

JUL 02 2019

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Chatham- Kent Police Service Discipline Hearing

In the Matter of Ontario Regulation 268/10

Made Under the Police Services Act, R.S.O. 1990,

And Amendments thereto:

And

In The Matter Of

The Chatham-Kent Police

And

Constable Brad Molnar #6444

**Charge: Discreditable Conduct
Neglect of Duty
Insubordination**

Before:

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

Appearances:

**Counsel for the Prosecution: Mr. Paul Bailey
Chatham- Kent Police Service**

**Counsel for the Defence: Mr. Damon Hardy
Chatham-Kent Police Association**

Penalty Decision with Reasons:

Background:

Constable Brad Molnar #6444 appeared before the Tribunal in Chatham, Ontario on June 20, 2019. Constable Molnar was charged under the Police Services Act with One Count of Insubordination, One count of Neglect of Duty and One count of Discreditable Conduct. The offences under the Police Service Act relate to Constable Molnar's inadequate investigation of an assault of a young person when reported to him on May 28, 2016 and the continuing lack of investigation and report taking of this incident through July 31, 2018.

Hearing:

On Thursday June 20, 2019 Constable Molnar #6444 pled guilty to One (1) count of Discreditable Conduct contrary to Section 2 (1) (a) (xi) and One (1) Count of Neglect of Duty contrary to Section 2 (1) (c) (i) of the Schedule Code of Conduct and therefore to Section 80 (1) (a) of the Police Services Act. One Count of Insubordination Contrary to Section 2 (1) (b) (ii) of the Police Services Act was withdrawn by the Prosecutor, Mr. Bailey on June 20, 2019.

Counsel did not submit an agreed statement of facts to support the guilty plea entered by Constable Molnar. Instead, agreed factual points not contested by Mr. Hardy were read into the Hearing by the prosecutor Mr. Bailey. These points were also supported by exhibits submitted by the Prosecutor and agreed upon by Defence Counsel, Mr. Hardy to support the guilty pleas entered by Constable Molnar.

To support the guilty plea Mr. Bailey tendered the following exhibits to the Tribunal.

Exhibit #5 the redacted OIPRD report made by the victim's mother.

Exhibit #6 the notes made by the mother for the victim that Constable Molnar did not take into his possession.

Exhibit #7 the notes made by Molnar on the day in question lacks detail and information on the incident.

Exhibit #8 the Chatham Kent police report submitted by Molnar which indicates the investigation is completed.

Exhibit #9 a supplementary police report submitted by Sgt. Mungar on a follow up of this case and actions taken by the Service.

Exhibit #10 a victim impact statement from the mother

Exhibit #11 a Psychiatrist report dated October 10, 2017 in relation to the victim.

Exhibit #12 was tendered by Mr. Hardy to support the joint penalty.

All the exhibits support the guilty pleas and the joint submission of penalty that I will discuss later in this disposition.

Mr. Bailey made submissions to support the exhibits entered. Constable Molnar made sparse notes on this incident. The Prosecution states and conceded by Mr. Hardy that the notes made by Molnar do not meet the requirements of the Standing Orders of the Chatham Kent Police Service in regards to content and fulsomeness of an investigation. There was no statement taken from the mother of the victim or the victim himself by Constable Molnar. He did not make a report of their attendance to the Chatham Kent Police Service, report the incident to his supervisor or the attention of the Criminal Investigation Branch. Molnar did not report the incident to the Children's Aid Society as required by Provincial Statute and Standing orders of the Chatham Kent Police Service. Constable Molnar at no time followed up with the mother of the victim or report to her he was not taking any further action on this occurrence.

In the report filed by Molnar on October 14, 2016 after requested by Sgt. Mungar it was noted that there were no family court proceedings taking place as Molnar had noted in his report. They were completed by this time. The victim did not make the report for family purposes as noted by Molnar or did she say to Molnar that she did not wish any criminal charges pursued against the father of the victim.

The father gave a recorded statement indicating he never spoke to Molnar even though Molnar had suggested in a report that he spoke with the father. Molnar had no notes of his contact with the father.

Findings:

Counsel in this matter, Mr. Paul Bailey, representing the Chatham Kent Police Service and Mr. Damon Hardy representing the Chatham Kent Police Association and Constable Brad Molnar #6444 have requested a joint submission for a reduction in rank from First Class Constable to Second Class Constable for a period of twelve (12) months, pursuant to Section 85 (1) (c) of the Police Services Act.

In Ontario, Legal Aspects of Policing (pages 6-15) 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.

