

**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 J.G. (James) Avarell, #12552

CHARGES: Neglect of Duty

DECISION WITH REASONS

Before: Superintendent K.M. (Mike) Bickerton
Ontario Provincial Police

Counsel for the Prosecution: Inspector Charles Young
Ontario Provincial Police

Counsel for the Defense: Mr. Gavin May
Ontario Provincial Police Association

Public Complainant: Arshad DESAI

Hearing Date: January 15, 2020

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

PART I: OVERVIEW

Allegations of Misconduct

The amended particulars of the allegations state:

It is alleged that Provincial Constable (PC) Avarell committed 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 Reg. 268/10, as amended.

On or about August 6, 2017 while on duty, PC Avarell responded with PC Raison to a call for service where he received information that an alleged domestic violence between A.D. and M.M. and an assault by A.D. on B.L. It is alleged that PC Avarell failed to conduct a thorough investigation into these allegations, which includes:

- Failed to obtain statements, probe or ask relevant questions of the involved parties and witnesses in relation to the allegations
- Failed to conduct interviews with the involved parties and witnesses in relation to the allegations
- Failed to discuss a safety plan with M.M., the alleged victim of the domestic assault or ask allegation specific questions
- Failed to enter incident information relating to the allegations into appropriate police databases

Representation

In this matter, Mr. May represented PC Avarell and Inspector Young represented the OPP. The public complainant, Mr. Arshad Desai chose not to be in attendance for this matter.

Plea

On January 15, 2020 PC Avarell, represented by his counsel Mr. May, pled guilty in absentia to neglect of duty.

Positions on Penalty / Submissions

Mr. May and Inspector Young submitted a joint penalty proposal of 24 hours be imposed against PC Avarell. The parties supported this proposal with submissions which are addressed in Part III of this decision. The parties indicated the Notice of Hearing can be adopted as the Agreed Statement of Facts (ASOF).

Inspector Young outlined correspondence and communication with the Public complainant in this matter. The public complainant declined to participate in these proceedings and made no submissions regarding the proposed penalty position.

Decision

Having reviewed and considered the submissions of Inspector Young and Mr. May I am satisfied the proposed penalty meets all the goals of discipline including to correct errant behaviour, to deter others from similar misconduct and to reassure the community. The ASOF establishes that PC Avarell committed neglect of duty on clear and convincing evidence.

The proposed penalty is within the range of penalties imposed for misconduct of a similar nature. I order PC Avarell to forfeit 24 hours; to be worked under the direction of his Regional Command, upon PC Avarell's return to work.

My reasons for the decision are as follows:

PART II: THE HEARING

Exhibits

The exhibits for this matter are listed in Appendix A.

Agreed Statement of Facts

At the commencement of the hearing, the prosecution and defence counsel agreed to advance the Notice of Hearing as the Agreed Statement of Facts.

Part III: SUBMISSIONS, ANALYSIS AND FINDINGS

Analysis

The following analysis is based on submission of the prosecution and defence counsel. To assist me in this process, I will rely upon commonly held proportionality considerations relevant to this matter. In my analysis, mitigating and aggravating factors will be balanced and weighed.

Public Interest

The protection of citizens and conducting thorough and proper investigations are fundamental duties expected of police officers. This particular matter involved a domestic violence call for service that PC Avarell failed to properly and carefully investigate which is clearly not consistent with his sworn duties outlined in OPP policy and the Police Services Act nor with public expectations.

Public Interest is an aggravating factor.

Seriousness of the Misconduct

This misconduct was related to a domestic violence call for service. Timely, appropriate, thorough and effective police response to domestic violence is a high priority in the communities we serve and to the OPP for public safety reasons. Police officers must demonstrate understanding, compassion and respect to those involved in domestic violence occurrences and are sworn to preserve the peace and prevent offences. At the time of this incident PC Avarell was a coach officer and was accompanied by a recruit. Through his misconduct, PC Avarell failed the involved citizens and set a poor example for the officer he was mentoring. I acknowledge and am quieted to a degree that Inspector Young identified this as atypical behaviour for PC Avarell.

Seriousness of the misconduct is an aggravating factor.

Recognition of the Seriousness of Misconduct

PC Avarell has recognized the seriousness of his misconduct and has been apologetic for his missteps. He has participated fully with the investigation, the ASOF and the resolution of this matter. Despite being away from the workplace due to illness, PC Avarell wanted this matter to proceed and entered his plea in absentia through his counsel. I am satisfied that PC Avarell clearly recognized the seriousness of his misconduct and has unequivocally accepted responsibility for his mistakes.

Recognition of the seriousness of misconduct is a mitigating factor.

