

**Ontario Provincial Police Discipline Hearing  
In Accordance with Ontario Regulation 123/90  
The Police Services Act, RSO 1990  
And Amendments Thereto:**

**And**

**In the Matter of**

**The Ontario Provincial Police**

**And**

**Provincial Constable L.J. Turgeon #7054**

**CHARGE: Neglect of Duty**

**ADJUDICATOR: OPP Inspector Paul Kelly**

**PROSECUTION: Mr. Norm Feaver**

**DEFENCE: Mr. James Girvin, OPPA**

## **Reasons for Decision - Disposition**

Constable L. J. Turgeon was charged with Neglect of Duty in that he without lawful excuse, neglected or omitted to promptly and diligently perform a duty as a member of the Ontario Provincial Police, contrary to section 2(1) ( c ) (i) of the Code of Conduct contained in the Schedule to Ontario Regulation 123/98, as amended.

The particulars of the allegation contained in the Notice of Hearing are that:

On March 02, 2010, Constable Turgeon was assigned to investigate a matter reported by Ms. GC regarding her husband.

With respect to this matter it is alleged that Constable Turgeon failed to:

- Deal with the matter promptly and diligently according to OPP Domestic Violence Policy
- Did not obtain statements from other witnesses
- Did not arrange for the matter to be investigated
- Did not make any arrangements for her safety
- Advised Ms. GC that there was nothing he could do for her
- Did not complete the LE239 – Domestic Violence Supplementary Report

A hearing was held under the Police Services Act on May 25 -27 and June 28-30. A decision was made on 04 August with a finding of guilty of neglect of duty as charged.

Submissions were made on August 25<sup>th</sup> and the following are the reasons for my decision.

### **Summary of Findings From Hearing**

On Saturday February 27, 2010 Ms. GC experienced a family related conflict within her home situated in Limoges, Ontario. The conflict involved herself, her three teenaged children and her spouse Mr. CC. On Tuesday March 02, 2010 a further problem arose involving her son SG at his school during which she decided to contact the OPP for assistance.

On Tuesday March 02, 2010 at approximately 6:15 p.m. Ms. GC contacted OPP Communications Centre and asked to speak to a Constable about reporting a “domestic violence” incident regarding her husband Mr. CC (EX20). Ms. GC related some details of her situation to the dispatcher. The dispatcher advised Ms.GC that an officer would attend her home at about 7 p.m. that evening.

That evening a different dispatcher contacted Russell County OPP, Embrun detachment and spoke with Constable Turgeon. The dispatcher told Constable Turgeon that they had a complainant who wanted officers to contact her after 7 p.m. that night as her husband would be gone. The dispatcher told Constable Turgeon that the complainant reports that she had a "domestic" with her husband Mr. CC on Saturday night. Constable Turgeon inquired as to the nature of the domestic, specifically whether it was an assault, but the dispatcher gave no additional information (EX20). Dispatch assigned this incident to him.

Between approximately 6:15 p.m. and 7:00 p.m. Constable Turgeon commenced an investigation by contacting Ms. GC by telephone. Constable Turgeon received some initial information about her complaint and noted it in his notebook: "Domestic Assault" name and telephone number of the complainant, a suspect Mr. CC and the statement: "reports that her husband is verbally abusive, intimidating a lot of finger pointing and chest butting." Constable Turgeon requested that she attend the detachment to provide a statement. A time of 7:15 p.m. was arranged (EX 8/ EX7).

Ms. GC attended the Embrun Detachment between 7:15 to 7:20 p.m. (EX 8/EX9) with her son CC. They were met by Constable Turgeon (EX8/ EX7) and Ms. GC was directed to an interview room while her son CC waited in the lobby. Ms. GC and Constable Turgeon did not know each other prior to this meeting.

They remained in the interview room for approximately 15 to 25 minutes. During the interview the complainant conveyed information to Constable Turgeon and there was discussion about her complaint.

