

**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**

**PROVINCIAL CONSTABLE KENNETH B. ST. JOHN, #6994**

**CHARGES: NEGLECT OF DUTY AND  
UNLAWFUL OR UNNECESSARY EXERCISE OF AUTHORITY**

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**DECISION WTH REASONS**

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**Before:** Superintendent Robin D. McElary-Downer  
Ontario Provincial Police

**Appearances:**

**Counsel for the Prosecution:** Ms. Claudia Brabazon  
Legal Services Branch, MCSCS and MAG

**Counsel for the Defence:** Mr. James Girvin  
Ontario Provincial Police Association

**Public Complainant:** Mr. Allan Dear

**Hearing Dates:** August 11 and 12, 2015

This decision is parsed into four parts: PART I: OVERVIEW; PART II: THE HEARING; PART III: ANALYSIS AND FINDINGS FOR DISPOSITION; and, PART IV: DISPOSITION.

## **PART I: OVERVIEW**

### **Allegation of Misconduct**

Provincial Constable Kenneth B. St. John, (PC ST. JOHN), #6994, being a member of the Ontario Provincial Police (OPP), faces two counts of misconduct, which allege he committed neglect of duty and unlawful or unnecessary exercise of authority, contrary to sections 2(1)(c)(i) and 2(1)(g)(i) of the Code of Conduct contained in the Schedule to Ontario Regulation 268/10, as amended.

The edited particulars of the counts state:

#### 1. Neglect of Duty

On or about October 8, 2012, while on-duty in the Village of Dundalk he arrested Allan Dear, (Mr.Dear):

- While affecting the arrest he was aware Mr. Dear sustained an injury to his head.
- He failed to obtain medical attention for Mr. Dear, despite his request to seek medical attention for this injury.
- He failed to seek, arrange or take any action in relation to Mr. Dear's threat of suicide.
- He knew or reasonably ought to have known his actions and lack of communication in this incident were neglectful and discreditable.

He knew or ought reasonably to have known that his conduct was inappropriate and neglectful.

#### 2. Unlawful or unnecessary exercise of authority

On or about October 8, 2012, while on-duty in the Village of Dundalk he arrested Mr. Dear:

- Based on the information he received, the evidence known to him, and the explanation of his arrest of Mr. Dear, he knew or ought to have known that the arrest was unnecessary and or unlawful.

He knew or reasonably ought to have known that his conduct was inappropriate.

### **Plea**

On August 11, 2015, PC ST. JOHN pleaded not guilty.

### **Decision**

After reviewing and weighing the evidence presented, I find PC ST. JOHN not guilty on both counts. My reasons for this are as follows:

## **PART II: THE HEARING**

### **Exhibits**

The following exhibits were tendered during the hearing:

Exhibit 12: Coloured photograph of Mr. Dear;

Exhibit 13: Criminal record printout; and

Exhibit 14: OIPRD complaint.

### **Representation**

In this matter, Mr. Girvin represented PC ST. JOHN and Ms. Brabazon represented the OPP. The public complainant, Mr. Dear, was unrepresented.

### **Evidence Called - *By the Prosecutor***

#### *PC Peter Karlsson (summary of testimony)*

PC Karlsson joined the OPP in August 2011, and was posted to the Grey County Detachment. On October 8, 2012, while working the midnight shift, he and PC ST. JOHN responded to a Crime Stoppers tip concerning Mr. Dear and a stolen farm tractor. Mr. Dear, flagged violent, was known to PC Karlsson. The officers arrived in Dundalk, located the tractor and confirmed it had been reported stolen.

At 2305 hours, PC Karlsson observed Mr. Dear walking in the distance and called to him to come closer. As Mr. Dear approached, PC Karlsson observed him showing signs of intoxication; his words were slurred and he was stumbling. PC ST. JOHN arrested Mr. Dear for public intoxication.

Mr. Dear was leaned against the cruiser and PC Karlsson started to frisk him. Mr. Dear wormed around as he was being searched and he was repeatedly told to stop resisting. At some point, PC ST. JOHN grounded Mr. Dear and PC Karlsson fell with him. PC Karlsson injured his knee and Mr. Dear's face scraped against the gravel surface. The search of Mr. Dear was completed while he was in the prone position, before he was placed in the cruiser. PC ST. JOHN cautioned and read Mr. Dear his rights at 2325 hours.

