

**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

SERGEANT JASON POSTMA, #7876

NEGLECT OF DUTY

DISPOSITION WITH REASONS

Before: Superintendent Greg Walton
Ontario Provincial Police

Counsel for the Prosecution: Inspector Dave Tovell
Ontario Provincial Police

Counsel for the Defence: Mr. Gavin May
Ontario Provincial Police Association

Public Complainant: C.D.

Hearing Date: December 20, 2017

Plea / Penalty Position

Sergeant (Sgt.) Postma, represented by Mr. Gavin May, entered a plea of guilty to neglect of duty. His plea was accepted by this tribunal based on clear and convincing evidence. On behalf of the Ontario Provincial Police (OPP), Inspector (Insp.) Dave Tovell submitted a joint penalty submission of 30 hours.

This matter involves a public complainant referred to as C.D.¹ throughout this decision. C.D. had been consulted by the prosecution and was in agreement with the proposed penalty but C.D. chose not to attend the hearing in person.

In addition to Sgt. Postma, a second officer was identified in the Notice of Hearing as an involved officer. There is no reason to identify that officer in this decision and instead, will be referred to as the Probationary Constable.

Decision

Based on the Agreed Statement of Facts (ASoF) presented, I find Sgt. Postma guilty of neglect of duty. I see no reason to deviate from the sanction proposed and thereby order Sgt. Postma to forfeit 30 hours. These hours are to be worked at the earliest reasonable opportunity in consultation with Sgt. Postma's detachment commander.

Allegation of Misconduct

Sgt. Postma is alleged to have committed neglect of duty in that he did, without lawful excuse, neglect or omit to promptly and diligently perform a duty as a member of the OPP, contrary to Section 2(1)(c)(i) of the Code of Conduct contained in the Schedule to Ontario Regulation 268/10, as amended. The edited particulars of allegations concerning Sgt. Postma state:

- On or about Thursday July 28, 2016 while on duty at the City of Kawartha Lakes detachment, Sgt. Postma attended a 9-1-1 call for service that included an allegation of domestic violence. Sgt. Postma was the supervisor who responded to the call for service along with a Probationary Constable.
- It is alleged Sgt. Postma received information indicating S.T. had choked C.D. and a ring had been forcibly removed from C.D.'s finger.
- It is further alleged Sgt. Postma committed the following misconduct in relation to this call for service:

¹ Initials utilized to anonymize involved persons

- Sgt. Postma failed to obtain proper statements from C.D. and S.T..
- Sgt. Postma failed to ensure photographs were taken of the alleged injuries.
- Sgt. Postma failed to ensure a proper investigation and appropriate law enforcement action was initiated.
- Sgt. Postma failed to follow OPP domestic violence policy and to ensure it was followed by the Probationary Constable.
- Sgt. Postma failed to properly supervise and provide meaningful guidance to the Probationary Constable in relation to this matter.

Agreed Statement of Facts (amended)

On or about July 28, 2016 while on duty at the City of Kawartha Lakes OPP detachment, Sgt. Postma attended a 9-1-1 radio call for a domestic violence incident. A female caller identified as C.D. was reporting to the OPP Provincial Communication Centre that she had locked herself in the bathroom after an argument between her and her boyfriend and she requested police attend her residence.

Sgt. Postma attended the scene with assistance from a Probationary Constable. Sgt. Postma spoke with C.D.'s boyfriend [S.T.] while the Probationary Constable spoke to C.D..

Sgt. Postma heard information from S.T. that they had an argument over breaking up and C.D. gave him back her engagement ring. She then wanted it back, but S.T. would not return it to her. C.D. then locked herself in the bathroom.

The Probationary Constable heard from C.D. that the two had been in an argument. C.D. indicated S.T. choked her from behind and grabbed her hand and forcibly removed her engagement ring from her finger causing her finger to bleed. C.D. then locked herself in the bathroom and called police. The Probationary Constable had difficulty believing C.D.'s version of events.

Sgt. Postma advised the Probationary Constable that if he could not believe the complainant, then he could not form the reasonable grounds for a charge.

