

Windsor Police Service Discipline Hearing
In the Matter of Ontario Regulation 268/10
Made Under The Police Services Act, R.S.O. 1997

And Amendments thereto:

And

In The Matter Of

The Windsor Police Service

And

Staff Sergeant Paul Bridgeman #1777
Staff Sergeant Patrick Keane #1781

Charge: Discreditable Conduct

Before:

Superintendent (Retired) M.P.B. Elbers
Ontario Provincial Police Adjudicator

Appearances:

Counsel for the Prosecution: Mr. Bruce Brown
Windsor Police Service

Counsel for the Defense: Mr. Glen Donald (Staff Sergeant Keane)
Mr. Andrew McKay (Staff Sergeant Bridgeman)
Windsor Police Association

Public Complainant: Dr. Tyceer Abouhassan (Not represented by Counsel)
(Attended Hearing only to give evidence)

Background:

Staff Sergeant Keane on April 27, 2010 and Staff Sergeant Paul Bridgeman on April 30, 2010 acted in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the Windsor Police Service by offering an inducement to Mr. Anthony Barile, a lawyer representing the interests of Dr. Tyceer Abouhassan, to dissuade the victim Dr. Abouhassan from exercising his lawful right to pursue a complaint against a Windsor police officer, Detective David Van Buskirk. This complaint was as a result of Dr. Abouhassan on April 22, 2010 being served a summons indicating he was being charged with the Criminal offence of "Assault a Peace Officer." Subsequent conversations were held with Mr. Barile in person and over the phone by the Windsor police officers. Mr. Barile had been retained by Dr. Abouhassan at the time of these conversations.

Evidence:

This Hearing commenced on October 24, 2011 in Windsor, Ontario and concluded on January 10, 2012. Five (5) days of testimony was heard by this Tribunal. Eight (8) witnesses testified at this Hearing with nineteen (19) exhibits being tendered.

Bernie Mueller, an investigator with the Office of the Independent Police Review Director with one (1) year service and thirty two (32) years prior policing experience with Hamilton Police Service, retiring as a Staff Sergeant, testified he was investigating this complaint along with Patrick Sayer.

Mueller testified that Dr. Abouhassan had three issues with the Windsor Police Service that he wanted investigated by the OIPRD. Mueller testified these issues were:

1. *Dr. Abouhassan felt there was a large number of officers at the hospital when he was admitted and the purpose of the presence of these officers were to intimidate him.*
2. *Dr. Abouhassan believed his injuries should have triggered the involvement of the Special Investigations Unit and that the Windsor Police Service did not notify the SIU.*
3. *The two phone calls that Dr. Abouhassan is aware that was made to his lawyer Tony Barile on April 26 and 30, 2010 by members of the Windsor Police Service.*

Mr. Mueller testified that issues one and two were not substantiated through their investigation. Mueller did testify that the basis of issue #3 was why this Hearing was commenced. Mueller testified that on April 26, 2010 Staff Sergeant Keane called Tony Barile to suggest that the Doctors Assault Police charge could be withdrawn if the doctor dropped the matter. On April 30, 2010 Staff Sergeant Bridgeman made a similar call to Tony Barile advising that if the Doctor did not support criminal charges against the police officer his Assault Police charge would be dropped. Tony Barile relayed both messages to the Doctor who advised him to refuse the offers.

Audio tapes, Exhibits #5 and #6 were played at the Hearing of the interviews conducted by the OIPRD and the subject officers, Staff Sergeant Keane and Bridgeman.

Mueller testified that he interviewed Staff Sergeant Bridgeman first and then spoke to Mr. Tony Barile. It was during the interview with Barile that he learned of the disclosed conversations with the offer. Barile advised the OIPRD investigators that he made notes of the discussions and this is where it was learned that Staff Sergeant Keane had contacted Mr. Barile.

Mueller testified that due to the inconsistencies of the officers in regards to their investigation there were reasonable grounds to suggest that the offers were made to Mr. Barile.

