

DURHAM REGIONAL POLICE SERVICE
***Police Services Act* Disciplinary Hearing**
Reasons for Penalty
Cst. Caroline Stenzel #909

Hearing Officer:

Inspector J. Bruce Townley
Durham Regional Police Service

Parties:

Complainant	Mr. Jerry Aman
Counsel for the Prosecution	Mr. Ian B. Johnstone
Counsel for Cst. Stenzel	Mr. William Mackenzie

WHEREAS, Constable Caroline Stenzel #909

WAS ALLEGED TO HAVE COMMITTED MISCONDUCT IN THAT SHE, on June 30, 2011 used unnecessary force against a prisoner or other person contacted in the execution of duty, thereby committing the offence of Unlawful or Unnecessary Exercise of Authority, contrary to Part V, clause 80(1)(a) of the Act as amended, and clause 2(1)(g)(ii) of the Schedule "Code of Conduct", O.Reg. 268/10, as amended under the Act.

AND WHEREAS on July 9 & 10, 2012 a hearing was held pursuant to section 66(3) of the Act with respect to the allegation and, on September 11, 2012 , Constable Stenzel #909 was found guilty of the offence of Unlawful or Unnecessary Exercise of Authority, contrary to Part V, clause 80(1)(a) of the Act as amended, and clause 2(1)(g)(ii) of the Schedule "Code of Conduct", O.Reg. 268/10, as amended under the Act.

BACKGROUND

On Saturday July 30, 2011, an anniversary backyard party took place at 106 Colston Ave in Brooklin, the residence of Vince and Vangie Gervais. There were approximately 50-60 people in attendance including young children, several teenage kids and 20 – 30 adults. There had been a bonfire fire, but was extinguished by the homeowner after Whitby Fire had attended. The patio area surrounding a pool was two tiered with upper level closer to the house. In the back of the yard was a pool house that contained a bar and a television.

Cst. Stenzel was dispatched to the above-mentioned address shortly before 11:00 pm for a loud pool party and a backyard fire. Cst. Stenzel arrived, as a single unit, and after hearing loud music coming from the rear of the residence, she decided to enter the backyard through a secured side gate. The officer utilized her flashlight, which gained the attention of the some of the people at the party.

A number of females, one later identified as Vangie Gervais, approached Cst. Stenzel. The officer advised Ms. Gervais there had been complaints from neighbours and was asked to turn down the music. An argument ensued which gained the attention of Ms. Gervais' sister in law, Cathy Santiago. The discussion became heated. A confrontation occurred between Ms. Santiago and the officer.

Mr. Jerry Aman, the brother of Ms. Santiago, became involved in the discussion. The argument became more heated and a physical confrontation ensued between Mr. Aman and Cst. Stenzel,

which resulted in Mr. Aman being struck in the face by the officer. Mr. Aman sustained an injury to his mouth.

A short period of time later, additional officers arrived, including A/Sgt. Romano who took control of the scene. By that time, people had calmed down. Discussions took place and officers subsequently cleared the scene.

On August 4, 2011, Mr. Jerry Aman filed a complaint with the Office of the Independent Police Review Director ("OIPRD"). The Durham Regional Police Professional Standards Branch conducted an investigation into the allegations, which resulted in Cst. Stenzel being charged with misconduct.

On July 9 and 10, 2012 a hearing was held. On September 11, 2012, Cst. Stenzel was found guilty of Unnecessary Exercise of Authority as a result of a strike to the complainant Mr. Jerry Aman's face. Both Counsels were requested to submit their positions in writing with supporting documentation by October 2, 2012.

POSITION OF PROSECUTION

1. Mr. Johnstone made the following submission:

In *Schofield and the Metropolitan Toronto Police*, the Commission explained [at page 4]:

Consistency in the discipline process is often the earmark of fairness. The penalty must be consistent with the facts, and consistent with similar cases that have been dealt with on earlier occasions.

