

**POLICE CONSTABLE KEITH HEATON**

**BADGE NUMBER 1721**

**OTTAWA POLICE SERVICE**

OFFICE OF THE INDEPENDENT  
POLICE REVIEW DIRECTOR

MAR 20 2013

**RECEIVED**

**THURSDAY, JANUARY 10, 2013**

**DEPUTY CHIEF TERENCE KELLY (RET.)**

Before dealing with sentencing in this matter, I wish to thank Mr. Bill Carroll, Defence counsel and Mr. Robert Houston, the Service prosecutor, for their able submissions and exhibits, all of which have assisted me in my decision.

Police Constable Keith Heaton, Badge Number 1721, has pleaded Guilty, and been found guilty, of Nineteen counts of Discreditable Conduct; Two counts of Unlawful Exercise of Authority and Two counts of Unlawful or Unnecessary Exercise of Authority, laid under the *Police Services Act*.

The entry of the Guilty plea was advanced with an Agreed Statement of Facts (Exhibit Number 7.)

## AGREED STATEMENT OF FACTS:

Count 1 - Discreditable Conduct

Count 2 - Unlawful Exercise of Authority

Count 3 - Unlawful or Unnecessary Exercise of Authority

relate to an incident involving J.C. on the 2<sup>nd</sup> of March, 2010.

On the 2<sup>nd</sup> day of March, 2010, at approximately 3:00 pm, Constable Heaton, accompanied by Constable Nip, attended at the residence of B.C. in Ottawa, responding to a complaint from one of the residents of the building about drug use. Constable Heaton's notes indicated that the incident was "a general investigation."

The officers entered the apartment unit after knocking on the door. Constable Heaton found the door to be unlocked and entered the apartment. His notes indicate "entered due to odour, concern for the residents." The notes of Constable Heaton do not cite any authority for his entry.

In his interview with Professional Standards, Heaton stated that there was music blaring and he detected a smell of "rotting flesh." He stated that there might be a dead body in the apartment and indicated that he understood he had the authority under the Coroners Act.

There was no reference to the Coroners Act in either officer's notes.

There had been no authorization by any Coroner with reference to entry into this apartment.

Upon entering the apartment the officers found rotting garbage in the unit. After looking through the apartment, Constable Heaton observed a bong and grinder used to grind marijuana. Constable Heaton seized these items.

A neighbour reported seeing a police officer dumping articles into a garbage can outside the apartment building.

J.C. the son of the tenant, questioned why the officers were in the apartment and requested Constable Heaton's badge number. When J.S. had difficulty understanding the words of the police officers, Constable Heaton uttered a derogatory remark about J.C.

Constable Nip overheard a conversation between J.C. and his girlfriend. J.C. was asking his girlfriend to check with a cousin of his, a police officer, about the entry into the apartment. When informed of this by Constable Nip, Constable Heaton became visibly upset and at that point informed J.C. that he was under arrest for possession of the Schedule 2 drug (marijuana), obstruct a police officer and resisting arrest.

Constable Heaton escorted J.C. out of the apartment to his cruiser. At this time J.C.'s mother approached the cruiser and questioned why her son was in the cruiser. Constable Heaton indicated that he "didn't have

time for this and released J.C. on a promise to appear.”

After telling J.C. he was under arrest, Constable Heaton handcuffed him. J.C. complained that the handcuffs were too tight. J.C. stated that Constable Heaton twisted his wrists as he escorted him out of the apartment, that the application of the handcuffs and his treatment of J.C. caused injury to both wrists.

After a review of the circumstances the Ottawa Police Service Professional Standards requested that the Federal Crown review the entire matter. After the Federal Crown reviewed the circumstances all charges were withdrawn.

Count 6 (Unlawful Exercise of Authority) and Count 8 (Discreditable Conduct) relate to an incident involving S.P. on December 23<sup>rd</sup>, 2008.

On December 23<sup>rd</sup>, 2008, Constable Heaton, Constable Kubiseski, and two Security officers from Ottawa Community Housing attended at an apartment unit in the west end of Ottawa. Constable Heaton knocked on the apartment door. The tenant, P.W. answered the door and invited the group to enter the apartment. Once inside the unit the police officers noticed one S.P. in the bedroom. S.P. was attempting to hide drugs and paraphernalia when the officers entered the apartment. Constable Heaton entered the bedroom and closed the door. He then searched S.P. and found pieces of crack cocaine and a number of Oxycontin pills. He also found crack cocaine pipes and some cash.

In his report, one of the Security officers indicated that Constable Heaton informed S.P. that he was under arrest and handcuffed him. Constable Heaton made no notes of the arrest of S.P. In his interview with Professional Standards, Constable Heaton stated that he had little recollection of the incident, nor did he recall arresting S.P.

