

Brantford Police Service Discipline Hearing
In the Matter of Ontario Regulation 268/10
Made Under the Police Services Act, R.S.O. 1990,

And Amendments thereto:

And

In The Matter Of

The Brantford Police Service

And

Constable Darrin Rattie #1911

Charge: Unlawful or Unnecessary Exercise of Authority (Seven Counts)
Discreditable Conduct

Before:

Superintendent (Retired) M.P.B. Elbers
Ontario Provincial Police Adjudicator

Appearances:

Counsel for the Prosecution: Mr. Gordon Woods
Brantford Police Service

Counsel for the Defence: Mr. Gary Clewley
Brantford Police Association

Penalty Decision with Reasons:

The Hearing:

Constable Darrin Rattie #1911 pled guilty on March 24, 2015 and was found guilty of Discreditable Conduct pursuant to Section 2 (1) (a) (v) and three (3) counts of Unlawful or Unnecessary Exercise of Authority pursuant to Section 2 (1) (g) (i) of the Code of Conduct contained in Schedule to Ontario Regulation 268/10 as amended.

Four (4) counts of Unlawful or Unnecessary Exercise of Authority were withdrawn at the request of the Prosecutor, Mr. Gordon Woods.

The charge pertains to Constable Rattie's behaviour on July 09, 2013 while on duty in the City of Brantford attending a call at an address situated in Brantford, Ontario which led to Constable Rattie trading abusive and profane language with residents at that location and charging three parties with Criminal Code offences which were later withdrawn by a Crown Attorney.

An agreed statement of fact was verbalized to the Tribunal by Counsel for the affected parties.

On July 9th, 2013 at approximately 8:00 p.m., Constable Rattie was dispatched to an apartment or a housing complex at 56 Memorial Drive in Brantford. He was dispatched in regards to a report that a young child was running unattended in the parking lot of that complex and was almost hit by a vehicle.

When Constable Rattie arrived at the complex at Memorial Drive, he encountered a resident of the complex, Mr. Travis Domsolai. Mr. Domsolai was upset at Constable Rattie's arrival into the parking lot and suggested that he had been cut off by Constable Rattie's cruiser and began yelling at Constable Rattie. Constable Rattie got out of the car and confronted Mr. Domsolai. A verbal confrontation ensued. Constable Rattie was loud and used profanity. Constable Rattie made profane remarks including telling Mr. Domsolai he, "*had a big fucking mouth, and even without my gun belt, I'd mop the floor with you, so go inside.*"

Mr. Domsolai walked away towards his unit, and he was accompanied by his girlfriend, Jacqueline Garvey. It's either girlfriend or common-law wife, the actual relationship I'm not quite sure. Constable Rattie followed them to the front steps of their unit where Constable Rattie then told Mr. Domsolai, "*Get the fuck in your house now!*" Constable Rattie then proceeded to arrest Mr. Domsolai on his front steps for cause disturbance.

The arrest was unlawful as Mr. Domoslai's behaviour did not amount to cause disturbance. The charges against Mr. Domoslai were dropped by -- by the Crown. In effecting the arrest, Constable Rattie choked Mr. Domoslai, placed a forearm across his throat and forced Mr. Domoslai to the ground and handcuffed him and because the arrest was unlawful, any exercise of authority was also unlawful.

During the course of this confrontation, Constable Rattie also had physical contact with Jacqueline Garvey. After effecting the arrest of Mr. Domoslai, Constable Rattie took Mr. Domoslai towards his cruiser and placed him in the back of his car. At that point, one of Mr. Domoslai's neighbours, James MacKenzie, began yelling at Constable Rattie. Constable Rattie warned Mr. MacKenzie to go back into his residence. Mr. MacKenzie eventually took refuge back in his home and continued to engage with Constable Rattie, both yelling back and forth. Constable Rattie was loud and used profanity. There were neighbours who observed these actions and his behaviour.

As Mr. MacKenzie retreated back into his residence, his wife, Nicole MacKenzie, was also on scene and placed herself between the front door to the residence and to Constable Rattie. During this altercation, Mr. MacKenzie, who was still located inside his residence, grabbed a baseball bat. Constable Rattie drew his firearm and, eventually, deployed pepper spray at Mr. MacKenzie through the screen door. Now, in drawing his firearm, Constable Rattie pointed it at or in the vicinity of Mr. and Mrs. MacKenzie. Constable Rattie also had physical contact with Mrs. MacKenzie. Mrs. MacKenzie was eventually put under arrest for obstruct justice and Mr. MacKenzie was also placed under arrest for cause disturbance. Both of those arrests were unlawful and the Crown agreed with such in withdrawing the charges against both Mr. MacKenzie and Mrs. MacKenzie. As a result of the charges being unlawful, all exercise of authority and use of force were also unlawful.

The Mackenzie's were both placed under arrest. Mrs. MacKenzie was eventually released to be able to care for her children, as was Mr. Domoslai. Mr. MacKenzie was eventually taken to police station for booking.

Mr. Clewley added these additional comments which were agreed by Mr. Woods.