In *Constable Peter White and Constable Thomas (Scott) Reid v. Windsor Police Service*, the Commission stated [at page 11]:

The penalty also must be consistent with similar cases in order to maintain consistency in sentencing. While fact situations vary, a spectrum of misconduct and resulting penalties can provide a good comparative analysis to assist the Commission in determining an appropriate and fair penalty.

2. It is the Service's position that the penalty of a loss of 96 (ninety-six) hours would be most in line with the penalties imposed in discipline proceedings involving similar circumstances.

COMPARATOR CASES

3. In *Constable Turpin and the Durham Regional Police Service and Roderick Tamney*, the Commission considered the appropriate penalty in the context of an unnecessary exercise of force. The Commission upheld the following two-part penalty: an order to work an additional 84 (eighty-four) hours without remuneration and spend 8 (eight) hours at the police learning center reviewing the law relating to the use of unnecessary force.
4. In *Constable Dennis Sutton v. City of Barrie Police Force*. In this case, the Commission upheld three convictions regarding the unnecessary exercise of authority. The Commission upheld the penalty of reduction in rank from first-class constable to a second-class constable for a period three months and removed the qualification that the officer could not move up in rank after the three month period without the recommendation of his immediate supervisor.
5. Cst. Sutton observed a man leaving a hotel, with three friends, "howling like a dog." Cst. Sutton advised the civilian to be quiet and move on. The individual did not respond. In response to being ignored, Cst. Sutton led the civilian away from his friends and struck the civilian in the face twice. The civilian sustained an injury to his face and neck.
6. The Commission stated that Cst. Sutton's use of force was against the code of conduct. The Commission upheld the penalty of rank first-class constable to a second-class constable for a period 3 (three) months.
7. In *Constable Turgeon and the Ontario Provincial Police*, the Commission upheld a conviction for unnecessary use of force and a penalty of 10 (ten) days time.
8. In this case, Cst. Turgeon stopped a vehicle operated by a young offender that was unlawfully at large. Cst. Turgeon effected an arrest and, while doing so, pushed the young offender to the side of his vehicle. Cst. Turgeon drove the young offender to the

detachment and commenced an interview. At one point during the interview, he hit the young offender on the face.

9. The Commission upheld the Hearing Officer's imposition of the penalty of 10 (ten) days time. Consequently, the appeal was dismissed.
10. In *Constable Gibbs and the Metropolitan Police*, the Commission upheld a conviction for the use of necessary force and penalty of reduction in rank from a first-class to second-class constable for a period of 1 (one) year.
11. Cst. Gibbs slapped a small boy, more than once, during his apprehension. There was evidence of some provocation.
12. The Commission stated that there was no reason to interfere with the Board's sentence. Accordingly, the appeal was dismissed.
13. In the present case, Cst. Stenzel applied unnecessary force against the complainant by striking his face. Cst. Stenzel's exercise of force caused the complainant to lose a tooth. A review of the above Commission jurisprudence demonstrates that the Commission typically imposed harsher penalties with respect to exercises of unnecessary force, which were substantially similar to the subject exercise of unnecessary force. Accordingly, the Service submits that its position on the appropriate penalty disposition is extremely fair.

AGGRAVATING PENALTY CONDITIONS

14. The Service submits that the presence of a multitude of aggravating circumstances in the present matter support the imposition of a more serious penalty. In particular, the Hearing Officer should take into account the following aggravating factors in determining the appropriate penalty:

- A. Seriousness of the misconduct;
- B. Remorse and the recognition of the seriousness of the misconduct;
- C. Rehabilitation potential;
- D. Specific and general deterrence; and
- E. Employment record.

A. Seriousness of the misconduct

15. The Service submits that Cst. Stenzel's exercise of unnecessary force on a civilian is considered a very serious form of misconduct.

16. In *Constable Maguire and Ontario Provincial Police*, the Commission explained the seriousness of misconduct relating to unnecessary force. The Commission affirmed the Hearing Officer's conviction and penalty of dismissal in the absence of resignation.

17. In this case, Cst. Maguire attacked a prisoner while the prisoner was in the custody of another officer. The Commission's written judgment did not provide any other details or information pertaining to the use of force.

