

**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 KYLE KNEESHAW #13007**

**CHARGE: DISCREDITABLE CONDUCT**

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**DISPOSITION WITH REASONS**

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**Before:** Superintendent Greg Walton  
Ontario Provincial Police

**Appearances:**

**Counsel for the Prosecution:** Ms. Jordana Joseph  
MCSCS

**Counsel for the Defence:** Mr. Michael Miller  
Ontario Provincial Police Association

**Public Complainant:** Ms. Julie Morton

**Counsel for the Complainant:** Ms. Marie Therese Habib  
Sokoloff Personal Injury Law Office

**Hearing Date:** April 25 and 26, 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**

### **Allegation of Misconduct**

Provincial Constable (PC) Kyle Kneeshaw stands charged with discreditable conduct in that he did act in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the Ontario Provincial Police (OPP), contrary to section 2(1)(a)(xi) of the Code of Conduct contained in the Schedule to Ontario Reg. 268/10, as amended. The edited particulars for PC Kneeshaw are as follows:

- On Monday November 3, 2014 at approximately 5:14 pm PC Kneeshaw was on duty and responded to a 911 call involving a possible impaired driver travelling on the 17<sup>th</sup> Side Road of New Tecumseth.
- It is alleged PC Kneeshaw drove a fully marked black and white OPP ford Explorer equipped with emergency lighting eastbound on the 14<sup>th</sup> Line at speeds of 153 km/h in a posted 60 km/h zone narrowly avoiding a head-on collision with a westbound car on a bridge and struck a vehicle stopped at a laneway entrance and an on-coming van.
- PC Kneeshaw failed to operate the OPP vehicle in a manner demonstrating legal, safe and appropriate driving practices in keeping with public safety.
- PC Kneeshaw knew or ought to have known his actions were discreditable.

### **Representation**

In this matter, Mr. Miller represented PC Kneeshaw, Ms. Joseph represented the OPP and the complainant Julie Morton was represented by Ms. Marie Therese Habib.

### **Plea**

On April 25, 2016 PC Kneeshaw pleaded guilty and was found guilty as charged.

### **Decision**

After considering the submissions and examining the exhibits, I order PC Kneeshaw to forfeit 100 hours. My reasons for this are as follows:

## **PART II: THE HEARING**

### **Exhibits**

The following exhibits were tendered during the hearing:

- Exhibit 8 : Agreed Statement of Facts
- Exhibit 9 : Court Transcript April 29, 2015
- Exhibit 10 A: Photo of damaged Honda Accord
- Exhibit 10 B: Photo of damaged OPP cruiser 1-610
- Exhibit 10 C: Photo of damaged Dodge Caravan
- Exhibit 10 D: Photo of damaged Dodge Caravan
- Exhibit 11: Newspaper clippings, 12 pages
- Exhibit 12: Driver Competency Assessment
- Exhibit 13: Career Profile
- Exhibit 14 A: Performance Learning Development Plan 2014-2015
- Exhibit 14 B: Performance Learning Development Plan 2013-2014
- Exhibit 14 C: Performance Learning Development Plan 2012-2013
- Exhibit 14 D: Performance Learning Development Plan 2011-2012
- Exhibit 14 E: Performance Learning Development Plan 2010-2011
- Exhibit 15: OPP Orders Section 6.16.4 OPP vehicles
- Exhibit 16 A: OPP Vehicle Collision memo dated November 19, 2009
- Exhibit 16 B: OPP Vehicle Collision memo dated February 10, 2010
- Exhibit 16 C: OPP Vehicle Collision memo dated August 4, 2009
- Exhibit 17: *OPP v. Baker*, June 8, 2015
- Exhibit 18: *OPP v. Bender*, August 28, 2014
- Exhibit 19: *OPP v. Bingham*, January 11, 2008
- Exhibit 20: Sergeant Tait memorandum April 25, 2016
- Exhibit 21: Staff Sergeant Humber memorandum April 25, 2016
- Exhibit 22: Inspector Cockburn memorandum April 25, 2016

### **Agreed Statement of Facts**

On Monday, November 3, 2014, PC Kneeshaw was assigned to general patrol duties and assigned a fully-marked Ford Explorer SUV police cruiser with full roof emergency lights. At approximately 5:41 pm, a call for service from the Communications Centre was dispatched to Nottawasaga members for a possible impaired driver on Highway 9 at the 17<sup>th</sup> Side-Road of New Tecumseth. At that time, P.C. Kneeshaw was located on Industrial Parkway very close to the Detachment.