Mr. Dear complained of injury to his face and PC Karlsson observed an abrasion above his eye. The skin was scraped, but not streaming blood. Mr. Dear did not ask to go to the hospital and PC Karlsson did not believe there was a need to call a paramedic.

PC Karlsson viewed a photograph of Mr. Dear and confirmed the injury to his face was consistent with his observation that night. The photograph was tendered as exhibit 12.

At 2353 hours, PCs Karlsson and ST. JOHN turned custody of Mr. Dear over to PCs Bierworth and Starzecki for transport purposes. PCs Karlsson and ST. JOHN remained on scene to process the stolen property.

*In cross-examination*, PC Karlsson advised Mr. Dear's flag V (violent) was based on his criminal history. He also advised that Mr. Dear was arrested at approximately 2305 hours. The officers verified the tractor was stolen through its serial number. PC Karlsson agreed Mr. Dear was very respectful in the cruiser. PC Karlsson advised he did not lay the charges against Mr. Dear, so he could not say why he was not charged with resist. He advised that Mr. Dear had been told repeatedly to stop resisting and it was communicated to him he was going to be grounded.

*In cross-examination*, PC Karlsson advised the officers encouraged Mr. Dear to come into the light because of their concern for officer safety. Mr. Dear raised his voice and used profanity. PC Karlsson advised that resist can take on different forms, such as shuffling one's body and arms. Mr. Dear was respectful and curious until he was arrested and then his mood changed. The officers recovered a lock pin in Mr. Dear's pocket which linked him to the stolen tractor. After reviewing his Duty Report, PC Karlsson confirmed Mr. Dear admitted to have been drinking.

*Witness Mr. Allan Dear (summary of testimony)*

Mr. Dear is forty-eight years old and resides in Brampton. His criminal record, tendered as exhibit 13, began in 1984. The last entry was for impaired driving in 2011. He is currently on probation for break and enter and on bail for shoplifting. He was charged for the stolen tractor, which resulted in a conviction, although it shouldn't have.

Despite Mr. Dear coming into contact with approximately five hundred police officers over the past twenty years, he has never been charged with resisting arrest. The majority of his criminal activity has been non-violent. He acknowledged he was charged with uttering threats in 1996 and assault in 1999. These incidents related to his former girlfriend and wife.

On October 4, 2012, Mr. Dear was residing in Dundalk. He had been drinking with friends earlier in the day. Between 10 pm and midnight he was on his porch when he saw taillights in the back alley, so he

went to investigate. When he got close, he realized it was a cop car so he turned around to go back. The officers asked him to come closer, so he did, although he didn't want to. They told him to come into the light and they kind of raised their voices. It upset Mr. Dear because he has mental health issues. The officers said they were not going to arrest him, and then they did.

The officers handcuffed Mr. Dear and walked him over to the cruiser. PC ST. JOHN pushed him over the trunk, placed his elbow on him and said, "Stop resisting". Mr. Dear wasn't moving his body, but he tried to lift his head because it was jammed against the trunk. Then bang, he was on the ground and PC Karlsson was right beside him. PC ST. JOHN pinned him down by the neck and told him to stop resisting. Mr. Dear tried lifting his head because he felt something sharp on his face. He kept telling PC ST. JOHN he was not resisting and he raised his voice so he could hear him. PC ST. JOHN also spoke with a raised voice. Mr. Dear does not remember being searched when he was on the ground. Two minutes later, the officers put him in the cruiser.

Mr. Dear vaguely remembers PC Karlsson in the cruiser with him. He remembered telling two officers at the scene he wanted some medical attention. They told him he would have to talk with their staff sergeant. He remembers seeing Sergeant Spires who told him he could get medical attention if he signed some papers, but Mr. Dear refused to sign anything. They had the same conversation three times and Mr. Dear still refused to sign anything.

Mr. Dear advised his level of intoxication would have prevented him from driving a car, but he was not stumbling or falling down drunk. His mood was happy.