I would just like to add a few things I don't think Mr. Woods is going to quarrel with because in the main there, I rely on the assessment of the matter by the Crown Attorney for Welland who was brought into the jurisdiction, as you can see in the transcript that I earlier provided you. And he reviewed the matter. And, of course, it goes without saying that when he got there many months later, on May 21, 2014, he had had the benefit of looking at all the evidence including the statement that Officer Rattie gave, in which he frankly admitted -- I should say, and I think it's beyond dispute, that his guilt with respect to Count 8, right from the beginning, that he acted, in his own words, his buttons were pushed and he used some profane language that he regretted.

What Officer Rattie didn't have was the case law that Mr. Shuster reviewed at great lengths. And you can see in the proceedings before his Honour, Judge Edward, back last May, took him eight or ten pages to articulate the reasons why the arrests were unlawful. And he's the first one to acknowledge here today that those having been not grounded in objective legal principle, he was wrong to do it.

He didn't do it out of spite or malice; he did it because he misunderstands the parameters of the cause disturbance charge. Something that he has come to learn and will take away from this proceeding with him.

In other words, he didn't act, you know, to try and convict people or have people charged and put in the criminal justice system for no good reason. These gentlemen, and Ms. MacKenzie for that matter, were all shouting of constituent part of the offence, yelling, swearing. Certainly, Mr. Domoslai and Mr. MacKenzie were swearing at him and, regrettably, he's the first to acknowledge it, he responded in kind and that's not appropriate. These folks were there to interfere with his lawful execution of his duties and they wouldn't take no for an answer. He warned both of them. At the end of the day, he was wrong to charge them with that offence and I agree with Mr. Woods, and so does he, that the resulting use of authority and force was, therefore, not legally grounded.

Findings:

Counsel in this matter, Mr. Gary Clewley representing Constable Rattie and Mr. Gordon Woods representing the Brantford Police Service have presented a joint submission of forfeiture of fifteen (15) days of time.

Mr. Woods and Mr. Clewley have not supplied me with any cases to assist me in determining an appropriate disposition. Exhibit #3 the decision and comments of Mr. Justice Edward and the Crown Attorney, Mr. Shuster for the criminal proceedings conducted on May 21, 2014 was tendered by Counsel to assist the Tribunal in accepting the proposed joint submission.

In Williams and the Ontario Provincial Police, the Commission identified three key elements a Hearing Officer must take into account when imposing a penalty. These include: the nature of the seriousness of the misconduct, the ability to reform or rehabilitate the officer, and the damage for the reputation of the police force that would occur if this officer remained on the Force.

Constable Rattie is a seventeen (17) year member of the Brantford Police Service. Accountability, ethical behaviour and conduct are at a standard much higher than the public we serve. It is generally known and an accepted fact that the law requires a higher standard of conduct from police officers in their lives than the ordinary citizen. It helps to create the professional image and excellence that the Brantford Police Service officers strive to maintain.

I must be guided by the OCCPS decision of Schofield and Metropolitan Police Service.

“Consistency in the disciplinary process is often the benchmark of principles. The penalty must be consistent with the facts, and consistent with similar cases that have been dealt with on earlier occasions.”

The public observes and evaluates the Police 24-7. We, as individuals and as a professional organization must be mindful of this fact. Our members, while on patrol and off duty, must conduct themselves in a professional manner at all times.

Aggravating Factors

- a. ***Public Interest-*** It is common knowledge that the public holds police officers in a position of high trust and accountability. Constable Rattie is a police officer and the public expects him to make appropriate decisions with the investigations that he is assigned or the enforcement activities he is engaged with while working on duty. If arrests are warranted they must be conducted in the appropriate and professional manner that is expected by our law enforcement agencies. The type of behavior demonstrated by Constable Rattie is not tolerable.
- b. ***Seriousness of the Misconduct-*** Abhorrent behavior displayed by a police officer in any Service is extremely serious. This situation is compounded when the member is expected to be trusted by the community and his fellow officers. Constable Rattie betrayed the trust of his fellow officers, the community and the Brantford Police Service.
- c. ***Need for Deterrence-*** The Brantford Police Service must send the message to all members that professional and respectful language, accompanied with the proper procedures to be employed while arresting or charging members of the public is the expectation of the Service. Further, there must also be specific deterrence for Constable Rattie to send the message that this type of behavior is unacceptable.
- d. ***Management Approach to Misconduct-*** The Brantford Police Service is a Professional and disciplined organization. The Brantford Police Service considers the actions of Constable Rattie to be serious in nature for this Service.

Mitigating Factors

- a. ***Recognition of Seriousness of Misconduct-*** Constable Rattie has recognized and accepted responsibility for his behavior.
- b. ***Employment History-*** To date, Constable Rattie has no previous disciplinary record prior to this occurrence. Constable Rattie has been a hardworking and diligent officer for the Brantford Police Service.

- c. ***Ability to Reform or Rehabilitate the Officer***- It is expected that Constable Rattie will be able to rehabilitate himself and will continue to be a useful member of the Brantford Police Service.