In *Legal Aspects of Policing* at pages 6-93) the author (Paul Ceyskens) states the following in relation to guidance in Neglect of Duty counts:

In Ontario, a peace officer commits Neglect of Duty when he or she “without lawful excuse, neglects or omits promptly and diligently to perform a duty as a member of the police force.”

The leading judicial decision concerning failure to promptly and diligently discharge duty is *P.G. v. Police Complaints Commissioner* (1996) 90 O.A.C. 103 (Div. Court). This case considered the provisions of the Ontario scheme as stated above.

In *P.G.*, the Divisional Court ruled that either of two situations is required in order to establish neglect of duty:

1. “there was some element of willfulness” in the police officer’s neglect; or
2. “there was a degree of neglect which would make the matter cross the line from a mere performance consideration to a matter of misconduct”.

The Ontario Civilian Commission on Police Services as it was known at that time has ruled that the employer must establish that the police officer was required to perform a duty, and that he or she failed to perform this duty because of neglect, or did not perform the duty in a prompt and diligent manner. If these two burdens are established, the police officer bears the burden of establishing lawful excuse.

Aggravating Factors

- a. ***Public Interest***- It is common knowledge that the public holds police officers in a position of high trust and accountability. Constable Molnar is a police officer and as such the public expects him to obey the laws of the country and the policies of the Chatham Kent Police Service. It is the communities’ expectations that a police officer more so than the general public would know and understand that a police officer would conduct himself properly while conducting an investigation. Members of the Chatham Kent Police Service are expected to investigate criminal activity in a professional and thorough manner.

- b. **Seriousness of the Misconduct-** Abhorrent behavior displayed by a police officer in any service is extremely serious. This situation is compounded when the member is expected to be trusted by the community and his fellow officers. Constable Molnar betrayed the trust of his fellow officers, the community and the Chatham Kent Police Service.

The public confidence in the police is one of an expectation that the law will be upheld and the Police Service will do everything in their power to conduct proper, thorough and professional investigations at all times.

Constable Molnar neglectful investigation and the lack of methods he utilized to execute his involvement in this investigation is unsettling considering his years of police experience. He has shown in the past that he can be an effective investigator. He has the accolades, letters of appreciation to prove this point. He is a sworn police officer and that is something that you cannot turn on and off at will. The profession of policing is a twenty four hour job, seven days a week, on or off duty.

- c. **Need for Deterrence-** The Chatham Kent Police Service must send the message to all members that conduct displayed and portrayed by Constable Molnar cannot be tolerated. Further, there must also be specific deterrence for Constable Molnar to send the message that this type of behavior is unacceptable. The guidance rule for a police service in my mind is to provide the Community with investigations that provide the utmost of policing excellence, diligence and thoroughness. A quality investigation is warranted. Nothing less can be accepted or tolerated.
- d. **Damage to the Reputation of the Police Service-** The credibility of the Chatham Kent Police Service as police agency is of paramount importance. The credibility of officers that ignore the laws of the land, ignore the policies of the Service and conduct improper or no investigation whatsoever can damage the Service. This is particularly damaging to the remaining members of this Service who are out doing their jobs in a proper manner, meeting the public, conducting thorough proper and diligent investigations and acting in accordance with the policies and procedures of the Chatham Kent Police Service.
- e. **Management Approach to Misconduct-** The Chatham Kent Police Service is a Professional and disciplined organization. The Chatham Kent Police Service has a clearly defined Performance Management Program and Disciplinary Process. The Chatham Kent Police Service does not condone or accept this type of behaviour from its officers. The Chatham Kent Police Service considers the actions of Constable Molnar to be serious.

Mitigating Factors

- a. Recognition of Seriousness of Misconduct-** Constable Molnar has recognized and accepted responsibility for his behavior. He has apologized to the Tribunal and the mother of the victim and assured the Tribunal that these actions will not be duplicated in the future. This action has prevented a potential lengthy Hearing and calling of numerous witnesses at a Hearing.

- b. Ability to Reform or Rehabilitate the Officer-** It is expected that Constable Molnar will be able to rehabilitate himself and will continue to be a useful member of the Chatham Kent Police Service.

- c. Effect on the Police Officer and his Family-** There is no doubt that Constable Molnar and his family will suffer from the penalty position to be imposed. He has accepted the penalty and wishes to move forward with his career.

- d. Employment History-** To date, Constable Molnar has no previous disciplinary record. Constable Molnar has been a hardworking and diligent officer throughout his career and has been an asset to the Service.

In Williams and the Ontario Provincial Police, the Commission identified three key elements a Hearing Officer must take into account when imposing a penalty. These include: the nature of the seriousness of the misconduct, the ability to reform or rehabilitate the officer, and the damage for the reputation of the police force that would occur if this officer remained on the Force.