Sgt. Postma admits that he, being the senior and most experienced officer in attendance, failed to follow OPP Domestic Violence Standard Operating Procedures (DVSOP) in that he:

- Did not take a formal statement from C.D. or the alleged suspect S.T. and,
- Did not arrange for photographs of the injuries reported by C.D..

Had Sgt. Postma followed the OPP's DVSOP, he may have determined there were reasonable grounds to believe that an assault had occurred upon the complainant. The DVSOP articulates that if there are reasonable grounds to believe an offence has occurred, then criminal charges are compulsory. Offences relating to domestic violence where mandatory charges apply include the offence of assault.

In failing to conduct a thorough investigation according to policy, Sgt. Postma did not provide proper supervision and guidance to the Probationary Constable.

Analysis

This tribunal accepted Sgt. Postma's guilty plea; the ASoF clearly illustrates his misconduct. What remains to be determined is whether or not the proposed sanction is appropriate; does the joint position of 30 hours strike a balance between community expectations, fairness to Sgt. Postma and the needs of the organization?

I will rely upon the commonly held proportionality considerations that counsel found applicable to this particular matter to assist me in the assessment of whether or not the joint sanction is appropriate.

Public Interest

Insp. Tovell submitted this penalty factor arises when the misconduct offends or undermines public interest or public confidence. In this case Sgt. Postma failed to ensure a thorough investigation was conducted and law enforcement initiated. The public must have confidence the OPP will hold their officers accountable when their actions fall short of public expectations and OPP Policy.

Sgt. Postma's actions failed to meet the needs and expectations of C.D., the OPP and the Probationary Constable. Sgt. Postma demonstrated poor judgement when he failed to ensure proper statements were obtained, failed to ensure photographs were taken of alleged injuries and failed to follow the OPP's DVSOP.

The public must be able to trust that police officers will act with integrity and professionalism at all times. Behaviour such as this brings the reputation of the officers

involved and the OPP into disrepute; it undermines the confidence and trust the public places in its police officers. As such, public interest is an aggravating factor.

Seriousness of the Misconduct

Sgt. Postma is a very knowledgeable veteran police officer and a supervisor. In this instance, he was directly responsible for supervising an inexperienced Probationary Constable. Sgt. Postma ought to have known the appropriate actions which were required given the circumstances presented; the circumstances were not unique, nor did they create a particularly challenging situation. By not following Police Orders, Sgt. Postma's actions adversely affected C.D., the Probationary Constable and the reputation of the OPP.

I will delve into Sgt. Postma's employment history later in this decision, but suffice it to say, he is viewed as an excellent supervisor who was being supported for future promotion within the police service. I take comfort knowing this behaviour appears to be an isolated incident; no doubt the sanction would be greater otherwise.

Exhibit #11 is Sgt. Postma's Performance, Learning and Development Plan (PLDP) wherein Staff Sergeant (S/Sgt.) Donnie MacDonald noted:

Sgt. Postma is a career uniformed general duties officer and as such, he has developed an expertise in policy, technology, and procedures associated to front line policing. He is an excellent resource to his officers and can always be counted on to ensure his members are provided with the guidance, direction and support they require to enable them to do their jobs effectively.

Sgt. Postma offered up no explanation as to why this incident occurred. I am left dumbfounded by Sgt. Postma's behaviour in this instance. Based on Sgt. Postma's clear knowledge of OPP Policy, and the work ethic he has demonstrated throughout his career, one would expect him to take the necessary action and to provide applicable leadership to the Probationary Constable.

The very nature of domestic violence occurrences suggests the utmost professionalism and due diligence is required when conducting investigations. The potential fallout when an officer falls negligent in their responsibilities is significant. Members of the policing community are all too familiar with tragic outcomes following inadequately investigated domestic violence occurrences. Fortunately, there was no indication that this situation was aggravated by Sgt. Postma's inaction, this appears to be an isolated incident and out of character for Sgt. Postma. Nonetheless, I find this to be serious misconduct.

Recognition of the Seriousness of the Misconduct

Insp. Tovell submitted the OPP looks to its members to take responsibility for their actions. In this case, Sgt. Postma quickly sought to resolve the matter. He entered a guilty plea, accepted the ASoF and accepted the proposed penalty. This suggests Sgt. Postma is aware of the seriousness of his misconduct and he is expected to put this incident behind him.

