

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

PROVINCIAL CONSTABLE ANNE EMMERSON-STRINGER # 7785

AND THE ONTARIO PROVINCIAL POLICE

CHARGE: NEGLECT OF DUTY

DISPOSITION WITH REASONS

Before: Superintendent Greg Walton
Ontario Provincial Police

Appearances:

Counsel for the Prosecution: Inspector Hazel O'Brien
Ontario Provincial Police

Counsel for the Defence: Mr. David Butt
Ontario Provincial Police Association

Complainant: Mr. D.L.

Hearing Date: April 28, 2016

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

PART I: OVERVIEW

Background

Provincial Constable (PC) Emmerson-Stringer was charged with neglect of duty in that she without lawful excuse, neglected or omitted to promptly and diligently perform a duty as a member of the Ontario Provincial Police (OPP), contrary to section 2(1)(c)(i) of the Code of Conduct contained in the Schedule to Ontario Reg. 268/10, as amended. The edited particulars for PC Emmerson-Stringer are as follows:

- On July 28, 2013 while on duty PC Emmerson-Stringer responded to a call for service at the Oro Family Campground in Oro-Medonte Township involving T.A, T.I. and D.L.¹
- PC Emmerson-Stringer failed to investigate this incident in compliance with the OPP domestic violence policy.
- PC Emmerson-Stringer failed to treat T.I. in compliance with OPP domestic violence policy.
- PC Emmerson-Stringer failed to initiate and complete domestic violence reports.
- PC Emmerson-Stringer failed to make accurate notes in relation to the incident.
- PC Emmerson-Stringer failed to properly investigate, make inquiries and interview people involved in this incident.
- PC Emmerson-Stringer arrested and charged Z.H. and D.L. for assault notwithstanding an inadequate investigation.
- PC Emmerson-Stringer further failed to properly investigate a possible breach of probation and breach of court order involving T.A. and T.I. resulting from a previous domestic incident.

PC Emmerson-Stringer pleaded not guilty to neglect of duty. Following a four day hearing which concluded October 29, 2015 PC Emmerson-Stringer was found guilty.

The tribunal reconvened April 28, 2016 to hear penalty submissions.

Decision

After reviewing all of the evidence and considering the submissions, I order PC Emmerson-Stringer to forfeit 24 hours. My reasons for this are as follows:

¹ Involved persons initialized to provide anonymity

PART II: THE HEARING

Exhibits

The following exhibits were tendered during penalty submissions:

- Exhibit 22 Book of Authorities - Prosecution
 - Tab 1: Career Profile
 - Tab 2: Performance, Learning and Development Plan 2012-2013
 - Tab 3: Performance, Learning and Development Plan 2013-2014
 - Tab 4: Performance, Learning and Development Plan 2014-2015
 - Tab 5: *OPP v. Dinsdale*, May 14, 2004
 - Tab 6: *Dinsdale v. OPP*, OCCPS, December 30, 2004
 - Tab 7: *OPP v. Marshall*, October 22, 2010
 - Tab 8: *Turgeon v. OPP*, OCPC, July 20, 2012
 - Tab 9: *OPP v. Connor*, July 24, 2013
 - Tab 10: *OPP v. Mouland*, October 16, 2004
- Exhibit 22A: *OPP v. Hussain*, April 15, 2015

Representation

In this matter, Mr. Butt represented PC Emmerson-Stringer, Inspector (Insp.) O'Brien represented the OPP and the complainant D.L. was unrepresented.

Penalty Positions

Insp. O'Brien submitted a penalty of 40 hours was most appropriate while Mr. D.L. took no position on penalty. Mr. Butt did not commit to a true number of hours but he took the position the hours to be forfeited by PC Emmerson-Stringer ought to be at the low end of the scale, considerably less than 40.

Submissions

Summary of prosecution submissions

Insp. O'Brien referenced section one of the *PSA* specifically the need to ensure the safety and security of all persons and property in Ontario. She highlighted the facts stating that PC Emmerson-Stringer failed to complete a fulsome investigation which breached the standard of care the public can expect. Insp. O'Brien noted that two individuals were arrested and charged and in part, the negligent investigation contributed to the fact the criminal charges did not proceed. Furthermore, a potentially dangerous situation was created when the domestic violence component was not pursued by PC Emmerson-Stringer.

Insp. O'Brien submitted that the seriousness of the misconduct was aggravated as PC Emmerson-Stringer had ample opportunity to follow up the assault investigation in the days that followed the incident. Not pursuing other investigative avenues is a continuation of the misconduct. Insp. O'Brien submitted the economic and personal consequences for the arrested persons were significant.