Accountability, ethical behaviour and conduct are at a standard much higher than the public we serve. It is generally known and an accepted fact that the law requires a higher standard of conduct with Police Officers in their private lives than the ordinary citizen.

Credibility, honesty, integrity are characteristics that are earned. As one elevates him / herself through the ranks of this proud organization, those characteristics are more revered and treasured. It helps to create the professional image and excellence that the Chatham Kent Police officers strive to maintain.

I must be guided by the OCCPS decision of Schofield and Metropolitan Police Service.

“Consistency in the disciplinary process is often the benchmark of principles. The penalty must be consistent with the facts, and consistent with similar cases that have been dealt with on earlier occasions.”

In determining disposition, I must give due consideration for the public interest. It is common knowledge that the public holds Police Officers in a position of high trust. It is therefore extremely important that the Chatham Kent Police Service demonstrate that members will be held to that standard.

The public must be confident that the police will strive to set the example for those in the community. Anything short of this will be seen as a contradiction and serve no other purpose but to undermine the efforts of all serving officers and the explicit goals of the Chatham Kent Police Service.

Members of the Chatham Kent Police Service are expected to investigate criminal activity in a professional and thorough manner. Reports are expected to be filed forthwith as policy dictates with this Service. In this case, we have a public complainant and her son which were directly affected by Constable Molnar's actions. The public must be confident that the police will strive to set the example for those in the community. Anything short of this will be seen as a contradiction and serve no other purpose but to undermine the efforts of all serving officers and the explicit goals of the Chatham Kent Police Service.

Constable Molnar has learned from his indiscretion and that he is fully prepared to take responsibility for his actions. I believe this also sends a strong message to all police officers that you must consider when receiving reports of potential criminality the policies and procedures for conducting those investigations must be adhered to in conducting those investigations. This includes the proper notifications and reporting to the appropriate supervisors.

It is commendable that Constable Molnar recognizes and accepts that his actions were irresponsible and unacceptable as a police officer. My only hope now is that Constable Molnar follows through on his promise to the Tribunal to uphold the core values of a police officer and conduct himself accordingly.

You are accountable for your actions and any deviance from those actions, the Chatham Kent Police Service will hold you accountable. This is what the public expects of the management of this Police Service.

Short of dismissal, it is unknown to this Tribunal or to the Chatham Kent Police Service whether this conduct will continue by this officer.

The proposed joint penalty submission submitted by Counsel in this matter suggests to me that the officer can be rehabilitated and once again be useful to this proud organization.

The Chatham Kent Police Service will not tolerate unacceptable behaviour by its members. The rank structure within the Chatham Kent Police Service is the backbone of the organization. It must be respected. The proposed joint submission as submitted I believe sends a message to the organization and its members.

The Chatham Kent Police Service views this misconduct as serious and is cognizant that a penalty must be imposed to protect the interest of the public we serve

Constable Molnar, as a senior member of this organization, you have conducted yourself with a total lack of professionalism, judgment and courtesy, which is expected of all members of the Chatham Kent Police Service.

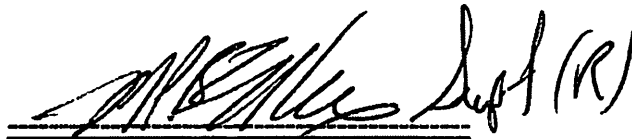
I commend you for attending your Hearing in Chatham on June 20, 2019 with your Association counsel, Mr. Hardy and pleading Guilty to the misconduct charges as quickly as you have done. It was obvious to me that you wished to put this situation behind you. I will take into consideration your forthright manner in assessing the appropriate disposition.

I may have been more inclined to administer a more stringent penalty if it were not for the positive comments and observations relayed to me by Counsel and the supporting documentation that was presented by Counsel.

I have considered the submissions by Counsel, the agreed statement of facts and the joint penalty submission agreed to by Counsel and Constable Molnar.

Disposition

In light of the seriousness of these allegations and bearing in mind all the evidence placed before me, Constable Brad Molnar #6444 will be demoted from his position of First Class Constable to Second Class Constable immediately for a period of twelve (12) months and will return to First Class Constable in the normal manner that a Constable within the Chatham Kent Police Service according to their Collective Agreement advances from Second Class Constable to First Class Constable pursuant to Section 85 (1) (c) of the Police Services Act.

A handwritten signature in black ink, appearing to read 'M.P.B. Elbers' followed by '(R)' in parentheses. The signature is written over a horizontal line.

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

**June 25, 2019
Date**