The inconsistency issue was explored in depth by Counsel and it was clear through the cross examination that interpretation of meetings between Mr. Barile and the Police officers, and Mr. Barile and Dr. Abouhassan played a huge part in the determination of this case. Defense Counsel spent a great deal of time with Mr. Mueller on the notes of Mr. Barile and the accuracy of these notes.

Dr. Tyceer Abouhassan testified that he is a medical doctor employed at the Jackson Park Medical Center. He testified that his lawyer assisted him in completing the complaint form against Staff Sergeant's Bridgeman and Keane.

He testified that on April 22, 2010 an altercation took place between Detective Van Buskirk and himself which resulted in injuries to himself. He contacted his friend a lawyer, Anthony Barile to assist him with this situation that he faced. He was charged with Assault Police Officer. Detective Macmillan, another Windsor police officer was investigating the incident that took place in Jackson Park with he and Van Buskirk.

Abouhassan testified that he spoke with Tony Barile after he got out of the hospital after having emergency surgery on his retina and Mr. Barile advised him that a possible deal could have his charges dropped. Barile also advised him at a later time and after listening to an audio tape, that another officer was offering the same deal. He felt he was being bullied and retained Julian Falconer from Toronto who assisted him in preparing the complaint form to OIPRD. Dr. Abouhassan did not make any notes or have any contact with the Subject Officers.

Mr. Anthony Barile testified that he is a lawyer practicing in Windsor in the field of criminal and immigration law. He was retained by Dr. Abouhassan in April of 2010. He testified that Dr. Abouhassan attended his office as a result of an altercation with a Windsor Police Officer and as a result Abouhassan was charged with Assault Police Officer. Barile testified that he had made notes and there had been no alterations or deletions. He testified he does this as a matter of course to assist him with his time allocation on his files.

Barile testified that he had a face to face meeting with OIPRD investigators on December 13, 2010. Barile testified that there were solicitor /client issues and until the OIPRD received consent from Abouhassan he could not discuss the case. Eventually this was received and a twenty minute telephone interview was conducted on January 6, 2011.

Mr. Barile testified that he met Dr. Abouhassan in his office on April 24, 2010. On April 26, 2010 Barile received a voice mail message from Staff Sergeant Keane indicating he wished to speak with him about the matter. Barile returned the call to Keane and a meeting was arranged for the lobby of the Court House later the same day. Barile testified that Keane made it clear to him that Bridgeman was away on vacation and that as a favour to Bridgeman, Keane wished to talk about the Abouhassan matter.

Barile testified they met later that morning at the coffee counter in the lobby of the Justice building. It was a five minute meeting. Barile testified that the nature of the conversation with Keane was that if Dr. Abouhassan did not file charges against Van Buskirk the charges against Abouhassan will be withdrawn. Keane made it abundantly clear that Abouhassan could still pursue civil action for his injuries against Van Buskirk and the Windsor Police Department.

Barile testified he returned to office and made his notes. Barile testified he later met on April 27, 2010 with Dr. Abouhassan and gave him his version of the meeting and advised Abouhassan to decline the offer. Barile testified later on the 27th he advised Keane that Abouhassan will be filing a formal complaint against Det. Van Buskirk.

Barile testified that on April 29, 2010 he received a phone call from Staff Sergeant Bridgeman. Bridgeman advised Barile that there was a video tape of the altercation between Abouhassan and Van Buskirk and it was available at the Windsor Police Headquarters. Barile testified he attended the station and met with Bridgeman and Det. MacMillan who was identified to him as the officer investigating the Abouhassan/Van Buskirk matter. Barile viewed the tape with the officers. Barile testified that the officers were attempting to sell him on the point that Van Buskirk was exonerated by the video tape.

On Friday April 30, 2010, Barile testified that he set up a meeting with Bridgeman at the coffee shop in the Court building after Bridgeman contacted him by phone. He testified that he did not make notes, however it was the same discussion that Keane had had with Barile on the earlier date.

Barile testified that it was not unusual to have these types of discussions with members of the police department. He testified that he has had several dozen conversations over his twenty four years practicing law in Windsor.