P.C. Kneeshaw answered the call for service indicating that he would attend. Information provided was that a complainant had observed the suspect motor vehicle weaving into oncoming traffic. Further information was that the complainant had blocked the vehicle in and that the male

driver had his hands up in the air like he was being arrested. The male was described as impaired or "something is wrong with him." This male was said to be standing outside his vehicle on the 17<sup>th</sup> Side Road north of Highway 9, staggering around and losing his balance. An officer requested that the complainant be told to keep her distance from this male until the police arrived.

P.C. Kneeshaw activated emergency equipment with overhead lights and proceeded eastbound on the 14<sup>th</sup> concession of New Tecumseth from Industrial Parkway. Traffic was light and the road was dry. PC Kneeshaw reached a speed of 153 km/h in a posted 60 km/h zone. PC Kneeshaw came over the crest of a hill at a high rate of speed and observed an eastbound Honda Accord stopped on the road facing eastbound waiting to turn left into a private driveway.

PC Kneeshaw immediately braked hard and moved to the left to avoid the vehicle. PC Kneeshaw observed an approaching westbound Dodge Caravan which was attempting to pull to its right to get out of the way. PC Kneeshaw was unable to come to a stop and at an approximate speed of 77 km/h struck the rear left corner of the eastbound Honda with the right side of his police vehicle. PC Kneeshaw's vehicle then struck the side of the westbound Caravan at an approximate speed of 46 km/h.

The impact caused the left front wheel of the police vehicle to separate causing it to enter the ditch on the south side of the road. The airbags deployed. PC Kneeshaw was able to cut the shoulder restraint and slash the airbag so that he could exit the police vehicle. PC Kneeshaw radioed that he had been in a collision. PC Kneeshaw checked on the other involved motorists. The Dodge Caravan and the police vehicle had sustained significant damage; the Honda Accord sustained comparatively less damage. The drivers of these two vehicles did not appear to have serious injuries.

As a result of the collision, both civilian drivers were taken to Stevenson Memorial Hospital by ambulance. They were treated for what appeared to be minor injuries and released shortly thereafter. In May 2015 the driver of the Honda Accord reported that more significant injuries had surfaced shortly after the accident which she was continuing to deal with on a daily basis. PC Kneeshaw suffered a minor injury to his wrist as a result of the airbag deployment.

PC Kneeshaw pleaded guilty to the offence of fail to turn out to left to avoid a collision, contrary to section 142(1) of the *Highway Traffic Act (HTA)*.

## **Positions on Penalty**

Prosecution, defence counsel and the public complainant jointly proposed a sanction of 100 hours to be forfeited by PC Kneeshaw. In support of their position, they each made submissions with respect to mitigating and aggravating factors. These submissions are incorporated in Part III of this decision.

## **PART III: ANALYSIS AND FINDINGS**

### **Summary of Misconduct**

*On November 3, 2014 PC Kneeshaw was assigned general patrol duties operating a fully marked cruiser equipped with emergency lights. PC Kneeshaw responded to a possible impaired driver and activated the emergency lights. Traveling eastbound, PC Kneeshaw reached a speed of 153 km/h in a posted 60 km/h zone, crested a hill and saw an eastbound Honda Accord stopped to turn left into a private drive and an oncoming westbound Dodge Caravan. PC Kneeshaw moved into the westbound lane to avoid the stopped Accord but struck its left rear corner. PC Kneeshaw's cruiser then struck the westbound Caravan. All three vehicles sustained significant damage and the drivers were injured.*

*PC Kneeshaw was charged and pleaded guilty to the HTA offence of "fail to turn out to left to avoid a collision."*

The particulars of PC Kneeshaw's misconduct are not in dispute. The prosecutor, the public complainant and defence counsel jointly proposed a sanction of 100 hours. It is my responsibility to determine whether their proposal strikes a balance between the expectations of the community, the needs of the organization and fairness to the subject officer.