In a report prepared by a Security officer with Ottawa Community Housing, it is recorded that the Ottawa Police Service officer flushed the drugs down the toilet.

In his interview, Constable Heaton indicated that he had flushed drugs in the past and also indicated that, in the past, he had broken and sometimes flushed them or broke them and threw the pieces into the garbage. After flushing the drugs and disposing of the drug paraphernalia, Constable Heaton removed the handcuffs. Constable Heaton and Constable Kubiseski, together with the Security officers, then left the apartment.

There were no notations in the notes of Constable Heaton regarding his attendance at this residence on December 22/23<sup>rd</sup>.

Count 9 (Unlawful or Unnecessary Exercise of Authority) relates to an incident involving H.S. on January 4<sup>th</sup>, 2010.

At approximately midnight on the evening of January 4<sup>th</sup>, 2010, Constable Heaton attended at an apartment in the west end of Ottawa with Constable Michael Bellefeuille and two Security officers from

Ottawa Community Housing. The tenant of the unit was C.S who, according to Constable Heaton, had given the constable permission to enter his apartment and “look for people.” The arrangement was made because C.S’s apartment was often overrun as a flophouse. C.S. was not at the apartment at the time in question.

On the day in question, one of the group knocked on the apartment door, which was answered by N.P. a cousin of the tenant. The police officers and the Security officers were invited into the apartment at that time. The police officers searched the apartment. Constable Bellefeuille located a female crouched under the kitchen sink and informed Constable Heaton of this fact. The female was one H.S. who was known to Constable Heaton as a sex trade worker and a drug addict.

Constable Heaton told the female to come out from under the sink, however she did not move immediately. He advised the investigators who took the statement from him that he warned the female that if she did not come out with her hands visible, he would pepper spray her. When she did not move immediately Constable Heaton sprayed H.S. In his interview, Constable Heaton admitted that he did not know for sure that the female under the sink was, in fact, H.S.

Counts 10 through 26 (Discreditable Conduct) relate to unauthorized use of C.P.I.C.

The Professional Standards investigators assigned the complaint

conducted a detailed review of the Canadian Police Information Centre (CPIC) logs for the period May of 2008 to February of 2010. This review revealed a total of 17 (Seventeen) CPIC queries made by Constable Keith Heaton for non-employment related reasons. No incident report or intelligence information was submitted regarding the parties queried.

A police officer lives and works as a member of the community. They are, essentially, a civilian in uniform but they are expected to uphold standards higher than those of many other sections of the community. Their personal conduct in all matters, both on and off duty, **must** be above reproach. That expectation speaks to their general charge and becomes part of the public trust in that violations of the law by police officers create more devastation and widespread impact than would the same, or similar, actions by the average citizen.

Police officers must be honest and establish in the community a reputation for uprightness and fair dealing that puts them beyond the reach of criticism and media attention which could bring disrepute to the Service.

Without this high standard of conduct, on and off-duty, they would lose the confidence of the community and, without that confidence and trust, the Police Service would never be fully effective.

The general public must be assured that police officers will strive to set

the example for those in their community. Anything short of this will be seen as a contradiction and serve no purpose other than to undermine the efforts of all police officers and the explicit goals of the Service. An informed police officer possesses a sense of responsibility to the Service of which he/she is a member and to the community they serve.

Police Constable Heaton must be made aware that officers must conduct themselves in such an exemplary way to avoid discrediting, or compromising, the image of their Police Service. The standards of conduct and control expected of a police officer are high, and rightly so. A police officer is empowered by law with extraordinary powers of arrest and detention. An officer must be judicial in its application and be ever alert to any abuse or perceptions of abuse. Quite simply, if we are to think of policing as a profession then we must assume the level of responsibility that a professional life entails. The profession should, and does, require more from its members than expected from the general community.

Police Constable Heaton's conduct, with respect to the three investigations, was extremely unprofessional to say the least, and a humiliation to his profession.

With respect to the unlawful use of CPIC, Police Constable Heaton, who should know better, must be reminded that the use of CPIC be **solely reserved for official police investigations** and must **never** be used for personal reasons.



Fundamental to the successful functioning of the CPIC system is a strong sense of trust; trust that the system is there to assist police officers in pursuit of their official duties; and trust that no police officer will purposely or willfully misuse the system for any other reason.

I accept the Guilty plea based on the facts relating to this case. The facts stated and agreed to (Exhibit Number 7) provide clear and convincing evidence of the alleged misconduct strongly supporting Constable Heaton's plea of Guilty.