18. The Commission stated [at page 8]:

Law enforcement by the Police does not function in a vacuum. It presupposes that the public respects and relies upon the Police. It must expect exemplary conduct on the part of the Police even in the face of intense provocation. If a Constable, particularly one having experience, does not display the qualities, which are expected of Constables and Officers of the Force, then he automatically downgrades the image and effectiveness of it.

19. The Commission concluded that the continued presence of the officer on the force was incompatible with the principles upon which the force operated. Accordingly, the appeal was dismissed.

20. In *Constable Venables and York Regional Police Force*, the Commission reiterated its' view that the exercise of unnecessary force is one of the most serious forms of misconduct.

In support of this principle, the Commission referenced the reasoning of the Alberta Law Enforcement Review Board articulated in *Gladish v. Byers*, stating [at page 10]:

Excessive use of force by a police officer which causes bodily harm, is one of the most serious forms of police misconduct. It must be made clear to the few who engage in such misconduct that serious penalties are likely to follow proof of such an event. [Emphasis added]

21. The Service submits that Cst. Stenzel's striking of the complainant with a closed fist should be viewed as one of the most serious forms of police misconduct and, as such, warrants an elevated disciplinary response.

B. Remorse and the recognition of the seriousness of the misconduct

22. The Service states that an officer's remorse, or lack thereof, and an officer's recognition of the seriousness of the misconduct are fundamental penalty considerations. The Service submits that in the present case, Cst. Stenzel's lack of remorse and further lack of recognition of the seriousness of her misconduct requires the imposition of an elevated penalty.

Remorse:

23. In *Constable Turgeon*, as discussed above, the Commission stated that the Hearing Officer's penalty correctly considered the absence of any demonstrated remorse. The Commission specifically stated [at page 6]: "We agree with the Hearing Officer's finding that Constable Turgeon showed no remorse."

24. In the case at hand, the Service respectfully submits that Cst. Stenzel failed to demonstrate any remorse or contrition for her actions.

25. Cst. Stenzel has not provided a meaningful apology to the complainant or his family.

Meaningful cooperation during the misconduct investigation:

26. The Service respectfully submits that meaningful cooperation during the misconduct investigation and the hearing process is an essential element of the recognition of the seriousness of the misconduct.
27. In *Detective Sergeant Kenny and the Ontario Provincial Police*, the Commission emphasized the importance of meaningful co-operation during the misconduct investigation. In this case, the Commission accepted counsel's submissions that his penalty should be influenced by the fact that he co-operated with the investigation and throughout the trial. The Commission explained [at page 9].

In addition he has at all times accepted full responsibility for his actions and was cooperative and forthright with respect to the Professional Standards Bureau's investigation.

28. Similar to the finding in *Constable Kenny*, in *Constable (Deborah) Gregg and the Midland Police Service*, the Commission noted the importance of co-operation throughout the investigation and the hearing. The Commission explained [at page 20]:

In fact, the lack of co-operation exhibited by Constable Gregg in the subsequent investigation and the resulting hearing, following the incident at Cocktails and Shotz, makes her conduct more serious than that of Constable Stitt.

29. The Service states that Cst. Stenzel did not cooperate in the Professional Standards Unit's investigation process. Pursuant to her duty statement in response to a complaint, dated September 21, 2011, Cst. Stenzel did not punch Mr. Aman; rather, she simply pushed him back. Pursuant to her interview with Sergeant Wilson, on December 19, 2011, she admitted that she delivered an open palm strike to Mr. Aman; however, she stated that it was in response to her fear that he was going to attack her.

He did take a swing and get into my personal space and I was fearful that he was going to attack me, that's why I gave him the palm heel strike to back him off.

Acknowledgment of wrongdoing at the discipline hearing:

30. The Service states that at the disciplinary hearing, Cst. Stenzel did not demonstrate any remorse or acknowledge any wrongdoing.

31. During Cst. Stenzel's examination-in-chief by Mr. McKenzie, she stated that punching the complainant was consistent with her training.