I find it noteworthy that Sgt. Postma's first appearance was in April 2017 and resolution talks appear to have commenced almost immediately. While this guilty plea was not received at the very first opportunity, Sgt. Postma was prepared to accept responsibility from the onset and sought to resolve this matter without a hearing. Mr. May submitted Sgt. Postma was very apologetic.

I commend Sgt. Postma for the approach he has taken in his quest to resolve the matter expeditiously. This recognition bodes well for Sgt. Postma in the future and I find this to be a mitigating factor.

Employment History

Sgt. Postma began his career with the OPP in 1990 and was promoted to the rank of sergeant in 2012. His career profile is marked as Exhibit #9 and it reflects a number of letters of recognition. A letter from 1998 stands out to me; Justice Romain recognized Sgt. Postma for his conduct, demeanor and professionalism. Justice Romain noted Sgt. Postma's evidence and credibility is without question when testifying in court. In 2003 Sgt. Postma received another letter of appreciation from the public highlighting his compassionate treatment and professionalism.

Four PLDPs were submitted as exhibits. In each of those annual evaluations, Sgt. Postma received excellent scores in the respective assessment categories and glowing comments from his supervisors. The PLDPs leave no doubt that Sgt. Postma is very well thought of and an asset to the OPP.

To me, one of the most significant factors to be considered when ascertaining an appropriate penalty is employment history. I take the position that whenever possible; a sanction ought to reflect whether or not the conduct in question is an isolated incident. In most instances, the sanction could be significantly greater if the behaviour in question is more than an isolated incident. Fortunately, that is not the case here and furthermore, Sgt. Postma has an excellent track record. I am pleased to make the following observations:

Exhibit #10 is Sgt. Postma's PLDP from 2016-2017 where he received four scores of "exceeds standard" and "meets standard" in the remaining 17 categories. S/Sgt. Nathan Hele stated:

I appreciate his insight and knowledge when it comes to technology, policy and procedure. He takes his work seriously and holds himself to the same level of accountability that he expects from those he supervises.

Sgt. Postma's detachment commander, Insp. Cathy Bell, stated:

Sgt. Postma is a dependable member of CKL [City of Kawartha Lakes] Detachment, who has great integrity and professionalism.

Exhibit #11 is Sgt. Postma's PLDP from 2015-2016 wherein he received three scores of "exceeds standard" and "meets standard" in the remaining 13 categories. S/Sgt. MacDonald stated:

I have found Sgt. Postma to be a highly ethical officer who takes pride in his profession as a police officer and strives to continue his development as a supervisor.

I have observed Sgt. Postma in his dealings with his peers, subordinates, supervisors and members of the public. He is always respectful and thoughtful in his interactions and professional in nature. I would not hesitate to recommend Sgt. Postma for any future developmental opportunities that he seeks and I am confident he will be successful in achieving his future goals.

Insp. Bell once again added very positive and supportive commentary and Superintendent Brent Anderson noted:

Sgt. Postma displays leadership and professionalism consistently. He is a valuable member of the management team at CKL detachment.

Exhibit #12 is Sgt. Postma's PLDP from 2014-2015. Sgt. Postma received ten scores of "exceeds standard" and "meets standard" in the remaining six categories. S/Sgt. Chad Bark stated:

Jason is the consummate professional. He is always well turned-out, committed to policing and dedicated to the detachment and members under his command. He is respectful [to] all he comes into contact with.

Jason stays current with legal and policy updates. It is common for Jason to be aware of a change or amendment to policy from his research of the Intranet and to share that knowledge with other members of the detachment or me for my distribution.

Jason is an intelligent officer who has a solid grasp on current policy and the law. He is very approachable and eager to share his skills and knowledge with all detachment members.

Over all I have been pleased with Jason's work over the last year. He has expressed an interest in being promoted and I believe he would make a good staff sergeant. He has a solid work ethic, a dedication to policing and a desire to complete all tasks in a professional manner. He always presents in a positive manner and tackles issues and assignments in a timely head on manner.