Inspector Facciola #4041, officer in charge of the Professional Standards Unit, Inspector John McGuire #7574, officer in charge of Major Crime and Mr. Edward Parent, Administrator of the Windsor Police Association all testified to be in attendance on March 3, 2011 at the Windsor Casino Hotel where the OIPRD investigators interviewed Staff Sergeant Keane. The essence of their testimony was to criticize the OIPRD investigator Bernie Mueller for his comment of how Hamilton Police Service, the service Mueller retired from, would have handled the complaint.

Staff Sergeant Bridgeman testified that he is a twenty six (26) year member of the Windsor Police Service. He is the senior Staff Sergeant in the Investigations Branch. Bridgeman is the assigning member for cases that require investigative expertise. Bridgeman was the assigning officer for the Abouhassan file.

He advised that the file was given to his most experienced officer Det. Kent McMillan with the comments "You treat this file as if you would any other file." This was completed on April 23, 2010. Later that afternoon Det. McMillan located a video tape of the altercation. Bridgeman contacted Mr. Barile that afternoon, however did not receive a return call from Barile. They observed the video and attempted to get a statement from Abouhassan. McMillan was advised by Abouhassan to contact his lawyer Tony Barile. Barile advised McMillan that no statement would be given at this time.

Bridgeman testified that later on April 24, 2010, Barile contacted him and they discussed the video and a possible statement from his client. Bridgeman advised Barile that he would be on scheduled days off from April 25th thru 28th. Bridgeman advised Barile to contact him on the 29th when there is a break in court.

Tony Barile attended the Windsor police Headquarters 3rd floor Investigative floor and viewed the tape with McMillan and me at about 10.30AM. A copy of the tape was provided to him he testified. Bridgeman testified they viewed the tape approximately ten (10) times and Bridgeman was of the belief that the offence of assault police officer had been committed.

Bridgeman testified that on April 30, 2010 he was scheduled to attend mandatory first aid training at the Windsor Police training center. While at the training center, Bridgeman was advised to meet Barile at noon for a further meeting. Bridgeman testified he was dressed in blue jeans and a tee shirt. He testified he drove to the station and saw Barile while he was parking his truck. He met Barile at the front of the police station and they spoke outside.

Barile advised him that Abouhassan was not going to give a statement. Bridgeman testified that he told Barile that without any evidence to the contrary they would take to the Crown. There was some discussion about an 810 or some other resolution.

Bridgeman testified that Barile contacted him on May 1st or 2nd to advise him that dr. Abouhassan had contacted a law firm in Toronto and were going to go ahead with charges against Det. Van Buskirk.

Bridgeman also testified that his area and Staff Sergeant Keane's division are separate and there is no crossover. There is no overlap. Bridgeman also testified that there was no discussion between himself and Keane on this file, and Keane was not filling in for him while he was on scheduled days off.

Exhibits seventeen (17) and eighteen (18) were entered as notes of Staff Sergeant Bridgeman relating to this file.

Staff Sergeant Patrick Keane testified that has been a member of the Windsor Police Service for twenty seven (27) years. He has held the rank of staff Sergeant for five (5) years. He is presently in charge of the Special Victims Unit. He testified the unit focuses their investigations on three areas of concern; domestic violence, sexual offences and child abuse.

Keane testified that when an investigation is received by the Service, there is an officer in charges who assigns the investigation. He testified that you do not tread on someone else's investigation unless you are invited to, or you have some substantial information to bring to that case.

Keane testified that on April 23, 2010, Inspector John McQuire attended his office and updated him an incident in Jackson Park. He testified it was two separate incidents, and that one fell under the Investigations Branch which involved a Windsor police officer and Dr. Abouhassan and the other matter involved an unknown party who had approached a child in the park which fell under the Special Victims Unit.

Keane testified that he assigned an officer to identify the person in the park who had approached the child. The incident with the police officer and the doctor was not his mandate.

Keane testified that Inspector McQuire relayed to him that Bridgeman was handling the interaction between the police officer and the doctor, thereby fulfilling the mandate of the Investigations Branch and that Keane's office would deal with the second incident at the park, identifying who the unknown person was that made contact with the child.