Insp. O'Brien reviewed the very positive employment history of PC Emmerson-Stringer in great detail but noted, in her testimony, she failed to acknowledge the deficiencies of her investigation. Insp. O'Brien stated that if PC Emmerson-Stringer can heed the comments of this tribunal, she will be an even greater asset to the organization.

Insp. O'Brien submitted a number of cases to assist with consistency considerations and concluded 40 hours should be the appropriate sanction.

Summary of defence submissions

Mr. Butt submitted there is a distinction between an officer who is despairingly neglectful and needs to be punished significantly versus an exemplary officer who had a bad day; as was the case in this matter. Mr. Butt did not make a submission committing to the number of hours to be forfeited by PC Emmerson-Stringer other than to suggest it should be toward the low end of the spectrum.

Mr. Butt reviewed the facts of this case and compared them to those of the cases submitted for consideration. He emphasized the cases where officers were neglectful throughout as opposed to a deficient investigation as in this instance.

Mr. Butt submitted the misconduct in this matter is not categorical neglect; PC Emmerson-Stringer believed in what she did. Mr. Butt also referenced the supervisor comments included in the Professional, Learning and Development Plans which show PC Emmerson-Stringer has been functioning at the 2IC level and should be considered for promotion. He suggested this discipline process is likely to diminish the likelihood of her success in a future promotional process and noted; the discipline process is a test of character and that some officers fail that test, get a chip on their shoulder, resentful or angry and their performance deteriorates. In PC Emmerson-Stringer, the exact opposite transpired as illustrated in the annual evaluations which actually improved post event. It is easy to say you are of strong character if your character has never been tested. PC Emmerson-Stringer has conducted herself in the best possible way since this incident and therefore, forfeited hours at the low end of the scale is the appropriate penalty.

PART III: ANALYSIS AND FINDINGS FOR DISPOSITION

Summary of Misconduct

The details that gave rise to the finding of guilt are found in the judgement dated January 12, 2016 and need not be repeated here. PC Emmerson-Stringer's misconduct can be condensed as follows:

On July 28, 2013 PC Emmerson-Stringer attended a call for service where she failed to properly investigate allegations of assault which led to the arrests of Z.H. and D.L.. PC Emmerson-Stringer formed reasonable and probable grounds prematurely. A more thorough investigation was warranted before arresting the individuals; this omission breached the standard of care which any individual should reasonably expect when being investigated by police for a criminal offence. Not conducting a more thorough investigation breached the standard of care expected considering the totality of all circumstances.

While investigating the assault allegation, PC Emmerson-Stringer did not conduct a thorough investigation of the potential domestic violence incident which presented itself. This breached the standard of care expected considering the totality of all circumstances.

During the course of this investigation, PC Emmerson-Stringer failed to make accurate notes.

The facts in issue and PC Emmerson-Stringer's guilt have been determined by this tribunal. My task presently is to determine the appropriate sanction which strikes a balance between the expectations of the community, the standards of the OPP, and fairness to the subject officer. In doing so, the goals of the discipline process must be met: to correct errant behavior; to deter others from similar misconduct; and to uphold public trust. To guide me in this process I will rely on the commonly held disposition considerations.

Public interest

The public has an interest in ensuring the police maintain a very high standard in the performance of their duties. The facts in issue of this misconduct are concerning. Two individuals were arrested following a less than thorough investigation which breached the standard of care which any individual should reasonably expect when being investigated by police for a criminal offence. It was submitted that the criminal charges against the arrested persons did not proceed in part, due to the neglectful investigation.

PC Emmerson-Stringer failed to explore the domestic violence avenue even though there were indications of that possibility. Although it was later determined there had not been a domestic dispute, the outcome could have been deleterious.

PC Emmerson-Stringer violated the trust of the public and public trust is critical to the success of any and all police services. The public needs to be reassured this type of careless investigation is not acceptable and the OPP will hold their officers accountable. I find this violation of public trust to be a significant aggravating factor.