Constable Rattie demonstrated unprofessional conduct while on duty in a small community policed by the Brantford Police Service

Constable Rattie has conducted himself in a way not conducive to the conduct that the Brantford Police Service expects from their officers while either on or off duty.

A strong message must be sent to this officer, so that we as an organization and the public at large maintain the high trust and accountability that the public demands of its police officers.

As Counsel have stated in their submissions, Constable Rattie is embarrassed over this situation.

The actions of Constable Rattie on July 09, 2013 has affected his career

When an arrest is unnecessary and an individual's right to freedom has been removed, however briefly, that matter is serious. The arrests of Mr. Domsalai and Mr. and Mrs. MacKenzie were unnecessary. Their personal freedom was removed. They were assaulted and handcuffed. They were placed in a cruiser for a period of time before Domsalai and Mrs. MacKenzie were released; however Mr. MacKenzie was transported to the Brantford Police station where he could not leave voluntarily. This is a significant action against him by the Brantford Police Service.

An officer with seventeen years of service knows or ought to know, that he /she must acquire all available information and seek guidance or assistance if necessary from his/her peers or Supervisors if he/she is unsure before he/she deprives someone of their liberties. I can understand how Constable Rattie could have become frustrated or annoyed by the actions of Mr. Domsalai and the MacKenzie's, however this is where a professional police officer rises to the top, and does not allow oneself to slip to the behaviour of the people he is confronted with at an incident that he attends or is dispatched to attend.

A strong message must be sent to this officer, so that we as an organization and the public at large maintain the high trust and accountability that the public demands of its police officers. The Brantford Police Service will not tolerate unacceptable behaviour from its members. The rank structure within the Brantford Police Service is the backbone of the organization. It must be respected.

I feel relatively confident that this experience, pleading guilty at the earliest opportunity that Constable Rattie has learned from his indiscretion and that he is fully prepared to take responsibility for his actions.

I believe that Constable Rattie understands and recognizes the seriousness of this misconduct. I believe today, he understands how his actions on July 09, 2013 have affected his career today.

He has shown remorse in part by pleading Guilty to these charges and apologizing to this Tribunal. This action has prevented a potential lengthy Hearing and calling of numerous witnesses.

In addressing deterrence in this case I believe that specific deterrence is not an issue. As already stated, the officer has learned a great deal and I am confident he will continue serving the people of Brantford in an acceptable if not an exemplary manner.

General deterrence in this situation offers the Adjudicator in this matter the opportunity to remind all members of this organization that policing is serious business. You must as a police officer strive daily to complete your duties as a sworn police officer in a diligent and professional manner. You are accountable for your actions and any deviance from those actions, the Brantford Police Service will hold you accountable. This is what the public expects of the management of this Police Service.

Short of dismissal, it is unknown to this Tribunal or to the Brantford Police Service whether this conduct will continue by this officer.

The proposed joint penalty submission submitted by Counsel in this matter suggests to me that the officer can be rehabilitated and once again be useful to this proud organization.

Constable Rattie, as a senior member of this organization, you have conducted yourself with a total lack of professionalism, judgment and courtesy, which is expected of all members of the Brantford Police Service.

I commend you for attending your Hearing in Brantford on March 24, 2015 with Association Counsel. It was obvious to me that you wished to put this situation behind you. I will take into consideration your forthright manner in assessing the appropriate disposition. I may have been more inclined to administer a more stringent penalty if it were not for the positive comments and observations relayed to me by Counsel and the supporting documentation that was presented by Counsel.

The conduct exhibited by this officer will cause damage to the Brantford Police Service. The actions of Constable Rattie have garnered significant media attention. The media has reported the outcome of these proceedings from day one of the process.

There is no doubt that Constable Rattie will suffer from the proposed penalty disposition. Dismissal, demotion, forfeiture of hours, will have a significant impact on Constable Rattie. I have given this situation serious consideration in determining an appropriate disposition.

The Brantford Police Service will not tolerate unacceptable behaviour from its members and views this misconduct as serious. A penalty must be imposed to protect the interest of the public we serve and send a message to the organization and its members.

Our members, when dealing with the public, must act in a professional and cordial manner. The proposed penalty, as submitted jointly by Counsel I believe sends a message to the organization and its members.

I have considered the submissions by Counsel, the agreed statement of facts and the joint penalty submission agreed to by Counsel and Constable Rattie.

Disposition:

In light of the seriousness of this allegation and bearing in mind all the evidence before me, Constable Darrin Rattie #1911 will forfeit fifteen (15) days, pursuant to Section 85 (1)(f) of the Police Service Act.

This means you will attend your office on either rest days or annual leave days and work the prescribed hours until fifteen days have been accomplished. I am advised by Counsel that one day is equivalent to eight hours. The timeline to complete these hours will be issued by your supervisor in conjunction with discussions with Senior Administration, however I believe it should be completed within the next six (6) months.

**M.P.B. Elbers, Superintendent
(Retired)**

**March 26, 2015
Date**