Q. Okay. And so that's something that you've been trained to do?

A. Yes.

32. However, during Cst. Stenzel's cross-examination by the prosecution, she conceded that punching the complainant was not in fact in accordance with her training.

Q. Okay. And with respect to the flashlight, you've never been trained to hit somebody in the face with a flashlight? It's never been part of your training?

A. It's not a part of the use of force stuff. It was in my hand, yes.

33. During Cst. Stenzel's cross-examination by the prosecution, she failed to acknowledge that she did not explore alternatives to the use of force. The Service notes that she acknowledged that she did not reference exploring alternatives to the use of force in her note book, arrest report, duty of statement or in her interview with the Professional Standards Unit.

Q. Okay. And you didn't ask -- it's nowhere in your notes that you asked Mr. Aman to step back, is it? It's nowhere in your notes, nowhere in your interviews, that you asked Mr. Aman to step back?

A. I don't recall if it's in there or not, but....

Q. It's not in -- I'm going to put to you that it's not anywhere.

A. Okay.

And further:

- Q. But you know that your notes are supposed to be conclusive. Correct? They're supposed to be -- you're supposed to put everything in them?
- A. My notes are to refresh my memory, yes.
- Q. Yeah, but you haven't got any of that in your notes though. You have very little in your notes though.
- A. Correct.
- Q. You've got hardly anything.
- A. In my notebook, no.
- Q. Yeah. I mean in fact you don't put it in -- you don't say that to PSU. You know you're being interviewed by Professional Standards.
- A. Yes.
- Q. Correct? You know you've got a complaint against you. Correct?
- A. Yes.
- Q. You know with respect to the force you used. Correct?
- A. Yes.
- Q. And you don't say anything that you told Mr. Aman to step back, do you?
- A. I guess I did not, no.
- Q. No. And you don't put it in your duty statement?
- A. If it's not there, then I didn't put it in.
- Q. And you don't put it in your arrest report?
- A. If it's not there, I didn't put it in. [Emphasis added]

34. In fact, Cst. Stenzel claimed to have engaged in tactical communication notwithstanding the fact that the language she employed was obviously aggressive rather than tactical communication.

- Q. Okay. And what did you -- what sort of tactical communication did you engage in?
- A. I know that when he said to me as well about, "I pay your taxes," I did make a comment back and at that time frame that, "I probably pay for yours too."
- Q. That was tactical communication?
- A. That was part of it, yes.
- Q. Okay. And so how was that tactical communication? How was that tactical communication, "I pay for your salary too?"
- A. It was responding back to his comment.
- Q. So that's tactical in your opinion?**
- A. Yes.** [Emphasis added]

35. During Cst. Stenzel's cross-examination by Mr. Aman, she expressly denied committing any errors of judgment. Rather, she stated that he made a mistake and she exercised her discretion to not lay a charge against him.

Q. If I committed a crime that day, why wasn't I arrested?

A. Not every crime has to have an arrest. I have some discretion as a police officer to lay a charge. I didn't feel, as I said earlier, that arresting you and charging you with what happened would be in anyone's best interests that night. I could have but I decided that what happened was enough, that you made a mistake.

Q. Is it possible the reason why you didn't arrest me is because you made a mistake?

A. No.

Q. You made a bad decision.

A. No. [Emphasis added]

36. Throughout her cross-examination by the prosecution, she failed to admit that she hit the complainant in the upper lip. Rather, she stated that she hit him in the lower chin.

Q. All right. And you said -- where did you strike Mr. Aman?

A. It ended up being in the face.

Q. In the chin? In the chin.

A. That area, yes.

Q. Well you said the lower chin.

A. Lower chin, in that area.

Q. Well no, let's be very clear about that, because you testified the lower chin. Right? You said the chin.

A. Yes I did because that's the area it looked like it happened, yes.

Q. In fact in your report, you did this at the time, you said below the chin area, didn't you? In your report you said below the chin,...

A. Yes I did.

And further:

Q. All right. So I'm going to ask you to look, and I'm going to be two-thirds of the way down. "I aimed for the male's left shoulder area to push him back, however I struck him just below the chin area."