Nature and seriousness of the misconduct

Anytime an officer is found guilty of neglect of duty, it must be considered to be of a seriousness nature. The consequences of any negligent investigation are significant and in this particular matter, I find the misconduct to be aggravated by the fact two people were arrested, processed and charged. However, I recognize the criminal charges were withdrawn for reasons that include only in part, the quality of the investigation conducted. I am also aware that there are varying degrees of neglect of duty. This was not a categorical neglect of duty, it was a deficient investigation. This was not a situation where PC Emmerson-Stringer was lazy. If "the laziness factor had kicked in" as in other cases of neglect of duty, PC Emmerson-Stringer simply would have assessed the alleged assault to be unfounded. That would have resulted in minimal paperwork and reduced the time dedicated at the scene. Instead, PC Emmerson-Stringer arrested two individuals; a subsequent increase in her work commitment including crown briefs. She also made arrangements to conduct a witness interview at a future date.

While it has been established indolence was not the issue, it was still incumbent upon PC Emmerson-Stringer to conduct a more thorough investigation. The seriousness of the misconduct is an aggravating factor.

Recognition of the seriousness of misconduct and remorse

During the testimony of PC Emmerson-Stringer she indicated she was satisfied with the quality of her investigation. I have outlined the deficiencies in the investigation and notetaking in pronounced detail in my written decision and will not belabor those points here but am hopeful that upon further reflection, PC Emmerson-Stringer has learned from this incident.

I take considerable solace in the fact PC Emmerson-Stringer has personified strong character in the shadow of these *PSA* charges as illustrated in the following comments from Sergeant VanBeek in the most current Professional Learning and Development Plan of 2014-2015:

PC Stringer consistently demonstrates a commitment to service and performs her duties with regards to professionalism, accountability, diversity, respect,

excellence and leadership...PC Stringer does not do her calls for service with a minimal attitude. She goes well beyond what is the expected norm and provides a high level of service to the public. PC Stringer has a high level of personal integrity...PC Stringer is a leader on her shift and is always available to those around her...PC Stringer has been encouraged to participate in the promotional process, as her knowledge and leadership skills would be a great asset to the organization. PC Stringer will continue to maintain the 2IC [second in command] role on her platoon and is a greatly appreciated member and leader at her detachment in all respects.

While PC Emmerson-Stringer will not receive mitigating consideration generally afforded upon an associated guilty plea or a joint submission on penalty, I give her significant credit for not allowing this *PSA* proceeding to adversely affect her work ethic or her commitment to her profession.

Employment history

PC Emmerson-Stringer was the recipient of the Police Exemplary Service Medal in 2011. Her last three annual Professional, Learning and Development Plans were tendered as exhibits. The common theme among these reports is that PC Emmerson-Stringer is a hard working above average officer. In the 2011 document, Sergeant Patterson noted:

PC Stringer has had a very productive year. She continues to lead the shift in charges and incidents investigated...has also taken on the role of 2IC, I know I can count on her knowledge and experience to lead the platoon in my absence. PC Stringer is a hardworking, dependable officer and significant asset to the detachment.

Staff Sergeant Mayo added:

You continue to be a very strong member of the Barrie detachment, you're very dependable and always professional...is a go to person for many things in Barrie and always gives 200 percent to everything she does. She is a person who is always willing to take on added responsibilities and assist others without question and without being asked by others. She is self-initiated.

As indicated earlier, I am impressed with the manner in which PC Emmerson-Stringer reacted in response to these *PSA* proceedings. In the most current 2014-2015 Professional, Learning and Development Plan, PC Emmerson-Stringer received a score of exceeds in six categories and meets in the remaining nine categories. There is no need to repeat the positive comments of her immediate supervisor, Sergeant VanBeek but Staff Sergeant Fawcett's comments are noteworthy:

I concur with this evaluation. PC Stringer is an extremely dedicated member

of Barrie Detachment. PC Stringer is extremely knowledgeable and has the ability to work at the next rank. PC Stringer can be counted upon to complete all of her assignments at an above average level in a timely and comprehensive manner.

The employment history of PC Emmerson-Stringer is a significant mitigating factor to be considered.

Ability to reform or rehabilitate

One of the main goals of police administrative discipline is to ensure that at the conclusion of the process, the member demonstrates a positive attitude and is an asset to the organization. PC Emmerson-Stringer has already met this objective.

Need for deterrence

Specific deterrence is generally required at a sufficient enough level to correct behaviour. PC Emmerson-Stringer's behaviour may have already been corrected to a certain degree. The discipline process can often be a test of character and PC Emmerson-Stringer responded in a very positive manner as previously noted in the Employment History category. Therefore, specific deterrence is not a significant concern but there is a need for general deterrence as well; the membership of the OPP must understand the organization will not tolerate inadequate investigations and to be mindful of the subsequent consequences.

