

OTTAWA POLICE SERVICE DISCIPLINE HEARING

IN THE MATTER OF ONTARIO REGULATION 268/10
MADE UNDER THE *POLICE SERVICES ACT*, RSO 1990, AND THE
AMENDMENTS THERETO;

THE OTTAWA POLICE SERVICE
AND
CONSTABLE GREGORY THOMSON #1799

DECISION ON DISPOSITION AND PENALTY

APPEARANCES:

Counsel for the Prosecution: Inspector Mark Patterson.

Non-Legal Representation for the Defence: Sergeant Patrick
Laflamme.

Public Complainant: Mr. Dwayne Cavanagh.

BEFORE:

Superintendent Chris Renwick
Ottawa Police Service
Hearing Officer

May 24, 2018

Part 1: Overview

Allegations and Particulars of Misconduct

1. Constable Thomson is before this hearing accused of the following charge:

Unlawful or unnecessary exercise of authority.

Constable Thomson did commit unlawful or unnecessary exercise of authority in that on or about January 19, 2017, while on duty, used unlawful or unnecessary force on an apprehended person, Dwayne Cavanagh, by unjustifiably grabbing him by the neck and choking him thereby constituting an offence against discipline as prescribed in Section 2(1)(g)(ii) of the Code of Conduct, Ontario Regulation 268/10, and therefore contrary to Section 80(1) of the *Police Services Act*, R.S.O. 1990, as amended.

Plea

2. A Hearing was held on April 30, 2018, in which Constable Thomson pled guilty to one count of unlawful or unnecessary exercise of authority during which Mr. Dwayne Cavanagh had standing as the public complainant. I accepted the guilty plea on clear and convincing evidence.
3. As a result of this plea, a joint submission on penalty was submitted in which all three parties agreed that the appropriate disposition would be a forfeiture of five days (40 hours) and one off duty day attendance at the Ottawa Police Service's Professional Development Centre for emotional intelligence training, to be completed by October 31, 2018, in accordance with sections 85(1) (f) and 85(7) (b) of the *Police Services Act*.

Part II: Summary of Misconduct

Agreed statement of facts

4. An agreed statement of facts (Exhibit #6) was read on record by the prosecutor, Inspector Mark Patterson, at the April 30, 2018 proceeding as follows:

The subject officer, Constable Gregory Thomson (cadre 1799) is a sworn member of the Ottawa Police Service (OPS). Constable Thomson has been a police officer with the OPS since April 10, 2006.

On January 19, 2017, the OPS responded to a call for service for the public complainant, Mr. Dwayne Cavanagh, who appeared to have been suffering from a drug induced mental health breakdown. Upon arrival, police were greeted by Mrs. J.L., the complainant's cousin and a mental health nurse who noted that Mr. Cavanagh was laying at the doorstep of a local business in apparent medical distress. Mr. Cavanagh was transported to the Civic Campus of The Ottawa Hospital.

The Guarding officers were relieved of their duties at the hospital by another officer and Constable Thomson, the respondent officer.

At the hospital, Mr. Cavanagh was disruptive, yelled obscenities, and was belligerent towards hospital staff.

Constable Thomson entered Mr. Cavanagh's hospital room, instructing him to be quiet. Mr. Cavanagh responded by abruptly sitting up in his bed and continued to yell. Constable Thomson then struck Mr. Cavanagh's neck and continued to choke Mr. Cavanagh for a period of time.

Constable Thomson's actions were witnessed by the other officer and Mrs. J.L.

Upon his release from the hospital, Mr. Cavanagh contacted the OPS to file a

complaint about the interaction and subsequently lodged a formal complaint to the Office of the Independent Police Review Director.

The Professional Standards Sections (PSS) investigated the complaint and found reasonable grounds for misconduct pursuant to the *Police Service Act*.

Constable Thomson has been cooperative throughout the PSS investigation and has taken steps to address any excessive use of force issues, including registering for a court recommended anger management workshop at his own expense, and attending the OPS Professional Development Centre (PDC) for a two hour deescalating training session. He is also registered to attend a one day program at the PDC focusing on emotional intelligence.

Constable Thomson took ownership of his actions by apologizing to all involved parties and actively seeking out training.

Constable Thomson has received several (27) commendations from the OPS and members of the public, and also has no prior disciplinary record.

Summary of Evidence and Exhibits

5. At this Hearing, the Prosecution presented the following exhibits and no witnesses:
 - i) Ottawa Police Service Hearing Officer Designation – Superintendent Chris Renwick. (Exhibit #1.)
 - ii) Ottawa Police Service Prosecutor Designation – Inspector Mark Patterson. (Exhibit #2).
 - iii) Notice of Disciplinary Hearing. (Exhibit #4.)
 - iv) Notice of increased penalty (dismissal or demotion). (Exhibit #5.)
 - v) Agreed Statement of Facts. (Exhibit #6.)

- v) Joint submission on penalty. (Exhibit #7.)
- vii) Book of Authorities. (See Appendix A.) (Exhibit #8.)

6. Defence presented one document and no witnesses:

- i) Police Association non-legal representative waiver. (Exhibit #3.)