If not for his Guilty plea, which I take into account as a mitigating factor, together with (Exhibit Number 9) the report of Doctor David J. Ross; and (Exhibit Number 10) the report of Doctor Peter Cunniffe, which outline social and personal life situations which may have impacted Constable Heaton's behaviour, can only lend an explanation of, as opposed to excusing, the actions of this officer.

The seriousness of the offences is, of course, the primary consideration. However, the Tribunal is mindful of the general guidelines and considerations for sentencing; the history of the officer and upon any other relevant and specific circumstances upon which a finding can be made.

In addition to the Agreed Statement of Facts submitted at this Hearing, it was also agreed (Exhibit Number 8) that there was a joint position from Defence counsel and the Service prosecutor on penalty.

I am content to confirm the position put forth by counsel and assess a penalty of **GRADATION IN RANK TO THIRD-CLASS CONSTABLE FOR A PERIOD OF SIX (6) MONTHS.**

With a satisfactory Performance Review (**no more than two categories with “needs improvement”**) he will be moved up to **SECOND-CLASS CONSTABLE FOR A PERIOD OF SIX (6) MONTHS.**

At the end of this six-month period, Police Constable Heaton will return to **FIRST-CLASS CONSTABLE** provided a successful completion of all training and satisfactory Performance Review as outlined in **Exhibit Number 8, during the twelve months of gradation.**

### **REMEDIAL TRAINING**

Constable Heaton will be expected to participate, and successfully complete, the following training:

Advance Patrol Training

Use of Force Training

CPIC/RMS Training

Attendance at the Professional Development Centre for continued training in such areas as Search and Seizure; Arrest Authorities; Investigative Detention; Warrants; Criminal Offences and Arrest

Authorities; the Criminal Code of Canada, and any other training as identified by instructors.

This training will be done at regular intervals throughout the twelve-month period.

Training in the Ottawa Police Service Policies and Procedures, including Report and Note-Taking; Drug Investigations; Arrest; Use of Force; Search Warrants; Policing Fundamentals, Federal and Provincial Statutes.

Constable Heaton will be assigned to report to a Sergeant from the Professional Development Centre (Academics) for ongoing training at regular intervals during the twelve-month period. The assigned Sergeant will be the person of contact there. Together with a representative from the Professional Standards section, the Sergeant will develop a learning plan and schedule. This schedule will be provided to Constable Heaton and his management team. The Sergeant will monitor and document the progress throughout. These results will be reported back to the Professional Standards section and Labour Relations.

### **SUPERVISED TRAINING**

For a period of twelve (12) months (which begins upon re-qualification of his Use of Force), Constable Heaton will be assigned to West Division, C, E and F rotation. He will remain on his assigned platoon until successful

completion and positive Performance reviews.

Constable Heaton will be assigned to two/three Training Officers (to be determined by Professional Standards section and West Division Patrol Inspector); that he must ride with them for all shifts during the twelve-month period. The supervisory team on the platoon will monitor his daily progress. The Training Officers will monitor and supervise Constable Heaton. They will be considered a “doubled-unit” for the entire training period.

The Training Officers will complete ongoing evaluations throughout this time. His chain of command and Professional Standards will develop the specific format and details. He/She will be responsible for the Performance Evaluations at the six-month and twelve-month points. The supervisors of the platoon will be receiving a copy of these evaluations and forwarding them to Professional Standards Section and Labour Relations.

Every two weeks Constable Heaton will meet with his Sergeant; and with his Staff Sergeant every three weeks. There will also be a meeting with his Patrol Inspector every six weeks. These meetings are to discuss his progress and provide feedback and they will be documented.

Every six weeks the Patrol Inspector will provide an update and the evaluations to the Professional Standards Section.

Every four months there will be a case conference which will include the

Training Officers, Supervisors, Labour Relations and Professional Standards Section, among others, to monitor progress, assess training needs and deal with any issues which may arise.

During this time period, Constable Heaton is not to be on independent patrol. He is to remain supervised only by his platoon. He is to use any leave (Annual or Statutory holidays etc.) as per usual.

Constable Heaton will not participate in Paid Duties (as per policy.) He will not be allowed to participate in any job shadows or other special duties.

Should Constable Heaton be unsuccessful in any step of his re-integration process, it must be identified along with the opportunity to redress the issue. If his performance does not improve, Labour Relations will be consulted immediately to address how to resolve the issue.

In the event of an unsatisfactory or unsuccessful completion of these assignments and/or unsatisfactory performance reviews, Constable Heaton may be subject to further charges under the Police Services Act and/or other discipline procedures up to and including, dismissal.

Handwritten signature of Terence Kelly, with the word "Ret" written next to it.

Terence Kelly  
Deputy Chief (Retired)  
York Regional Police  
Hearing Officer