Ms. GC left the detachment frustrated, angry, and loudly speaking or yelling between 7:35 and 7:40 p.m. (EX8/ EX7). Constable Turgeon commenced the entry of an occurrence report at 7:59 p.m. (EX11). Before concluding his shift that evening Constable Turgeon queried the Records Management System for previous incidents involving the complainant and suspect and also the Canadian Police Information Centre (CPIC). He also completed his notebook, a general occurrence report and cleared the occurrence through dispatch before going off duty at 6:00 a.m. Constable Turgeon was then off on 5 consecutive rest days until he returned March 8<sup>th</sup>.

On Thursday March 04, 2010 at 09:50 a.m. Sgt. Julie Cyr of the same detachment spoke to Ms. GC on the telephone. This call took place as a result of a different incident that Sgt. Cyr was previously involved in relating to Ms. GC (EX14). Ms. GC related some information to Sgt. Cyr about an interview she had with Constable Turgeon on March 02. She expressed her dissatisfaction with his actions.

Sgt. Cyr reviewed Constable Turgeon's notebook and occurrence report and concluded that further investigation was required. Sgt. Cyr arranged for Ms. GC to attend the Embrun Detachment and meet with Detective Constable Joanne Dignard to be interviewed regarding an alleged domestic violence occurrence.

That same day, March 4<sup>th</sup>, Ms. GC attended the detachment at approximately 3:00 p.m. and met with Sergeant Cyr and Detective Constable Dignard. (EX14). Ms. GC was then interviewed by Constable Dignard. At 7:10 p.m. Constable Dignard interviewed CC then BC, both Ms. GC's sons. SC, her third son, was interviewed on 03 May 2010 (EX15/EX16).

The following morning of March 5<sup>th</sup>, Mr. CC was arrested for Criminal Harassment, transported to Russell County OPP Detachment, processed and released on a Promise To Appear in court on April 14, 2010 and an Undertaking with Conditions. (EX15/16).

On March 11, 2010 Ms. GC attended the Embrun Detachment and faxed a letter of complaint to the Office of the Independent Police Review Director (OIPRD) using the Detachment fax machine at 5:52 p.m. (EX7) which eventually culminated in these proceedings.

OPP Detective Sergeant Baldassare Nuccio was assigned by Professional Standards Bureau to investigate this complaint. He compared the evidence he received against OPP Domestic Violence Occurrence policy and noted discrepancies between the policy and Constable Turgeon's conduct. At the conclusion of his investigation Detective Sergeant Nuccio concluded that the allegation of neglect of duty was substantiated. (EX21)

### **Submissions**

Mr. Feaver submits that the disposition should be no less than 40 hours forfeited with additional domestic violence training. Mr. Girvin submits that a range of 12 to 20 hours would be appropriate and he does not oppose domestic violence training.

There are established factors to be considered when determining an appropriate disposition. Submissions were made in relation to those most relevant to this case and I will address the submissions accordingly.

### *Public Interest*

Mr. Feaver submits that public interest is significant in this case as it is domestic violence related and the importance of domestic violence has increased. He also notes Police Orders policy on domestic violence as being referred to as 'critical policy'. Mr. Girvin does not dispute that a proper investigation is required for a domestic violence occurrence.

Further, as the evidence disclosed, domestic violence is a very serious social problem which has been recognized by the OPP and extensively documented within OPP policies (Ex 10) and the subject of training for OPP members. The public not only has a significant interest in a proper investigation being conducted but there are many follow up activities that occur as a result of the unique nature of domestic violence occurrences.

### *Seriousness of Misconduct*

Again, all parties agree that this is a serious matter as it pertains to domestic violence in particular and as noted above.

I find that it is serious also in that the misconduct of this kind fundamentally affects the public's trust of police. When a member of the public attends a police detachment to report a serious matter they should not have to try to convince a police officer to take action but should expect that there would be reasonable action taken unless there are reasonable grounds that justify an officer not taking appropriate action. In this case the appropriate action was not taken and the complainant left without the benefit of an appropriate policing response to her complaint.

Ms. G submitted her concerns about being characterized as a liar by Constable Turgeon in his reports and that in future when she contacts the detachment she may not be taken as seriously. Her concern is valid. Fortunately the reports have been amended and no longer include these references. But these entries characterizing Ms. G as a liar with no investigational foundation were one of the results of Constable Turgeon making assumptions without conducting an investigation. This illustrates one of the serious potential implications of his actions had there not been a subsequent intervention by Sgt. Cyr and Constable Dignard.