7. Mr. Cavanagh, the public complainant, submitted no documents nor called witnesses.

Part III: Analysis

8. I will start my decision on penalty by first outlining the objectives of discipline which are to:

- i) Correct unacceptable behaviour;
- ii) Deter others from similar behaviour;
- iii) Assure the public that the police are under control.

To achieve these objectives, I will speak to five of the established 15 disposition considerations that are relevant, those being: Public interest; seriousness of the misconduct; recognition of the seriousness of the misconduct; deterrence; and consistency of disposition.

Public Interest

9. As often cited by prosecution in excessive use of force hearings, Inspector Mark Patterson refers me to Bright and Konkle (Board of Inquiry, Ontario *Police Services Act*, March 14, 1997) which established that “Good character in a police officer is essential to both the public’s trust in the officer and to the police service’s ability to utilize that officer.” Simply put, it is essential to the public’s trust and confidence in their police that all persons who are in police custody, despite their attitude or behaviour, will be treated fairly, impartially, and with due care, including restricting use of force to the level absolutely necessary to gain compliance.

10. From the agreed statement of facts, Constable Thomson was one of two constables guarding a prisoner confined to a bed in a hospital room who was being disruptive and belligerent, yelling obscenities at the hospital staff. When instructed by Constable Thomson to be quiet, the prisoner sat up in his bed and continued yelling, resulting in Constable Thomson striking his neck and choking him. This application of force by Constable Thomson is found to be both excessive and unnecessary in the circumstances, and a breach of the expectation of care that the public demands from its police, requiring discipline and corrective action to assure the public that the police are accountable.

Seriousness of the Misconduct

11. I deem the actions of Constable Thomson to fall on the serious side of misconduct given that he is a constable with 12 years service and has had extensive experience in controlling belligerent but non-combative persons and escalated right to applying physical force to quiet his prisoner. The choice of striking the neck and choking is quite concerning in itself.

Recognition of the Seriousness of the Misconduct

12. It is evident from his post incident actions that, upon reflecting on his use and choice of the application of unnecessary physical force, Constable Thomson clearly recognized his misconduct and took concrete corrective steps. He committed to being cooperative during the internal investigation, self registered and self expensed a court approved anger management workshop, and self attended an OPS de-escalating training session. In addition to taking ownership of his actions and apologizing to all parties, Constable Thomson has registered for the next available OPS emotional intelligence course. These are clearly mitigating factors that illustrate the self recognition of his misconduct, and his determination not to allow a repeat of the misconduct.

Deterrence

13. As to general deterrence, it is essential that a clear and consistent message be sent to the rank

and file of the Ottawa Police Service that the use of excessive force on a prisoner in our care is serious misconduct and cannot and will not be tolerated, not by the Service and not by the community that entrusts us. As to specific deterrence, a penalty must be imposed on Constable Thomson to illustrate that there will be serious consequences for his ill chosen application of unnecessary and excessive force, despite his acceptance of his misconduct and his corrective steps to ensure he never will fall short of the standard of care of a prisoner in the future.

Consistency of Disposition

14. As to consistency in reaching a penalty, the prosecution has directed me to two recent Ottawa Police Service decisions that have relevancy, being my decision in Boldirev and Ottawa Police Service (Supt. Chris Renwick, March 21, 2018) and the decision in Maseruka and Ottawa Police Service (Supt. Don Sweet, November 29, 2016). Both decisions involve the use of unlawful and unnecessary use of force on a handcuffed prisoner immediately following an arrest and both involve a degree of force that is arguably in excess of the unnecessary force used by Constable Thomson on Mr. Cavanagh. As to consistency, both constables were imposed penalties of seven days (56 hours) plus one day of off duty use of force training.
15. Inspector Patterson's position for prosecution is that the loss of five days plus one day of off duty training falls within the appropriate range of sanctions that I should consider. Taking into consideration the filing of a joint submission on penalty, endorsed by the respondent officer and the public complainant, I concur that it is consistent in range with the two Ottawa Police Service cases that were referenced.

Part IV: Disposition on Penalty

Disposition

16. I have considered the joint submission of facts, the arguments presented, the prosecution

supplied Ottawa Book of Authorities, and the disposition principles to come to a fair and fitting decision. Misconduct has been proven on clear and convincing evidence. I find no argument to reject the joint submission on penalty and I accept it.

17. Constable Thomson, you will forfeit five days (40 hours) in accordance with section 85(1)(f) of the *Police Services Act*.
18. Further, you will attend, while off duty, the Ottawa Police Service's Professional Development Centre for one day of emotional intelligence training in accordance with section 85(7)(b) of the *Police Services Act*, to be completed by October 31, 2018.

Dated at Ottawa, this 24th day of May, 2018.

Superintendent Chris Renwick
Hearing Officer

Appendix A: Book of Authorities.

Tab 1: Carson and Pembroke Police Service (O.C.C.P.S. # 06-12, March 9, 2006.)

Tab 2: Bright and Konkle. (Board of Inquiry, *Ontario Police Services Act*. March 14, 1997.)

Tab 3: Boldirev and Ottawa Police Service. (Supt. Chris Renwick, March 21, 2018.)

Tab 4: Maseruka and Ottawa Police Service. (Supt. Don Sweet, November 29, 2016.)