A. Yes.

Q. "Just below the chin area." So where is "just below the chin area?" Right here? Just below the chin area. It's the chin, right? It's the chin.

A. Yes, well the chin area.

Q. It's the chin?

A. Yeah.

Q. All right. This is the chin here.

A. I take this as the chin, yes.

37. Throughout Cst. Stenzel's cross-examination by the prosecution, she attempted to portray a situation that was not supported by the evidence. She claimed that the complainant was aggressive instead of admitting any errors in judgment.

Q. Okay. And how fast was he moving towards you?

A. Very quickly.

Q. Was he running towards you?

A. No.

Q. No. He was walking towards you?

A. No.

Q. Well I put to you that he was walking towards you.

A. That's not my recollection, no.

Q. Well that's what you said to PSU, isn't it? You said he was walking. Isn't that what you said?

A. I believe I said he was doing a hammer step.

Q. What's a hammer step?

A. And quickly closed the gap.

Q. You said he quickly....

A. A hammer step is if you -- I don't know how to describe it.

Q. What is the hammer step?

A. That's the problem I had with that day.

Q. What's the hammer step? Pardon me?

A. I'm sorry?

Q. You said he was doing a hammer step?

A. Correct, that's what I said.

Q. What's a hammer step?

A. I don't know how to describe it other than (sounds made), like very aggressive.

Q. Stomping his foot down?

A. Direct stomping, yeah. Yeah, that would be a good description, stomping.

38. The Service submits that Cst. Stenzel's failure to demonstrate remorse and acknowledge any wrong doing supports the imposition of an elevated penalty.

C. Rehabilitation Potential

39. The Service states that rehabilitation is a fundamental consideration to be taken into consideration when a penalty is imposed. The Service submits that Cst. Stenzel's failure to demonstrate remorse speaks to the likelihood of her rehabilitation potential and, consequently, the likelihood of a reoccurrence.

40. More broadly, the Service submits that Cst. Stenzel's failure to acknowledge any wrongdoing notwithstanding the fact that she saw the injuries Mr. Aman sustained as a result of her force, is reflective of her view that acting in such a manner is acceptable.
41. The Service states that if Cst. Stenzel believes that acting in such a manner is acceptable, she is not likely to alter her behavior and she is likely to exert unnecessary force on other members of the public. Accordingly, the Service submits that Cst. Stenzel has not shown any remorse, and as a result, lacks rehabilitation potential.

D. Specific and General Deterrence

42. The Service states that specific and general deterrence is required in the present circumstance and the requirement for deterrence warrants the imposition of a higher penalty.
43. In *Gabrielson v. Hindle*, the Alberta Court of Queen's Bench stated that deterrence is required in circumstances where officers misuse their privileges and use unnecessary force.
44. The plaintiff brought a civil action for negligence against an RCMP officer in relation to his exercise of unnecessary force and attendant confinement in a drunk tank for three hours. In response to a complaint by a neighbour regarding the noise level at the plaintiff's backyard party, the subject officer was dispatched to the plaintiff's home. Upon arriving on scene, the plaintiff immediately attempted to contact his lawyer. The officer objected to the plaintiff's desire to contact his lawyer and a physical dispute ensued. In particular, the officer threw the plaintiff against a fence; punched him and placed him in a drunk tank for three hours. The plaintiff suffered temporary vision problems and bruising.
45. The Court held that the officer's exercise of force constituted assault. The Court explained that the exercise of unnecessary force by an officer is oppressive and requires the imposition of a sanction. Specifically, the Court stated [at para. 22]:

At the same time, we are dealing with a sergeant of the Mounted Police. As I indicated in my opening remarks, responsibility goes with the privilege of intervening in other people's affairs under authority and in appearing in people's homes and yards with weapons on your side and with the expectation that the public will stop and respond to your presence. Care has to be exercised by persons in authority when they are tampering with other people's rights. I have found Mr. Hindle's use of force excessive and oppressive. In the result, his activities have to be construed as being arbitrary within the test of the Barnard v. Rookes decision in England. While we regret to see these things happening in a police force that is highly respected and regarded in our communities and our province, some sort of sanction should be imposed in the appropriate case as a -- I'm not sure whether "warning" is the right word, but certainly as an alert to those that have the right to exercise special privileges in our society, that they have to do so with intelligence and fairness and reasonableness. I view it appropriate to make an award for punitive damages, and I award an additional \$5,000 to Mr. Gabrielson on that head. So my total award is \$12,000 in damages. [Emphasis added]

46. In the end, the Court held that an award of punitive damages in the amount of \$12,000.00 was an appropriate alert to other officers that they must carry out their duties with intelligence.

