police Service. There is an expectation that our officers are held to a higher standard, especially when dealing with young people. Police cannot be seen to respond in frustration when dealing with a young person but are expected to be professional at all times no matter whom they are dealing with.

**Public Complainant:**

SR presented the Tribunal with a written submission only. Upon review of the submission SR has provided; it is a summarization of the events, along with his opinions as to evidentiary rules and practices of the Hearing itself. SR states within his submission that there have been delays and attempts to subvert the process by the Defence throughout this whole Hearing.

SR stipulates that the penalty imposed on the two officers needs to take into account the severity of their actions, along with their behaviour exhibited that day.

SR wants a clear message sent to the two (2) officers along with all other officers who are similar in their actions and attitude. The message needs to identify that members of the public are allowed to document police activity without being harassed or arrested.

SR sums up that officers are held to a higher standard, due to the trust placed upon them by the public and the extraordinary powers entrusted upon them by the public.

SR does not believe that the cases Defence has referred to; specifically *Wong* and *King* are applicable when compared to the actions of Constable Mulville and Constable Azaryev towards the affected person in this incident who was a 17 year old, female young person.

SR is seeking termination of employment for both Constable Mulville and Constable Azaryev.

**Defence:**

Ms. Machado, for the Defence, identified that the written submissions of SR should hold little weight in the penalty decision process. The comments provided within the submission are ill-informed, disrespectful of the process at hand along with the officers and all involved. SR's request for termination shows his lack of understanding of the Hearing process, as well as being inappropriate, and therefore should be given little or no weight in deciding penalty.

Defence identifies that the Prosecution's submissions as to penalty are quite high and are seeking to doubly punish the officers further. Defence concurs that training is the most appropriate need in this matter in relation to arrest and entry into a residence authorities.

Defence in reviewing the points for considerations identified the following:

**Public Interest:**

There was no expectation of privacy on the part of NR as she was a guest at the residence. The testimony from the owner of the residence identifies that she was satisfied with the conduct of the officers and outcome, therefore there should be no weight put on that aspect as to a negative effect on the public interest.

The Public Complainant in this matter, SR, has and will continue to have his day in court regarding this as there is a civil action ongoing. It has been identified in his testimony during the Hearing that he has a dislike for the police.

**Seriousness of the Misconduct:**

The fact that there weren't any pleas by the officers is not an aggravating factor, as it is their right. The officers were always willing to resolve this matter however the Complainant was the stumbling block for that avenue. Constables Mulville and Azaryev are not downplaying their role in this matter; however hindsight is 20/20.

This incident is at the low end of the spectrum as it pertains to misconduct. Neither of the officers in this matter was overly aggressive towards the affected party or the other party goers.

#### Consistency of Disposition:

The cases provided by the Prosecution are not proportional to the incident at hand as they are dissimilar in fact, along with a disparity in experience level. The Defence contends that the range Mr. Fraser is asking for is very high in the spectrum and will prevent the officers from participating in any Staff Development opportunities. According to Ms. Machado, along with the case being presented by the Defence a reprimand is appropriate for both of the officers along with training issues already identified.

Ms. Machado states that contrary to the cases provided by Prosecution, in this instance there was minimal force used, no injuries sustained by NR or any other person. The officers acted in good faith when dealing with the matter, they were patient despite the way in which the youths were attempting to provoke them.

Ms. Machado reviewed the cases within her Document Brief which all identify either a reprimand or lesser forfeiture of time identified by the Prosecution.

#### Employment History:

Neither Constable Mulville nor Constable Azaryev has any prior discipline and both have had positive performance appraisals. Each of these officers has been identified as a high producer on their platoon and both are eager and hardworking.

#### Need for Deterrence:

According to Ms. Machado having this matter “hanging over their heads” has already provided deterrence to them as well as their fellow officers. This incident has caused them to be cautious at similar calls and feel that their peers are not supportive of them if having to go to a similar incident with them.

#### Ability to Reform or Rehabilitate the Officer:

There has already been some rehabilitation for the officers as a result of this matter and both are willing to take the necessary training to ensure this does not happen again.

#### Damage to the Reputation of the Police Service:

The damage, if any, has been minimal in this matter. There has not been any media coverage on this incident. The home owner of the residence where the party took place is supportive of the officers and the Police Service as she testified that she was in agreement with how the matter was dealt with.

#### Effect on Police Officer and Police Officer's Family:

Both of the officers have been dealing with the stress of this matter in their home life as well as their work life. Both Constable Mulville and Constable Azaryev are married with children and the whole process has had an impact on each of them and their families.

#### Management Approach to Misconduct in Question:

According to Defence, Management have already identified how they expect these types of incident to be dealt with.

#### Written Statement by Constable Mulville:

Constable Mulville submitted a written statement to the Tribunal. Her statement is a complaint against having to go through the Hearing process, the effect that the conviction will have on her and her career and that it is all, in her opinion, unfair and unnecessary.