#### *Recognition of Seriousness of the Misconduct*

Mr. Feaver submitted that there has been no recognition by Constable Turgeon that he could have done things differently. Mr. Girvin did submit that Constable Turgeon does apologize for the language he used to describe the complainant during his conversation with the dispatcher and that he would approach domestic violence complaints differently in future. I do not believe that Constable Turgeon has fully acknowledged or accepted his responsibility for how he managed this occurrence. This is based on the hearing evidence and the disposition submissions. He partially apologizes but only for the language he used to describe Ms. G to a dispatcher.

#### *Provocation*

None of the parties submitted that there was actual provocation but noted that there was a bad interaction between the parties at the detachment. I do not find that this amounted to a provocation or reason that excused the conduct.

#### *Employment History*

Mr. Feaver submitted that Constable Turgeon is a 24 year police officer and provided the Tribunal with a copy of a Career Profile and a Performance, Learning and Development Plan (PLDP) for the year 09 Feb 2010 to 09 Feb 2011 (Ex 30/Ex31). Mr. Feaver submitted that he believes Constable Turgeon is a reasonably good police officer but has stalled a bit and needs to recommit to his work (Ex 31). Mr. Feaver highlighted several areas of the PLDP including the supervisor comments and the fact that Constable Turgeon has achieved 'conditional achievement' for this work period.

On review of Constable Turgeon's Career Profile I note five letters of appreciation from the community between 1991 and 2006. In 2007 he received his Exemplary Service Medal. The other entries are standard ones relating to training and special events.

Constable Turgeon has no previous record of misconduct and when considered in combination with the above letters are a significant mitigating factor and I will weigh them accordingly.

The performance assessment shows a member who is not performing to an acceptable standard. It does not reflect a motivated and high contributing member of his detachment. The supervisor comments reiterate some of the evidence from the hearing that Constable Turgeon appears to have some difficulty with interpersonal relations as noted under the heading Assists victims or vulnerable persons:

“Constable Turgeon has the knowledge and ability to be fully effective in this area. Although he has, at times, used an approach that has made persons he talks with feel hesitant to disclose their problems. I believe that a more emphatic approach could assist him in providing better assistance.” (Ex 31)

#### *Specific Deterrence*

Mr. Feaver submitted that Constable Turgeon needs to understand that this cannot happen again. Also, it is important that people generally see repercussions for this type of conduct.

Mr. Girvin submits that this is a ‘one-off’ incident and out of character for Constable Turgeon. While this particular incident may be a ‘one-off’ for Constable Turgeon, I think that when we say that it is out-of-character for Constable Turgeon we must qualify that statement to some degree based on the comments about Constable Turgeon on his performance plan noted above. Specifically about him not being highly motivated nor performing to the level expected of all detachment members.

I agree with Mr. Feaver’s submission that there is a need to impress Constable Turgeon that this type of conduct cannot happen again. I believe that Constable Turgeon is still reluctant to fully acknowledge his part in this incident, however, based on the submissions today I have no reason to believe that he would permit this specific type of error to occur again.

#### *General Deterrence*

This is a very serious incident. This fact was fully borne out by the evidence. A member of the public attended an OPP detachment for help and did not receive a professional response regarding a serious domestic violence matter. If Ms. G had not been contacted by Sgt. Cyr the following day this matter may never have come to the attention of police again, potentially leaving Ms. G and her children at a serious risk. We must signal to all members that this is clearly an unacceptable response to a domestic violence complaint.

#### *Employer Contribution*

Mr. Girvin submitted that other officers had not completed forms and gave the example of the KGB statements that were not completed exactly as policy directed. Throughout the hearing I have not held Constable Turgeon to the ‘letter’ of the policy. Our fundamental focus here is that the overall policy was not complied with in spirit nor in letter. Therefore, while there were some minor variations in some specific areas of the overall policy I did not find that this amounted to an excuse for Constable Turgeon’s conduct.