47. The Commission likewise adheres to this principle. In *Constable Venables*, as discussed above, the Commission expressly stated that the use of necessary force is an offence, which requires both general and specific deterrence. The Commission stated [at page 9]:

The Hearing Officer described the conduct in question as being "very serious". He characterized Constable Venables' actions as "shocking and egregious", a "significant lapse of judgment", a breach of public trust warranting both general and specific deterrence and conduct that has "caused serious damage to the reputation of the York Regional Police." [Emphasis added]

48. The Commission emphasized this view in the *Groot and Peel Regional Police Service* decision. In this case, the Commission stated [at page 10]:

It is clear that police officers, whether on or off duty should not be threatening harm to others or engaging in assaultive behavior. Such conduct is discreditable, warrants discipline and must be deterred. [Emphasis added]

49. In light of the above submissions regarding Cst. Stenzel's failure to acknowledge the seriousness of her misconduct or remorse, the Service submits that specific deterrence is particularly required.

50. The Service respectfully submits that specific and general deterrence is required in the case at bar.

E. Employment Record

51. The Service submits that it is trite law that an officer's negative employment record speaks to the likelihood of reoccurrence, and consequently, serves as an aggravating factor.

52. On May 25, 2007, Inspector Ennis found Cst. Stenzel guilty of discreditable conduct in that she acted in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the police force, contrary to section 74(1)(a) of the *Police Services Act*. The essential allegations of the misconduct were that Cst. Stenzel requested, under the name of a different Police Officer, from Telus the cell phone records relating to her husband. As a result, he ordered Cst. Stenzel to forfeit 24 (twenty four) hours without pay.

53. The Service submits that that Cst. Stenzel's history of misconduct shows a disregard for expectations of officer's behaviours as articulated in the Code of Conduct.

54. Accordingly, the Service submits that Cst. Stenzel's negative employment history should serve as an aggravating factor in determining the appropriate penalty.

CONCLUDING SUBMISSIONS

55. The Service submits that the penalty of a loss of 96 (ninety-six) hours is the most appropriate penalty.

POSITION OF DEFENSE

Mr. Mackenzie made the following submission:

Work History:

PC Stenzel has been a member of the DRPS since April 3rd, 1995 and she is currently a 1st class constable assigned to 18 Division. During her 17 year career, she spent 5 years in the Traffic Services Bureau and 3 years in the Criminal Investigations Bureau. She is also a trained SOCO officer and assists with many investigations arising from her uniform duties at 18 Division.

Discipline History:

PC Stenzel pleaded guilty to one count of Discreditable Conduct on May 25th, 2007. She received a penalty of a forfeiture of 24 hours without pay. The facts surrounding the plea involved an admission by PC Stenzel that she had sent a fax to Telus under the name of a different police officer rather than her own name, requesting phone records for her husband Mike Stenzel. PC Stenzel acknowledged that it was inappropriate to send a fax under another officer's name and to use police resources to secure information for a personal matter.