Constable Mulville identified that she used to be "number one" in almost every category on her platoon, however as a result of this process she is worn down and questions everything she now does. Constable Mulville states that she reviewed her training, questioned others as to what she did and still does not understand how she was wrong and that she did her job as was required.

Constable Mulville, within her statement, identifies numerous incidents that she has been through within her 5 years with YRP and how difficult these situations can be, however, she is not seeking sympathy but does not feel the public could ever understand what officers go through.

Constable Mulville believes she has been punished enough and that she should not receive further punishment.

## **ANALYSIS:**

Once again, I would like to thank the Prosecution, Defence and SR for their input provided to this Hearing on this matter.

Before I go into my review and decision as to penalty, I need to address a few points in relation to Constable Mulville's statement to the Hearing. To say that I am disappointed by her statement would be an understatement. This is not the type of statement I would expect from an officer, who has been found guilty of offences under the *Police Services Act*, a Provincial statute that has been in effect for a substantial period of time. It may not be perfect but it has been tried and tested many times and upheld to the highest level.

The primary purpose of the *Police Services Act* and its regulations thereto are to provide direction and accountability of all Police Services and their members. These are all identified and outlined within the Declaration of Principles, Responsibilities of Police Services, Duties of a Police Officer, Oath of Office and Code of Conduct. To consider the information and direction contained within the *Police Services Act* as "unfair" would be a complete lack of understanding of the *Act* and the necessity behind it.

Constable Mulville's statement was not one of contriteness but in my view one of an unwillingness to accept ownership for her actions and a refusal to acknowledge her accountability in this matter. Credibility and integrity are characteristics that are earned, not automatically received. I am choosing to put very little weight in her written statement to the Tribunal as it relates to penalty, as I believe it to be more of an emotional outburst as opposed to a reflection on penalty.

I sincerely hope that she will rethink her actions, learn from this and move forward in her career. I also hope she continues to be the eager and hardworking officer as others have identified her as opposed to withdrawing from her responsibilities as she mentions within her statement.

In relation to SR's comments regarding delays by the Defence, they have no bearing on the penalty aspect of this Hearing and will not be considered in my decision. Further, his request for termination is, in my view, well beyond the penalty range for this identified misconduct.

It is widely understood and accepted that our accountability, ethical behaviour and conduct are at a standard much higher than that of the public we serve. The public observes and evaluates the police at all times. We, as individuals and as a professional organization must be mindful of

this fact. All of our members, whether on or off duty, must conduct themselves in a professional and lawful manner at all times. The citizens of this community expect and must receive the very best from their officers.

I am cognizant that in *Gregg and Midland Police Service, OCPC No. 01-11*; we have the Commission reminding us that one of the basic principles of the discipline process is consistency in sentencing as consistency is a hallmark of a fair and just process. The Commission stated: "*This principle ...must be applied taking into consideration the unique fact situations in each case. It is, therefore, very difficult to assess each case and to apply the fact situation to other cases.*"

I have reviewed the submissions and cases provided to me by all involved and carefully considered the ranges identified. I acknowledge that I must consider a disposition that is both fair and consistent, based on the facts before me.

In totality of the situation, despite SR's written submission on penalty, the misconduct from this incident is on the lower end of the spectrum and is not even remotely close for the consideration of termination for either Constable Mulville or Constable Azaryev.

Both Constable Mulville and Constable Azaryev are relatively "young" in their career with YRP and neither have had any prior discipline. By accounts from the information provided by Ms. Machado, they are good workers and Acting Staff Sergeant Black believes the two will continue to be professional as they move forward in their careers, no matter what the outcome may be.

The actions of the officers and the resulting Hearing process, I believe has provided both general and specific deterrence to not only both of the officers but to the general membership as a whole. The conclusion of this matter with the appropriate penalty will also serve as suitable deterrence.

The primary consideration that I have to determine is that with the appropriate penalty and training provided to the officers as recommended by both the Prosecution and Defence, is whether I believe they can be rehabilitated so that they are fully cognizant of their authorities should they encounter a similar situation? After careful consideration as to all the facts and circumstances, I believe they can.

Another consideration as to penalty for either officer is in relation to the extent of their involvement in the incident. Constable Mulville was the primary officer on scene and took the

lead in all aspects. Constable Azaryev was the secondary officer and was not as engaged or involved as Constable Mulville.

**Decision:**

My disposition as to penalty is as follows:

Constable Shannon Mulville #2045:

1. For the conviction of Unlawful/Unnecessary Arrest, a forfeiture of 12 hours.
2. For the conviction of Discreditable Conduct, a written reprimand.

Constable Mykhaylo Azaryev #1915:

1. For the conviction of Unlawful/Unnecessary Arrest; a written reprimand.

Further, I direct that both Constable Mulville and Constable Azaryev undergo training, within 3 months of this decision, in the areas of:

- Police powers of arrest;
- Lawful entry into dwellings.



Graeme Turl  
Superintendent #387  
York Regional Police

Dated: January 11, 2016