Mr. Dear sustained lacerations to his cheek, eyebrow, shoulder and knee. In the morning someone came in and told him they were taking him to court and asked if he wanted medical attention. They took him for treatment and a nurse picked gravel out of his face. His face healed, but not his neck.

Mr. Dear started the complaint process as soon as he got to jail. The sergeant actually brought him the complaint form and told him he hated seeing guys come in roughed up.

Mr. Dear advised he has been suicidal in the past. He thinks about it all the time. His last attempt was ten to twelve years ago. When he was arrested in October 2012, he wanted to kill himself. He told someone this, but he doesn't know who.

*In cross-examination*, Mr. Dear acknowledged he has difficulty with his memory. He acknowledged he has had many charges relating to alcohol, but it didn't mean he had an alcohol problem. He acknowledged his 1996 arrest was in relation to assault causing bodily harm, but he wasn't totally guilty of that charge.

Mr. Dear advised there are things on his record he has plead guilty to when he was not. He acknowledged he has lied to judges when he pled guilty to things he was not guilty of. He advised jail is his safe place.

Mr. Dear did not know why he didn't mention suicide when he completed his OIPRD complaint. He advised he completed it while in solitaire, and had they refused him solitaire, he would have threatened suicide. He advised you actually have to do it in front of them to get them to do what you want. The OIPRD form was filed as exhibit 14.

Mr. Dear acknowledged he has filed a civil a suit against the OPP for \$500,000.

*In re-examination*, Mr. Dear advised he had consumed about four glasses of wine over a four to five hour period. He had been on medication for ADHD, anxiety and depression.

*Witness Detective Sergeant Daniel Rowbotham (D/Sgt. Rowbotham) (summary of evidence)*

D/Sgt. Rowbotham has been with the Professional Standards Bureau since 2008.

On November 26, 2012, he began his investigation into Mr. Dear's complaint. He collected duty reports and notes from numerous officers, including PCs Starzecki and Bierworth. He learned from these officers, that on October 8/9, 2012, they transported Mr. Dear from Dundalk to the detachment in Chatsworth. Mr. Dear asked for medical attention and an intoxilyzer test. The officers relayed these requests to Sergeant Spires.

D/Sgt. Rowbotham interviewed the OPP guard, Mr. Briand, and learned Mr. Dear said, "No" when asked if he had any medical concerns or conditions. Mr. Briand documented that Mr. Dear had dried blood on the left side of his face.

D/Sgt. Rowbotham interviewed Mr. Dear and reviewed the cell video of Mr. Dear while in custody.

As a result of his investigation, D/Sgt. Rowbotham concluded the allegation of unlawful exercise of

authority against PC ST. JOHN was unsubstantiated. He based this on:

- Section 31(4) of the *Liquor Licence Act (LLA)*, which is an arrestable offence for public intoxication, provided the arrest is in the interest of safety for the individual;
- Section 146(1) of the *Provincial Offences Act (POA)*, which permits an officer to exercise the necessary force required when effecting an arrest under provincial legislation; and,
- Section 25(1) of the Criminal Code, which justifies the use of force during the lawful execution of a police officer's duty.

D/Sgt. Rowbotham also concluded the allegation of neglect of duty against PC ST. JOHN was unsubstantiated. He based this on:

- The OPP Prisoner Care policy which directs police officers must ensure prisoners have appropriate medical attention;
- Mr. Dear was impaired by wine and this was corroborated by PC ST. JOHN and witness officers;
- The approved arrest procedure was followed;
- Sergeant Spires was informed of Mr. Dear's injuries;
- Sergeant Spires asked Mr. Dear if he wanted to discuss his injuries and made detailed notes of his response;
- The guard documented that Mr. Dear did not raise concern about his injury; and,
- The cell video depicts Mr. Dear waiting until the officers left the cell area, then putting his face close to the camera and pointing to his injury.

D/Sgt. Rowbotham advised Mr. Dear failed to make any mention in his OIPRD complaint or interview that he told PC ST. JOHN or any officer that he felt suicidal when arrested. D/Sgt. Rowbotham described the complaint options he provided Mr. Dear when they met for their interview. D/Sgt. Rowbotham advised he has conducted over two hundred alleged police misconduct investigations and has arrested and criminally charged officers.