Letters of Appreciation:

August 5, 1996 - letter of thanks from member of the public

August 9, 1996 - letter of thanks from Paramedic Supervisor

October 14, 1998 - letter of thanks from member of the public

October 6, 1998 - memo acknowledging SOCO excellence from S/Sgt. Sayer (OIC/FIU)

November 17, 1998 - memo acknowledging SOCO excellence from S/Sgt. Sayer (OIC/FIU)

November 5, 1999 - memo acknowledging dedication and commitment from the Special Enforcement Unit (Sgt. Gil Hughes)

December 13, 1999 - recommendation for Incentive Award from DRPS

November 6, 2002 - letter of thanks from Chief R.R. Martin (KLPS)

July 6, 2004 - letter of appreciation from the Ontario Community Council on Impaired Driving (OCCID)

October 24, 2005 - letter of appreciation from the Ministry of the Attorney General for lecturing at the Collision Investigation Seminar for Prosecutors

Performance & Development Review - December 2011:

PC Stenzel's supervisor Sgt. Lefaive made very favourable comments in Part 3B of the PDR which acknowledged the number of her occurrence submissions, SOCO assistance to the platoon members and her all around confidence and reliability.

Principles of Sentencing:

While a number of OCCPS' decisions have enumerated upwards of 13 different sentencing factors for the hearing officer to consider, I submit that the most relevant factors for consideration in this case are: seriousness of the offence, damage to the reputation of the police service and consistency of penalty/progressive discipline.

Seriousness of the offence:

In order to properly address this factor, the record should reflect the fact that PC Stenzel rejected an offer of informal resolution before a formal Notice of Hearing was issued.

I submit that this fact creates a conundrum for the hearing officer who is called upon to sentence an officer for a formal finding of guilt after the officer has rejected an offer of informal resolution. By definition, an informal resolution is proposed for a finding of misconduct that was 'not of a serious nature' (s. 76(10) PSA).

Clearly the seriousness of the alleged misconduct cannot be determined by the officer's right to have a trial on the merits.

I submit that if the Chief of Police was willing to resolve the alleged misconduct informally then the 'seriousness of the misconduct' must be mitigated accordingly.

Damage to reputation of the police service:

While Mr. Aman and his family were clearly upset and disappointed by the conduct of PC Stenzel, it was apparent from the examination and cross-examination of many of the family

members that they still have a high regard for the Durham Regional Police Service and its officers.

There is no evidence to indicate that this matter received any kind of negative publicity outside of the immediate complaint.

Consistency of penalty/Progressive discipline:

This sentencing factor speaks to requirement that the imposition of penalties is to be consistent for similar offences and that the penalty is to be progressive in nature defined by a sliding scale of penalties ranging from reprimand to dismissal.

With respect to consistency of penalty, I submit that the case of *Elliott v. PC Wayne King & DRPS* (OCCPS #07-01) is relevant for consideration

Despite having affected an unlawful arrest and causing injury to the complainant, PC King received a reprimand from the OCCPS tribunal.

With respect to the issue of progressive discipline, it is recognized that PC Stenzel has already received a penalty of 24 hours forfeiture albeit, this occurred over 5 years ago and it related to a personal matter.

In the circumstances of this case, bearing in mind the aforementioned factors in sentencing, I submit that the appropriate penalty is a forfeiture of thirty-six (36) hours.

Decision

As both Counsels alluded to, I must consider the following factors, if relevant, prior to deciding on penalty.

1. Public Interest
2. Seriousness of the Misconduct
3. The Seriousness Continuum

4. Recognition of the Seriousness/Remorse
5. Employment History
6. Ability to Reform or Rehabilitate the Police Officer
7. Need for Deterrence
8. Damage to the reputation of the Police Force
9. Handicap and Other Relevant Personal Circumstances
10. Effect on the Police Officer and his Family
11. Management Approach to Misconduct in Question
12. Consistency of Penalty
13. Effect of Publicity

Public Interest & Damage to the Reputation of the Police Service

It is always a concern when a member of the public has been a victim of police misconduct. In this matter, upwards of 50 members and friends of the Aman family were subject to an unnecessary confrontation that no doubt distracted from a family celebration of two wedding anniversaries. Avoidable incidents like this put the public's trust and confidence at risk.

Seriousness of the Misconduct

The Commission has stated on many occasions its view that the exercise of unnecessary force is one of the most serious forms of misconduct. The actions of Cst. Stenzel are concerning. I also must consider Mr. Mackenzie's submission where he indicated this matter had been attempted to be resolved by way of an informal resolution which would indicate the service may have considered the allegations as not serious. I take this under consideration as a mitigating factor when deciding on penalty.