I will utilize a number of commonly held sanction considerations to guide me. It should be noted that Ms. Habib and Ms. Morton chose not to attend the hearing on April 26, 2016 which was set aside for submissions following PC Kneeshaw's guilty plea on April 25, 2016.

### *Public interest*

The protection of the public is of vital importance to the OPP. One of the fundamental duties of the police is the protection of the public as stated in the *Bingham* case:

Police Services are highly vulnerable to public opinion so their employees are, therefore, subject to a higher standard of conduct in both their personal and professional lives, and rightly so. Any involvement in the violation of the law, on duty or off, violates the public trust and undermines the respect the public has for law and order and those who are sworn to enforce it.

This position is reiterated in the *Baker* case specific to the operation of a police cruiser:

In carrying out their duties a member is accountable for serving with honesty and integrity, in a manner that places public interest above personal interests. When a police officer drives a motor vehicle in an unprofessional manner for any reason, it undermines society's trust in the police and puts the safety of the public at risk.

The public has an interest in ensuring officers are following safe driving practices even when they are responding to emergency calls for service or are in pursuit of an offender. OPP Orders in section 6.16.4 states:

An employee shall operate an OPP vehicle in a manner that demonstrates legal, safe and appropriate driving practices to the general public. Notwithstanding exceptions contained in the HTA and operational requirements, an employee is always accountable for his/her driving behaviour and may be called upon to justify deviation from the law.

PC Kneeshaw failed to operate an OPP vehicle in a manner that demonstrated legal, safe and appropriate driving practices to the general public. In doing so, he jeopardized his own safety and that of the public. While he may have been well intentioned, PC Kneeshaw exercised poor judgement when he drove 93 km/h in excess of the posted limit, over the crest of a grade, on a narrow roadway at dark. As a result, he crashed a police vehicle into two civilian vehicles causing considerable damage and personal injuries.

The actions of PC Kneeshaw undermine the public's confidence in the OPP's ability to safely navigate the roads. The public must recognize that the OPP will not tolerate the complete disregard for public safety on the roads of Ontario.

Public trust can only be viewed as a significant aggravating factor.

#### *Nature and seriousness of the misconduct*

This was a preventable collision. It is acknowledged that PC Kneeshaw was responding to a 911 call where the female complainant had blocked in the car of the suspected impaired driver. When I consider the employment history of PC Kneeshaw it is easy to draw an inference he likely had the good intentions of coming to the aid of a witness; it appears consistent with his character. While PC Kneeshaw has an obligation to attend that call, he also has an obligation to do so in a manner safe to the public. However well intended, PC Kneeshaw chose to operate his vehicle at a rate of speed approaching three times the posted limit. He demonstrated a lack of respect for any other vehicles and any pedestrians who may have been in his path. Clearly, PC Kneeshaw did not take into consideration the blind spot created by the grade of the road combined with the narrow roadway and

the time of day. Consequently, he struck two civilian vehicles and caused personal injury.

The public complainant addressed the tribunal and provided an overview of the incident from her perspective. Although no medical evidence was tendered as an exhibit, Ms. Morton submitted she has not been able to work as a special needs teaching assistant since the time of this incident. She submitted she has been experiencing ongoing medical issues which have adversely affected her marriage and her family. According to her submission, she continues to struggle with her efforts to recover from this collision.

The injuries sustained to any of the involved parties could have been catastrophic considering the rate of PC Kneeshaw's cruiser at 153 km/h.

I find the nature and seriousness of this misconduct to be an aggravating factor.

*Recognition of the seriousness of misconduct and remorse*

PC Kneeshaw pleaded guilty to the HTA offence of failure to turn out to left to avoid a collision. Prosecution acknowledged that PC Kneeshaw demonstrated acceptance of responsibility for his actions by entering that plea and by pleading guilty at this proceeding in conjunction with the agreed statement of facts and the joint penalty submission. Prosecution further noted that although it would appear well into the process, in fact PC Kneeshaw entered his guilty plea at the earliest opportunity due to the delayed delivery of crucial production material.

PC Kneeshaw addressed the tribunal and indicated he continually replays the events of November 3, 2014 in his head. He expressed his remorse and stated he "cannot begin to apologize enough, I'm sorry."