*In cross-examination*, D/Sgt. Rowbotham advised he learned from PC ST. JOHN that Mr. Dear took two steps toward him, clapped his hands near his face and said, "What are you going to do, arrest me?" He also learned Mr. Dear appeared aggressive and used profanity towards the officers. D/Sgt. Rowbotham believed Mr. Dear sustained his injury when his head came into contact with the ground.

*Witness Sergeant Donald Fitzgerald, (Sgt. Fitzgerald) (summary of evidence)*

On October 9, 2012, Sgt. Fitzgerald was asked by his Staff Sergeant to provide Mr. Dear with OIPRD

forms. Sgt. Fitzgerald attended the Grey-Bruce Health Care Centre at 9:57 am and had a brief conversation with Mr. Dear. He recalled Mr. Dear had a laceration on his forehead. Mr. Dear did not make a complaint directly to him. He seemed relaxed, polite and cognizant of his surroundings. He arranged for PC Jeff Knight to deliver and explain the OIPRD forms on his behalf, as he had another call for service to attend.

### **Closing Submissions**

#### *By the prosecutor (summary)*

Ms. Brabazon submitted PC ST. JOHN had twenty-six years' service when he arrested Mr. Dear in 2012. His employment record is unblemished.

Ms. Brabazon requested the last two particulars of the neglect of duty charge, namely, 'He failed to seek, arrange or take any action in relation to Mr. Dear's threat of suicide' and 'He knew or reasonably ought to have known his actions and lack of communication in this incident were neglectful and discreditable', be struck from the Notice of Hearing because there was no evidence to support them.

Ms. Brabazon advised Mr. Dear has a significant criminal record for crimes of dishonesty. This begs the tribunal to look for other independent evidence. Mr. Dear testified in a fair and balanced fashion. He did not exaggerate. His biggest challenge is his memory fades and he acknowledged this. She acknowledged he was less than candid in regard to his criminal behaviour and it was obvious he tried to minimize it.

She submitted the officers arrested Mr. Dear and conducted a search incident to the arrest. Mr. Dear's face struck the gravel surface. PCs ST. JOHN and Karlsson decided to stay on scene so they summoned PCs Bierworth and Starzecki to transport Mr. Dear.

The issue this tribunal needs to determine is did PC ST. JOHN ultimately bear the responsibility for getting medical attention for Mr. Dear, or did it shift to other personnel when custody was turned over to other officers. PC Karlsson was not charged, nor was the other officers. Mr. Dear was more concerned about the manner in which he was arrested, and even OIPRD did not substantiate the manner was wrongful.

#### *By the defence (summary)*

Mr. Girvin submitted the fact a hearing was held into this matter is evidence the public complaint system works. The OIPRD reviewed the OPP's findings and directed a hearing be held. Mr. Dear's concerns

were appropriately heard. Sometimes people get arrested and sometimes they are inadvertently injured. He submitted Mr. Dear approached the truth with casualness and this is particularly troubling especially when he told the tribunal he had lied in criminal court. Through D/Sgt. Rowbotham, it was learned Mr. Dear was aggressive when he said to the officers, “What are you going to do, arrest me?” His actions led to his arrest for public intoxication. The arrest was valid. For officer safety reasons, he was taken to the ground. By Mr. Dear’s own testimony his action caused some of the injury – he was the architect in terms of his arrest and injury.

On the issue of medical attention, this was conveyed to Sergeant Spires. There was no evidence that medical intervention was required at the scene. Sergeant Fitzgerald ensured PC Knight explained the OIPRD process to Mr. Dear. The process, however, does not guarantee a finding in favour of the public complainant. The burden of proof must still be met.

*Prosecutor’s reply*

Ms. Brabazon concurred with Mr. Girvin’s comments with respect to the process. She pointed out Mr. Dear could be considered a marginalized person in light of his criminal history. Despite this, he had an opportunity to have his concerns heard and he was in fact an active participant in the process.