Remorse and Recognition of the Misconduct

At no time during the hearing or upon the finding of guilt rendered on September 11, 2012 did Cst. Stenzel demonstrate or show acknowledgement for her actions or express any remorse towards Mr. Aman. As indicated in my hearing decision, Cst. Stenzel made a series of errors during the confrontation with the Aman family members. At no time during her testimony or during cross did she admit that she error'd in her judgement.

Employment Record

As Mr. Mackenzie indicated in his submission, Cst. Stenzel received nine letters of appreciation over an eight year period. He also provided the Tribunal with Cst. Stenzel's most recent Performance Management Form (PDR), which indicated she has performed at an acceptable level in 2011.

Ability to Reform or Rehabilitate the Police Officer

As mentioned in Mr. Johnstone's submission, Cst. Stenzel has accepted no responsibility for her actions. It was clear to the Tribunal, Cst. Stenzel made a series of errors in judgement. This will be taken into consideration when assessing penalty.

Previous Convictions

Cst. Stenzel pled guilty to one count of misconduct on May 25, 2007 and was required to forfeit 24 hours. Although relevant, the misconduct occurred in February 2007.

Need for Deterrence

Based on the lack of remorse and acknowledgement of her actions, there is need for a specific deterrence. Mr. Aman suffered an injury as a result of the strike to the face that resulted in the loss of a tooth. Based on her own testimony, it was clear to the Tribunal that Cst. Stenzel provoked the matter and did little to deescalate the situation.

Summary

In determining penalty, I have taken into consideration the submissions from both Counsels. Cst. Stenzel is a veteran officer with a vast amount of frontline experience. Other than the one PSA conviction in 2007, her career has been unblemished.

Mr. Mackenzie suggested in his submission that I should consider King vs. DRPS where Cst. King received a reprimand from the OCCOPS Tribunal. Although there is some relevance, Cst. King was an inexperienced officer with one year in the policing profession.

I have reviewed all the cases submitted by Mr. Johnstone. There was an array of penalties upheld or determined by the Commission ranging from several days of unpaid work to demotion in rank.

In the Stenzel matter, while responding to a local bylaw offence, a key aggravating factor is that the officer committed the misconduct in the fenced backyard of the Gervais family in the presence of many family members including several young children. As a Police Officer, our duties include preserving the peace.

Specifically, section 42 of the Police Services Act provides:

Duties of a police officer are include,

- (a) preserving the peace;
- (b) preventing crimes and other offences and providing assistance and encouragement to other persons in their prevention;
- (c) assisting victims of crime;
- (d) apprehending criminals and other offenders and others who may lawfully be taken into custody;
- (e) laying charges and participating in prosecutions;

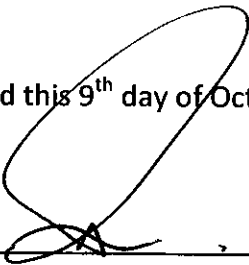
- (f) executing warrants that are to be executed by police officers and performing related duties;
- (g) performing the lawful duties that the chief of police assigns;
- (h) in the case of a municipal police force and in the case of an agreement under section 10 (agreement for provision of police services by O.P.P.), enforcing municipal by-laws;
- (i) completing the prescribed training.

To assist in these responsibilities, police officers are given certain extraordinary powers to use force. Such extraordinary powers are not unlimited. They must be exercised within the strict limits of the law. This includes respecting the rights of individuals as set out in the Charter. Consequences can arise if these requirements are not respected.

I have had the opportunity to review all the information provided to me. The following penalty will be imposed:

Constable Stenzel must work ninety-six hours (96) without pay. The time shall be worked at the discretion of her District Superintendant and Divisional Inspector. The time shall be completed during her regularly scheduled time off and shall not be entitled to any monetary compensation under the Uniform Collective Agreement while serving the Penalty. The penalty must be completed within eight (8) months from the date of sentencing.

Dated this 9th day of October, 2012



Inspector Bruce Townley
Hearing Officer