Keane testified that the investigation continued throughout the weekend. On Monday, detectives on the case advised Keane they had identified the person in question. He testified that Dr. Abouhassan was still a person of interest as he was involved in the park incident; however, he may still have been a witness to the SVU investigation. Keane testified he decided to call his longtime friend Mr. Barile to make arrangements to see him.

Arrangements were subsequently made to meet with him in the coffee shop at the Court building. Keane testified when they met, Barile relayed to him the connection to himself and Abouhassan. As a result of the conversation Keane made the determination that Dr. Abouhassan had no involvement in the predatory action of an individual at the park and was also satisfied that he was not a witness to anything at the park.

Keane testified that Barile then began to speak about the incident that fell under Bridgeman's command. Barile testified that Barile advised him that the doctor was charged with Assault Police Officer. Keane testified that Barile told him that Abouhassan was blind. Keane then advised Barile the significance of that statement. Keane testified that he advised Barile that his client had the opportunity to remove himself from the criminal charges.

Keane testified he told Barile he could explore this with Bridgeman however on an informal resolution no charges would be laid, however it would appear counter charges were evident. Keane testified that it was clear that Barile knew it was not his case and that Bridgeman was the officer in charge. Keane testified they spoke for five (5) to ten (10) minutes. Keane did not make any notes of the meeting.

Keane testified that the next morning he received a call from Barile who advised him that Abouhassan was going to charge the officer and once again he advised Barile that the investigation was under the care of Staff Sergeant Bridgeman.

Findings:

Staff Sergeant Patrick Keane # 1781 and Staff Sergeant Paul Bridgeman #1777 are before the Tribunal charged with Discreditable Conduct. The Hearing generated five days of evidence.

Submissions were heard on day five of the Hearing by Mr. Bruce Brown, representing the Windsor Police Service, Mr. Glen Donald, representing Staff Sergeant Keane and Mr. Andrew McKay, representing Staff Sergeant Bridgeman. Dr. Abouhassan, the Public Complainant did not have legal representation, nor did he make a submission. Counsel have provided me with Exhibit # 19 to assist the Tribunal in the decision making process.

I have considered the case supplied to me by Counsel. I have read the case supplied to the Tribunal and while not always on point have found it instructive in my deliberation.

In Ontario, Legal Aspects of Policing (pages 6-11) provides that a police officer commits an offence against discipline by acting “in a disorderly manner prejudicial to discipline or likely to bring discredit upon the reputation of the police force”.

The most recent application of the test for discreditable conduct in Ontario confirms that the test is “primarily an objective one” and that the conduct must be measured against the “reasonable expectations of the community”.

The Ontario Civilian Commission on Police Services has articulated the following approach regarding the meaning of “likely” to bring discredit upon the reputation of the police force:

The measure used to determine whether conduct has been discreditable is the extent of the potential damage to the reputation and image of the service should the action become public knowledge.

Dr. Abouhassan is the victim of an altercation with a police officer employed by the City of Windsor which took place in Jackson Park. As a result of his injuries he was hospitalized and charged by the Windsor Police Service with Assault Peace Officer and released on a Promise to Appear. His evidence is the conversations that were relayed to him by his lawyer that were purported to have taken place with the subject officers. That is the extent of the evidence that he can render in this particular allegation against Staff Sergeant's Bridgeman and Keane. Dr. Abouhassan retained the services of his good friend Mr. Anthony Barile, who combined with the two Staff Sergeants become the central figures in this investigation conducted by members of the Office of the Independent Review Director.

Notes, interpretations of people's actions and words are central to this investigation and are key to a determination of guilt in this case.

Notes in this case can be easily described in three ways:

1. Lack of notes
2. Inconsistent notes
3. Notes that are not made in a timely fashion

Mr. Anthony Barile is a good and close friend of Dr. Abouhassan the victim. He has a twenty five year friendship, dating back to school days with Staff Sergeant Keane and has known Staff Sergeant Bridgeman for a long time due to police investigations and these two officers are the subject officers.

It certainly places Mr. Barile in a tough position. The evidence as it unfolded in this Tribunal was confusing at times. Dates and locations were met with uncertainty. The spoken word appeared to have many interpretations.