Employment History

PC Avarell, as outlined in exhibit 8 (career profile) is a valued member of the OPP with a successful history unblemished by prior discipline. His personnel file reflected a dedicated officer who has performed at or above required competency levels and has been recognized many times by OPP Command and the public for exemplary service.

PC Avarell's performance and abilities have seen him recognized as a coach officer and second in command of his platoon. These added responsibilities are typically earned and are not simply granted.

From the detailed review of PC Avarell's performance over the course of his career provided by Inspector Young I infer that the behaviour and performance level resulting in this disciplinary hearing is isolated and uncharacteristic of PC Avarell.

PC Avarell's employment history is significantly mitigating.

Potential to Reform

PC Avarell's past performance is indicative of a valued employee. His approximately 10 years' experience and training up to the time of the misconduct represent a significant investment. PC Avarell offered no excuse or attempt to minimize his actions and has accepted full responsibility for his misconduct. I am confident that PC Avarell, when able to return to work, will put this matter behind him and will continue to serve the citizens of Ontario capably and professionally.

PC Avarell's potential to reform is a mitigating factor.

Deterrence

PC Avarell will clearly recognize that even an isolated incident or misjudgement has resulted in accountability and related discipline. A similarly clear message will also be sent to all OPP officers that failing to properly and professionally carry out their duties can adversely affect public confidence and will result in corrective measures.

Damage to the Reputation of the OPP

While not submitted as an exhibit, Inspector Young referenced the ¹*Durianacik* decision which stated at paragraph 5:

The discredit upon the reputation of the police force can be either internal, external or both and need not have actually been brought about but "likely to".

There was a public complainant and others involved in this occurrence who were adversely affected by PC Avarell's failure to properly investigate the incident in question. Others may have become aware of the misconduct. No specific media attention is known to have occurred. PC Avarell's misconduct has caused discredit to and damaged the reputation of the OPP and is likely to cause dishonour should the matter receive further attention.

Damage to the reputation of the OPP is an aggravating factor.

Consistency of Disposition

Inspector Young and Mr. May both submitted that the proposed 24 hour sanction is consistent with precedent and is fair and appropriate with regard to the circumstances. I have reviewed the *Connor*, *Emmerson-Stringer*, and *Postma* decisions contained in exhibit 9 where comparable misconduct warranted 24- 30 hours.

Based upon submissions I find that the proposed sanction of 24 hours is within the acceptable range available to me in relation to the described misconduct.

Conclusion

Upon carefully considering and weighing all the disposition factors above, I find that the proposed sanction meets the goals of discipline, and provides a fair and balanced approach. I thank Mr. May and OPP Professional Standards Bureau for bringing this matter to an agreeable resolution. Although they did not participate in these proceedings, it is my sincere hope that the public complainant is reassured by the outcome.

I have accepted the submissions of the Prosecution and Defense and heed deference to ²*Anthony-Cook* decision in accepting the joint submission on penalty unless doing so would bring the administration of Justice into disrepute. I encourage PC Avarell, when able, to return to work and continue to perform at a high level as he has demonstrated is his norm in the past.

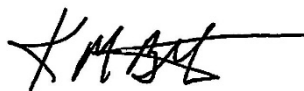
¹ Constable Stephen Duriancik and the Metropolitan Toronto Police, 1982 CanLII 3356 (ON CPC)

² R. v. Anthony-Cook, 2016 SCC 43 (CanLII), [2016] 2 SCR 204

PART IV DISPOSITION

I order PC Avarell forfeit 24 hours to be worked at the earliest opportunity, pending his return to work, in accordance and agreement with his Regional Command.

This order is made pursuant to section 85(1)(f) of the *Police Services Act*, R.S.O. 1990.



K.M. Bickerton
Superintendent
OPP Adjudicator

Date electronically delivered: July 16, 2020

Appendix “A”

The following exhibits were tendered during the hearing:

- Exhibit 1: Delegation – Adjudicator, Superintendent Taylor (Comm. Carrique)
- Exhibit 2: Delegation – Adjudicator, Superintendent Bickerton
- Exhibit 3: Designation – Prosecutor, Inspector Doonan
- Exhibit 4: Designation – Prosecutor, Inspector Young
- Exhibit 5: Designation – Prosecutor, A/Inspector Lepage
- Exhibit 6: Delegation – All Officers
- Exhibit 7: Designation – Prosecutor, Chris Diana
- Exhibit 8: Career Profile and Performance, Learning and Development Plans
- Exhibit 9: Defence Book of Authorities
 - Tab 1: *Connor v Ontario Provincial Police*, [June 24, 2013]
 - Tab 2: *Emmerson-Stringer v Ontario Provincial Police*, [April 28, 2016]
 - Tab 3: *Postma v Ontario Provincial Police*, [December 20, 2017]