Damage to the reputation of the OPP

While there has been no media attention thus far, the media consistently request and receive copies of PSA decisions. Public awareness of this incident will result in damage to the reputation of the OPP and that of PC Emmerson-Stringer. This is clearly an aggravating factor.

Consistency of penalty

Insp. O'Brien submitted a number of cases for consideration as a guideline for the appropriate range of penalty.

I found the misconduct in the *Dinsdale* matter to be more substantial than what was observed in this matter. The result in that case was a forfeiture of 48 hours as determined by the Ontario Civilian Commission on Police Services following an appeal. In *Marshall*, the officer received a sanction of 30 hours for failing to properly investigate the theft of a motor vehicle. In that matter the officer had ample opportunity to follow up or continue the investigation but simply "dropped the ball."

Similarly, PC Emmerson-Stringer failed to return to the scene to conduct a canvass and failed to contact a known witness who provided hand written observations. The facts in issue in the *Turgeon* matter are also considerably different although there was a failure to properly investigate a matter of alleged domestic violence which resulted in the forfeiture of 40 hours for neglect of duty. The finding and penalty were both appealed and upheld where the Ontario Civilian Police Commission noted:

The Hearing Officer acknowledged the positive aspects of the Appellant's work history including the letters of appreciation, his Exemplary Service Medal and the absence of a previous record of misconduct. In fact he states that these "are a significant mitigating factor and I will weigh them accordingly." However, the Hearing Officer also notes that the performance assessment "shows a member who is not performing to an acceptable standard. It does not reflect a motivated and high contributing member..."

As stressed repeatedly, the employment history of PC Emmerson-Stringer distinguishes her matter from the *Turgeon* case.

In the *Connor* matter the officer failed to properly investigate a residential break and enter where at night, an intruder entered the bedrooms of the residents while they were sleeping. The agreed statement of facts in that case noted:

It is acknowledged that the lack of supervision in this matter is a mitigating factor resulting in the joint penalty submission being put forward by prosecution and OPPA.

The officer had a positive work history but had been formally disciplined for a prior unrelated matter of insubordination. He pleaded guilty and settled on an agreed statement of facts and a joint penalty of 24 hours which was accepted by the hearing officer. In this case, the penalty was mitigated by lack of supervision, the joint submissions and guilty plea.

The *Mouland* case involved two unrelated matters of neglectful investigation which resulted in a sanction of 40 hours. In one instance, the officer in essence, ignored the call for service entirely; he did not even attend to meet the complainant and conducted no follow up. Additionally, the officer received previous documentation in his file for a "sloppy and deficient criminal investigation." I do not find the penalty factors are elevated to this degree in this matter.

In the *Hussain* case, the officer simply ignored a domestic call completely by indicating he was not in position to respond. The officer received an order to receive domestic violence training and a 30 hour sanction following a guilty plea, agreed statement of facts and joint submission on penalty.

Not surprisingly, none of the cases submitted were specifically on point but were certainly helpful to determine an appropriate range for penalty; 24 to 40 hours seems. I have relied heavily on the employment history of PC Emmerson-Stringer and the manner in which she has accorded herself since the initiation of the *PSA* proceeding.

PART IV: DECISION

After weighing the mitigating and aggravating factors of PC Emmerson-Stringer's misconduct, I find a sanction of 24 hours provides a balanced and fair approach.

Insp. O'Brien had noted Central Region Command Staff requested that PC Emmerson-Stringer not be required to work the forfeited hours (rather they be extracted from an existing bank of hours). Command Staff is apparently concerned that working additional hours in addition to overtime already required could be too taxing on the officer. Mr. Butt added that flexibility in working some of the hours would be appropriate while Insp. O'Brien did not take a position on behalf of prosecution. Upon first blush, flexibility appears to be a suitable compromise however; I respectfully disagree with the position taken by Region. The hours worked by PC Emmerson-Stringer, if scheduled appropriately, would be in lieu of overtime hours. This arrangement should benefit the Detachment, not be a detriment to it. I am confident that the Detachment can forecast shifts which will require overtime and schedule PC Emmerson-Stringer to cover that time accordingly without it becoming overwhelming for PC Emerson-Stringer.

PC Emmerson-Stringer is hereby ordered to forfeit 24 hours pursuant to section 85(1)(f) of the *PSA*. Specifically PC Emmerson-Stringer is required to work an additional 24 hours, to be completed at the earliest opportunity in consultation and agreement with her Detachment Commander.



Greg Walton
Superintendent
OPP Adjudicator

Date electronically delivered: May 3, 2016