**PART III: ANALYSIS AND FINDINGS FOR DISPOSITION**

***Summary of misconduct***

PC ST. JOHN faces two counts of misconduct, unlawful/unnecessary exercise of authority and neglect of duty. The charges stem from the arrest he effected on Mr. Dear for public intoxication on October 8, 2012. It is alleged PC ST. JOHN had no authority to effect the arrest and after doing so, he failed to get Mr. Dear medical attention for his injury.

***Issues that needs to be decided***

I have identified two key issues to guide me in my analysis of the evidence:

1. Did PC ST. JOHN have lawful authority to arrest Mr. Dear for public intoxication?
2. Was PC ST. JOHN negligent in his failure to obtain medical attention for Mr. Dear’s injuries?

***Analysis and Findings***

1. Did PC ST. JOHN have lawful authority to arrest Mr. Dear for public intoxication?

### The evidence

PC Karlsson testified Mr. Dear was found in a public place and displayed signs of intoxication, including slurred speech and stumbling. Mr. Dear testified he consumed wine during the day and, while he was not falling down drunk, he could not legally drive.

According to PC Karlsson, Mr. Dear worried about after he was arrested and was warned to stop resisting. Mr. Dear testified he tried to raise his head off the trunk of the cruiser because it hurt. Both testified PC ST. JOHN directed Mr. Dear to the ground.

D/Sgt. Rowbotham directed the tribunal to these authorities:

Section 31(4) and (5) of the *LLA* states:

(4) No person shall be in an intoxicated condition,  
(a) in a place to which the general public is invited or permitted access; or  
(b) in any part of a residence that is used in common by persons occupying more than one dwelling in the residence. R.S.O. 1990, c. L.19, s. 31 (4).

(5) A police officer may arrest without warrant any person whom he or she finds contravening subsection (4) if, in the opinion of the police officer, to do so is necessary for the safety of any person. R.S.O. 1990, c. L.19, s. 31 (5).

Section 146(1) of the *POA* states:

Every police officer is, if he or she acts on reasonable and probable grounds, justified in using as much force as is necessary to do what the officer is required or authorized by law to do.

### Findings

I am convinced by Mr. Dear's admission and PC Karlsson's testimony, Mr. Dear was intoxicated in a public place and an arrest was warranted for his safety. The law is very clear on this and I find PC ST. JOHN had the lawful authority to affect Mr. Dear's arrest.

Unfortunately, when an officer finds it necessary to apply some amount of force to facilitate an arrest, the individual arrested sometimes is inadvertently injured. While the picture that emerges is not attractive, it is necessary for the officer to maintain control for the safety of all concerned. In this case, Mr. Dear suffered a facial injury when his face struck the gravel after he resisted – a consequence, I find, that rests on his shoulders.

2. Was PC ST. JOHN negligent in his failure to obtain medical attention for Mr. Dear's injuries?

The evidence

The evidence is clear that Mr. Dear sustained a facial injury when his face struck the gravel. It is also clear PC ST. JOHN remained on scene, after he and PC Karlsson turned custody of Mr. Dear over to other officers. It is further clear Sergeant Squires had contact with Mr. Dear after he was lodged at the Chatsworth Detachment. According to Mr. Dear, the sergeant offered him medical attention on the proviso he signed some papers to which he refused. Additionally, Mr. Dear indicated to the guard that he had no medical concerns.

Findings

No evidence surfaced during this hearing to persuade me Mr. Dear's injury required immediate medical intervention. Shortly after Mr. Dear's arrest, the responsibility for his care shifted from PC ST. JOHN to others, which included the necessity to summons medical attention if required. Mr. Dear was offered but refused the sergeant's offer for medical attention. I therefore find PC ST. JOHN not negligent in his duty to seek medical assistance for Mr. Dear.

**PART IV: DISPOSITION**

The evidence pertaining to the allegations of neglect of duty and unlawful/unnecessary exercise of authority has not met the standard of proof. I find PC ST. JOHN not guilty on both counts.



Robin D. McElary-Downer  
Superintendent  
OPP Adjudicator

Date verbal decision communicated: August 12, 2015

Date written decision released: September 11, 2015