I found PC Kneeshaw's apology sincere. There are a number of comments included in the correspondence submitted by PC Kneeshaw's supervisors which reflect the sincerity of his recognition of the seriousness of his actions and his remorse. In the memorandum dated April 25, 2016 marked as exhibit 21, Staff Sergeant Humber stated:

...His dedication to the profession has never waned through these difficult times and his recruit is developing into a fine officer. PC Kneeshaw continues to request the opportunity to address new recruits about his experiences through this unfortunate and lengthy process in hopes that they may become better educated....Nevertheless, PC Kneeshaw has maintained a positive attitude and has conducted himself in both his professional and personal life in an exemplary manner...I believe that his work ethic, his personal commitment to the people of Ontario and his moral character illustrated throughout this difficult period are mitigating factors.

In exhibit 22 PC Kneeshaw's Detachment Commander, Inspector Cockburn stated:

Although devastating for any member to face significant repercussions as a result of a collision, PC Kneeshaw returned to work with a positive attitude and accepted responsibility for his actions, but what impressed me the most was the fact he wanted to use his experience as a learning opportunity for the policing community at large in the hopes of preventing similar types of collisions in the future. It is this type of professionalism towards policing and taking personal accountability that allowed me to carry on with a decision to have him take on the role of coach officer for one of our new recruits

It has been my experience that adversity does not build character, it reveals character. PC Kneeshaw is to be commended for the strong character he has demonstrated since this incident.

I consider PC Kneeshaw's recognition of the seriousness of his misconduct and his remorse to be a significant mitigating factor.

#### *Employment history*

Five of PC Kneeshaw's PLDP's were submitted for consideration. To call them very positive would be an understatement; in the last two annual submissions, PC Kneeshaw received seven scores exceeding standard. The comments from all levels of supervisors describe a dedicated hard working officer. As a brief exemplification I have extracted comments from Inspector Cockburn from the PLDPs marked as exhibits 14 A, 14 B and 14 C as follows:

Outstanding efforts by PC Kneeshaw...right from day one, PC Kneeshaw has demonstrated a high level of caring and commitment to policing and our communities. PC Kneeshaw was chosen for that very reason to become a coach officer and he has proven that he was more than up to the challenge.

Excellent review by Sergeant Tait which I fully agree with. PC Kneeshaw is a hardworking and dedicated officer who clearly understands what it means to police a community. He is very much engaged and cares about our people and our community, thank you very much for another outstanding year and for making a difference, not only in our communities but with our people as well.

Great evaluation and very well articulated by Sergeant Tait. I am very impressed with this officer and have been since the day he arrived here at Nottawasaga over four years ago. PC Kneeshaw is very much engaged with the community and gets to know by name those who need special attention. He has a kind and gentle disposition about him but does not hesitate to provide a firm hand when needed. As one can see from his performance numbers, he is not afraid of work and jumps right in to help out his fellow officers.



The characterization continued in the most recent PLDP, exhibit 14 A where Sergeant Tait noted:

...PC Kneeshaw was involved in a serious on-duty motor vehicle accident. The officer was responding to a high priority call for service when the accident occurred. During the investigative process, the motor vehicle accident was deemed preventable. Despite legislative consequences and organizational requirements, PC Kneeshaw remained positive and completed any/all associated assignments. In fact, on the 10<sup>th</sup> December 2014, at the mandated driver assessment training the member was recognized for excellent operation of the force vehicle. Due to the member's skills and abilities, he was requested to assist with additional training sessions. PC Kneeshaw should be commended for transitioning a stressful, negative experience into a personal and organizational success.

In his memorandum dated April 25, 2016 marked as exhibit 20, Sergeant Tait went on to state:

During my experience with PC Kneeshaw, I witnessed a dedicated, professional and empathetic police officer...(following this incident) he returned to duty with an astute determination to conscientiously continue a high level of performance...PC Kneeshaw has impressively managed the daily trials and tribulations with a patient, optimistic attitude.