I believe that Mr. Barile, Staff Sergeant Bridgeman and Keane through their testimony attempted to paint that clear picture for the trier of fact in this case. They were the main characters that this Discreditable Conduct charge centered around on the dates in question.

As the trier of fact, my job is to determine how the version of events preferred by these gentlemen fits with the evidence that I have received during this Hearing.

As outlined by Mr. Donald and Mr. McKay, Counsel for the two officers, meetings between police officers and Defense counsel are common place in the City of Windsor. Mr. Barile has also acknowledged this fact and went further in his testimony to say he did not believe anything happened in these meetings to make it unethical.

Staff Sergeant Bridgeman is the officer in charge of the investigations branch. He assigned a member of his team, Det. MacMillan to investigate the altercation between Dr. Abouhassan and Det. Van Buskirk.

Staff Sergeant Keane is the officer in charge of the Special Victims Unit. His office had carriage of the investigation of the unknown prowler in the park that made contact with the child. Staff Sergeant Keane initiated contact with Mr. Barile. The reason this contact was made, as testified by Keane, was to rule out Dr. Abouhassan as having anything to do with the attempted abduction in Jackson Park. He believed a direct conversation with Barile would expedite his office's investigation and also assist in ruling out Dr. Abouhassan and possibly the doctor might have some information to assist with their case.

I find that Staff Sergeant Keane after receiving the information in regards to the investigation being conducted by his unit entered an area that was delicate due to the assertion that he presented options to Mr. Barile with how do deal with his case. This, I believe was due to the friendship that these two persons had with one another.

I do not believe, nor do I find that this conversation that they were pursuing at the time breached any police misconduct.

Staff Sergeant Keane was acting alone on behalf of his unit. There was no discussion between Staff Sergeant Bridgeman and himself prior to this meeting. It was also unknown to Keane that Bridgeman and or MacMillan had attempted to speak to Dr. Abouhassan.

What is distressing about this meeting is that Staff Sergeant Keane has not made a notation of any kind in his memo book with regards to this discussion with Mr. Barile.

What is important listening to the evidence of Staff Sergeant Keane is that he made it abundantly clear to Mr. Barile that the investigation with the Doctor and Van Buskirk was under the guidance of Staff Sergeant Bridgeman.

As I have stated earlier in my decision the conversations had between the relevant parties are a matter of interpretation. Mr. Barile conveyed to his client the interpretation that he believed that Keane was acting for Bridgeman and if the doctor did not pursue charges against the officer a resolution could be obtained.

Keane was not acting for Bridgeman, and the doctor rejected the proposed offer as outlined to him by his counsel. Mr. Barile at numerous times in his evidence concluded that the meeting between himself and Keane was ethical. I find that had Mr. Barile believed it was unethical, he would have made the appropriate calls to superiors within the Windsor Police Service to outline his concerns.

Mr. Barile did make notes of the meeting however he could not say when the notes were completed. He certainly indicated they were placed in his time log so that he would be able to account for his dealings on this file with his client, Dr. Abouhassan.

The evidence at the Hearing was certainly more detailed than either the statements given by the two parties, or what notes were made of the meeting.

Staff Sergeant Bridgeman also had a meeting with Mr. Barile. This meeting took place on April 30, 2010. Mr. Barile states it happened at the same location he met Staff Sergeant Keane. Barile testifies it was at the coffee bar in the Justice building and Bridgeman testifies it took place outside in front of Windsor Police Headquarters. What was agreed by the relevant parties was that a meeting took place. I do find that a meeting took place on April 30, 2010.

Staff Sergeant Bridgeman contacted Mr. Barile on April 30, 2010 according to the testimony of Mr. Barile and the meeting was to take place at the coffee shop of the Justice building. The meeting concluded according to Barile with the same information that Staff Sergeant Keane had relayed to him regarding Dr. Abouhassan, however, Barile did not make notes of this meeting. Staff Sergeant's Bridgeman's notes as entered as Exhibits #17 and #18 can be considered as dismal and as he stated in this Hearing as "embarrassing." That statement I would concur with whole heartedly.