Exhibit #13 is Sgt. Postma's PLDP from 2013-2014. Sgt. Postma received six scores of "exceeds standard" and "meets standard" in the remaining 10 categories. S/Sgt. Bark stated:

I have observed Sgt. Postma to exhibit all of the Organizational Values on a consistent continuous basis. He presents as a confident individual who understands the importance of leading by example. As such he is constantly striving to do his best. He regularly seeks feedback on his performance and discusses approaches and methods of effective supervision.

It becomes very apparent to anyone reading his PLDPs that Sgt. Postma exudes professionalism and a strong commitment to policing. I commend Sgt. Postma for his strong work ethic and his ongoing professionalism. I find the employment history of Sgt. Postma to be a significant mitigating factor for consideration.

Potential to Reform or Rehabilitate

The employment history of Sgt. Postma demonstrates he performs his duties in a positive and professional manner. He places public interest above personal interest and every indication suggests this was an isolated incident. Based on the comments of his supervisors over the span of the last four annual evaluations, I have no concern that Sgt. Postma is likely to commit further misconduct. I am confident he has learned from this experience and will not commit further misconduct. Sgt. Postma was working toward promotional opportunities and I can see no reason why he cannot overcome this adversity, learn from it and become a better, stronger leader because of it.

Consistency of Disposition

Insp. Tovell submitted the proposed penalty is within the range of penalties for this type of behaviour when all penalty factors are taken into consideration.

Mr. May submitted cases for consideration. The case of the *OPP and Connor* from 2013 resulted in a sanction of 24 hours for one count of neglect of duty. PC Connor failed to promptly and diligently investigate, follow up and report on the matter of a residential break and enter. The 2016 case of the *OPP and Hussain* resulted in a sanction of 30 hours for discreditable conduct. PC Hussain failed to take any action with regards to a domestic assault he was dispatched to which was in progress in a vehicle. The matter of *OPP and Emmerson-Stringer* resulted in a penalty of 24 hours following a hearing and a finding of guilty for neglect of duty. PC Emmerson-Stringer failed to fully investigate a complaint of domestic violence.

Mr. May acknowledged the added factor in this case is the rank of Sgt. Postma and the additional responsibility related to the proper guidance and supervision of the Probationary Constable.

The cases submitted by Mr. May have been most assistive. I agree that the proposed sanction is definitely within the range of appropriate sanctions for similar misconduct.

Deterrence

The public needs to see that the OPP holds its officers accountable in order to maintain the high ethical standards of policing expected. The members of the OPP must also understand that a significant sanction awaits those officers who commit similar misconduct. Additionally, the sanction imposed must serve as a specific deterrence; Sgt. Postma must also understand he will be held accountable and any further misconduct of a similar nature will likely result in an increased sanction.

I find specific and general deterrence have been appropriately addressed in the sanction proposed.

Damage to the Reputation of the OPP

The public expects police officers to uphold high professional standards at all times. I agree with the submission of Insp. Tovell; if the public became aware of Sgt. Postma's behaviour, it would cause damage to the reputation of the OPP and to Sgt. Postma himself. The OPP strives to develop a positive reputation based on integrity and professionalism. The effect of a significant and appropriate sanction is to demonstrate that the OPP take their reputation seriously and behaviour of this nature will not be tolerated.

Damage to the reputation of the OPP is an aggravating factor.

Conclusion

I find the proposed sanction meets the goals of the discipline process; it strikes a balance between community expectations, fairness to Sgt. Postma and the needs of the organization. I agree with the submissions by Mr. May and Insp. Tovell and find the proposed sanction falls within the appropriate range of sanctions consistent with other similar misconduct. Therefore, I find no reason to disturb the joint penalty submission.

Disposition

After consideration of the aggravating and mitigating factors, I find the proposed sanction provides a fair and balanced approach.

Sgt. Postma is ordered to forfeit 30 hours pursuant to section 85(1)(f) of the *Police Services Act*. Specifically, Sgt. Postma is required to work an additional 30 hours to be completed at the earliest opportunity in consultation and agreement with his Detachment Commander.



Greg Walton
Superintendent
OPP Adjudicator

Date electronically delivered: January 10, 2018