In the memorandum dated April 25, 2016 marked as exhibit 22, Inspector Cockburn continued:

....PC Kneeshaw has proven himself as an exemplary officer whom has gone above and beyond in almost everything he does. PC Kneeshaw cares about his community; he cares about his fellow officers and strives to make a positive difference each and every day...This was a tragic event and as police officers, we are all accountable for our actions for which PC Kneeshaw is very much aware of, but with that said, I believe it is important to recognize the outstanding achievements by this officer...

I concur with the sentiments expressed by Inspector Cockburn; the employment history of an officer is a significant factor to be considered in penalty principles. PC Kneeshaw is to be commended for his exemplary service.

I find the employment history of PC Kneeshaw to be a substantial mitigating factor.

*Need for specific and general deterrence*

I am satisfied that the proposed sanction addresses specific deterrent and feel confident that PC Kneeshaw has learned his lesson from this incident.

In terms of general deterrence, all officers must understand this type of misconduct is unacceptable and that the OPP will respond accordingly. The conduct of PC

Kneeshaw violated police practices. The OPP regularly underscores the need for safe and appropriate driving and communicate this position. As stated in *Baker*:

The disposition must reinforce the position the OPP will not tolerate behaviour that puts the public at risk. Members must understand similar acts of this type of misconduct will be met with consequence.

#### *Damage to the reputation of the OPP*

Discipline decisions involving serious misconduct are available and requested on a regular basis by the media. Public awareness of the officer's conduct of this nature is embarrassing to the OPP and damages the reputation of the OPP. This misconduct tarnishes the reputation of PC Kneeshaw specifically and the OPP in general.

Exhibit 11 was submitted to reflect the number of media outlets that had reported on this incident to varying degrees thus far.

The damage to the reputation of the OPP is clearly an aggravating factor in this matter.

#### *Consistency*

In *Baker* the officer was transporting a civilian in his marked cruiser. The officer began to fall asleep which caused the cruiser to swerve out of its lane repeatedly, nearly striking the guard rail. The seriousness of that incident was elevated because of two elements: the fact he was transporting a civilian; and, PC Baker was charged and convicted under the *HTA* for two previous offences related to falling asleep while operating a marked cruiser on duty. PC Baker pleaded guilty with an agreed statement of facts. Following contested penalty submissions, PC Baker received a sanction of 80 hours.

In *Bender*, along with another officer, PC Bender was transporting a prisoner in a marked cruiser. After being stopped at a red light, he entered the intersection against the red light and was struck by a tractor trailer lawfully proceeding through the intersection. The prisoner died as a result of the incident while the officer in the passenger seat suffered minor injuries. PC Bender pleaded guilty with an agreed statement of facts and a joint penalty submission of 120 hours which was accepted by the hearing officer.

I find the *Baker* matter slightly less on point but as in the *Bender* case, PC Kneeshaw was driving in an unsafe manner and it does not appear either of the officers meant harm to come to anyone else, but both collisions were preventable. There were substantial consequences in each case in the form of significant damage to vehicles and personal injuries (death in the *Bender* matter). While the consequences were not as grave in this case, PC Kneeshaw made a decision, had a choice and chose to operate his cruiser at a high rate of speed.

While there are considerable differences in the facts in issue, the proposed sanction in this matter of 100 hours is certainly within the range based on the two cases submitted.

#### **PART IV: DECISION**

The issue identified at the onset was the need to determine the appropriateness of the proposed sanction. Recognition of the seriousness of the misconduct and demonstrated remorse for that misconduct are critical to any officer's ability to reform. Based on his employment history, I am not concerned about PC Kneeshaw's ability to reform and I do not anticipate behaviour of a similar nature in the future.

I found the evidence clear and convincing that PC Kneeshaw committed serious misconduct. The proposed sanction appears proper when all the factors have been weighed and balanced. I have considered the mitigating and aggravating factors and find the proposed sanction fair, measured and appropriate.

#### *Final disposition*

PC Kneeshaw is ordered to forfeit 100 hours pursuant to section 85(1)(f) of the *PSA*. Specifically, PC Kneeshaw is required to work an additional 100 hours to be completed at the earliest opportunity in consultation and agreement with his Detachment Commander.



Greg Walton  
Superintendent  
OPP Adjudicator

Date electronically delivered: April 27, 2016  
Amended April 28, 2016