Bridgeman had contacted Mr. Baril on April 24, 2010 to ascertain if his client was willing to give a statement. Staff Sergeant Bridgeman has this call noted, Barile does not. Baril's notes were entered as Exhibit #12 in this proceeding.

I note that Mr. Baril testified that he made relevant and accurate notes relevant to his actions in this case. As with the notes, or lack thereof of the officers during cross examination, Baril admitted to omissions to Mr. McKay, counsel to Staff Sergeant Bridgeman.

Baril had noted that Bridgeman was on holidays when he spoke to Staff Sergeant Keane. Bridgeman was on days off. Keane was not speaking to him on Bridgeman's behalf. Keane was speaking to Baril in relation to the attempted abduction. He testified that Keane made it clear he was speaking on Bridgeman's behalf. Evidence was heard and I have concluded that Staff Sergeant Keane was following up on his own file and was not in any way substituting himself into the investigation under the control of Bridgeman. Bridgeman was on scheduled days off. Testimony revealed the two areas of command operate as separate silos from one another.

During cross examination by Mr. McKay, Baril testified his meeting on April 30, 2010 as substantially the same conversation as held with Keane. The troubling fact with this assertion is that there are no notes and Bridgeman asserts they met outside of the Windsor Police Service due to the fact he was at the Training facility attending to mandatory training. He testifies he attended the meeting in jeans and observed Baril walking down the street to the Headquarters building. Mr. Baril or Staff Sergeant Bridgeman made no specific notation of the topic of discussion on this meeting. Only notes made were the location of which both differ on their location.

The jest of the investigation concerning these two officers relies heavily on the testimony of Mr. Baril. He was counsel acting for his client Dr. Abouhassan. Mr. Baril is a well-respected member of the Windsor bar and is known to the Windsor Police Service and the two officers subject to these charges. There is no animus between the lawyer, Mr. Baril and Staff Sergeants Bridgeman and Keane that is known to this Tribunal. Mr. Baril was conducting himself in a professional matter relating to his clients interest. Staff Sergeant Bridgeman and Keane were also acting professionally in attempting to conclude their own specific investigations that members of their command were conducting in relation to the Abouhassan/Van Buskirk altercation.

Mr. Baril concluded that all meetings with the officers were ethical. I have not received any conclusive proof that proves that statement to be in error. The officers are charged on April 27, 2010 as it relates to Staff Sergeant Keane, and April 30, 2010 as it relates to Staff Sergeant Bridgeman that they offered an inducement to dissuade the victim of crime from exercising their lawful right to submit a complaint against a police officer thereby bringing discredit upon the Windsor Police Service contrary to section 2(1)(a)(xi) of the Code of Conduct.

I find the evidence at this proceeding does not meet the standard of clear and convincing evidence to make a finding of guilt.

I believe the Windsor Police Service should be enacting policy to prevent this situation from arising again. The Service ought to be taking a hands off approach when a member of their Service is charged criminally or under the Police Services Act and no meetings should take place with Defense Counsel unless a senior member of the Service and either the Crown Attorney or the Prosecutor of the Police Services Act are present. These meetings must be recorded in some way that all agree what has taken place to preserve the integrity of the investigation and the transparency of the organization. A senior member of the organization in my mind is one of Superintendent or higher.

The accepted quality of the evidence that is required to be met in the prosecution of matters such as these is *clear and convincing evidence*, which has been described as:

“weighty, cogent and reliable evidence upon which a trier of fact, acting with care and caution, can come to a reasonable conclusion that the officer is guilty of misconduct.”


The prosecution has not met its burden of proving these allegations to me through clear and convincing evidence.

Decision relating to Staff Sergeant Paul Bridgeman

I find the prosecution has failed to prove its case on clear and convincing evidence and I find Staff Sergeant Paul Bridgeman #1777 NOT GUILTY of the charge of Discreditable Conduct.

Decision relating to Staff Sergeant Patrick Keane

I find the prosecution has failed to prove its case on clear and convincing evidence and I find Staff Sergeant Patrick Keane #1781 NOT GUILTY of the charge of Discreditable Conduct.


M.P.B. Elbers, Superintendent
(Retired)

March 07, 2012
Date