In regard to the submissions above concerning Constable Turgeon needing to be “remotivated” in his career, I submit that this is the primary responsibility of Constable Turgeon not his supervisor. The role of the supervisor is to remove obstacles that prevent officers from being able to perform. In this case I found no significant evidence that would suggest that Constable Turgeon was hindered in his actions as a result of employer or environmental circumstances.

### *Damage to Reputation*

Mr. Feaver submitted that Ms GC and her son did not have a high opinion of the OPP when she left the detachment. He believes that her opinion may have improved when the appropriate action was taken by Constable Dignard.

Ms. G submitted that she too has been in her profession for 24 years and cannot afford to have a bad day at work. I agree with the principle here that a police officer does not have the option of having a bad day when it comes to providing police service. Police officers are held to a very high standard and it must remain that way as they possess many special tools, powers and access to the justice system that citizens do not. Therefore, when a citizen attends a detachment they do so knowing that the police officers have tremendous authority and that their decisions can affect their lives significantly.

Mr. Girvin submits that no long term damage will occur. I agree with him to the extent that the following day corrective action was taken by other officers so that the negative effects of the initial misconduct were mitigated to some degree. Also, from Ms. G submissions I take it that she understands that one officer's conduct does not necessarily represent the entire OPP. She indicated her appreciation for the follow up by the OPP following the initial incident.

Nevertheless, the public must feel confident that when they attend a police detachment for assistance that they will not be treated in a similar fashion and if experiences like this are shared with the public they can only have a negative effect on the public's opinion of OPP services.

### *Cases*

Several cases were submitted. I have reviewed them and thank Mr. Feaver and Mr. Girvin for providing them. While there appear to be no closely similar cases I have considered and applied the principles which these cases represent where applicable.

### *Other*

Mr. Girvin submitted an OPP X005 form that pertained to an offer of informal discipline of 12 hours (Ex 37). He submitted that this should be taken as an indicator as to how serious the organization viewed the misconduct.

This offer was made during the discipline process in an effort to resolve the complaint as soon as possible. Resolution is a key goal of the discipline process. However, where an offer is rejected it remains a possibility that a hearing may result in a lesser or greater disposition depending on what is disclosed through evidence. In this case I believe that there is much more evidence available to the Tribunal to assess a disposition than would have been available to the Discipline Committee who authored this early offer. Also, see Gruzuk and OPP (1991) OCCPS; and McDougall and Brockville Police Service (1993) OCCPS which support this view. Therefore, I do not accept that this offer is definitive in determining a disposition in this case.

I agree with the defence submission that the respondent officer cannot be faulted for requiring a hearing to be held and therefore it cannot be considered an aggravating factor. While a guilty plea can be a mitigating factor a respondent officer is fully entitled to have a hearing.


Mr. Feaver submitted that refresher training on domestic violence issues would assist Constable Turgeon. Mr. Girvin concurred with this submission. While I will support this request I want to make it clear that, based on the evidence disclosed during the hearing, I do not view this misconduct as a training deficiency but a wilful and reckless act on behalf of Constable Turgeon. Nevertheless, refresher training may serve to reinforce for him the potential serious consequences of not appropriately responding to these types of occurrences.


The evidence demonstrated that Constable Turgeon had completed the OPP domestic violence training prior to this incident. He also acknowledged in cross-examination that he was aware of the policy and that it was critical policy. As there was no indication that Constable Turgeon was incapable of effectively executing the policy I cannot find that this is a training deficiency. Therefore, while training can always be of benefit, in this case, I believe that the misconduct was related to Constable Turgeon's attitude and approach to this incident not his ability to perform the required task.

Mr. Feaver and Ms. G noted that an apology would be appreciated from Constable Turgeon. It is beyond the authority of the Tribunal to order an apology.

### **Disposition**

Based on the evidence and submissions Provincial Constable L. J. Turgeon will forfeit 40 hours, specifically he will be required, in agreement with his supervisor, to work an additional 40 hours, pursuant to section 85(1)(f) of the *Police Services Act*, RSO 1990. Further in accordance with section 85(7)(c) he shall attend training on domestic violence policy as directed by his supervisor.

  
Paul Kelly  
Inspector,  
Adjudicator

  
Date