

DEC 10 2012

RECEIVED



**RECORD OF DISPOSITION OF A HEARING
PUBLIC COMPLAINT**

**Pursuant to Part V of the Police Services Act,
R.S.O. 1990, Chapter P.15, as amended.**

WHEREAS, CONSTABLE CRAIG WILES #3319 WAS ALLEGED TO HAVE COMMITTED MISCONDUCT IN THAT HE, on March 9, 2011 used unnecessary force against a prisoner or other person contacted in the execution of duty, thereby committing the offence of Unlawful or Unnecessary Exercise of Authority, contrary to Part V, clause 80(1)(a) of the Act as amended, and clause 2(1)(g)(ii) of the Schedule "Code of Conduct", O.Reg. 268/10, as amended under the Act.

AND WHEREAS a hearing was held pursuant to section 66(3) of the Act with respect to the allegation and on September 7, 2012 Constable Wiles #3319 was found guilty of the offence of Unlawful or Unnecessary Exercise of Authority, contrary to Part V, clause 80(1)(a) of the Act as amended, and clause 2(1)(g)(ii) of the Schedule "Code of Conduct", O.Reg. 268/10, as amended under the Act.

AND WHEREAS CONSTABLE CRAIG WILES #3319 WAS ALLEGED TO HAVE COMMITTED MISCONDUCT IN THAT HE, on March 9, 2011 did omit to make any necessary entry in a record, thereby committing the offence of Neglect of Duty, contrary to Part V, clause 80(1)(a) of the Act as amended, and clause 2(1)(c)(vii) of the Schedule "Code of Conduct", O.Reg. 268/10, as amended under the Act.

AND WHEREAS a hearing was held pursuant to section 66(3) of the Act with respect to the allegation and, on September 7, 2012, Constable Wiles #3319 was found guilty of the offence of Neglect of Duty, contrary to Part V, clause 80(1)(a) of the Act as amended, and clause 2(1)(c)(vii) of the Schedule "Code of Conduct", O.Reg. 268/10, as amended under the Act.

PENALTY IMPOSED AND/OR ACTION TO BE TAKEN

Constable Wiles will be demoted from First Class Constable to Second Class Constable for a period of fifteen (15) months and upon completion of the fifteen month term will be reinstated to First Class Constable.

Constable Wiles is to continue his counselling sessions and report back to the Management of the Service where applicable.

Remedial Training at the Ontario Police College of through In Service training internally ought to be given to this officer for him to meet the standards of a member of the Durham Regional Police Service.

(Penalty Decision with Reasons and Disposition by Hearing Officer is attached and forms part of this record)

ADJUDICATION

APPEARANCES:

Representing Constable Craig Wiles #3319
Representing Durham Regional Police Service

Mr. William Mackenzie
Mr. Ian Johnstone

BEFORE:

Superintendent M. Elbers (Retired)
Ontario Provincial Police
Hearing Officer

Dated this 7th day of December, 2012

DISTRIBUTION	
COPY TO	DATE SENT
Primary Officer	
Chief of Police (Information Only)	
Public Complainant OIPRD File # 1100002738	
Primary Officer Employment File (Conviction Only)	
Primary Officer Divisional File (Conviction Only)	

NOTICE
<p>Pursuant to subsection 87(1) of the <i>Police Services Act</i>, where a hearing has been held, the complainant or the police officer may, within 30 days of receiving this Notice, appeal the decision to the Commission by serving written notice stating the grounds on which the appeal is based.</p> <p>Commission Contact Information:</p> <p style="text-align: center;"> Ontario Civilian Police Commission 605 – 250 Dundas Street West Toronto, ON M7A 2T3 </p> <p style="text-align: center;"> 1 (888) 515-5005 Phone 1 (888) 515-5005 Fax </p>

Durham Regional Police 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 Durham Regional Police

And

Constable Craig Wiles # 3319

Charge: Discreditable Conduct (Three Counts)
Unlawful or Unnecessary Exercise of Authority (Three Counts)
Neglect of Duty

Before:

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

Appearances:

Counsel for the Prosecution: Mr. Ian Johnstone
Durham Regional Police

Counsel for the Defence: Mr. William MacKenzie
Durham Regional Police Association

Penalty Decision with Reasons

The Hearing

Constable Craig Wiles # 3319, after a six (6) day Hearing in Whitby, Ontario was found guilty on September 07, 2012 of Unlawful or Unnecessary Exercise of Authority and Neglect of Duty pursuant to the appropriate sections contained in the Schedule Code of Conduct in Regulation 268/10 as amended. Three Counts of Discreditable Conduct, and Two Counts of Unlawful or Unnecessary Exercise of Authority were dismissed on the decision date.

On March 09, 2011 Constable Craig Wiles #3319 stopped a vehicle operated by Mr. Edward Gamble in Durham Region for a Highway Traffic Act violation. As a result of the stop, Mr. Gamble and Constable Wiles entered into a physical altercation which resulted in injuries to Mr. Gamble. A follow up report was requested of Constable Wiles to complete the investigation of this traffic stop; however, Constable Wiles ignored this request to complete the report.

Mr. Johnstone, representing the Durham Regional Police Service has asked for a penalty of dismissal.

Mr. Mackenzie representing Constable Wiles has asked for a range of penalty of loss of hours to loss of pay of ten (10) days.

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 to the reputation of the Police Force that will occur if the officer remained on the force.

Counsel in total has provided the Tribunal with seventeen (17) cases to offer assistance in determining an appropriate disposition.

They are found in Exhibits # 15 for the Prosecution and # 16 for the Defense.

I will not recite the cases in their totality, however I have read and considered the cases that I was provided by Counsel. As learned Counsel have stated, there are no cases found which parallel the case that is before me at present. The cases as provided are for guidance to the disposition penalty that Counsel has sought to be appropriate for the findings of guilt on the Neglect of Duty and Unlawful or Unnecessary Exercise of Authority counts rendered on September 07, 2012.

The cases provided by Counsel can be considered as instructive in assisting the Tribunal to reach an appropriate disposition.

In Exhibit # 18, Mr. MacKenzie has provided the Tribunal with six (6) letters of positive achievement and a letter explaining a missed court appearance. Five of these letters were received from Mr. Johnstone via email after November 06, 2012. I have included them as part of Exhibit #18.

Exhibit #18 also contains a 2010 Performance Management Review where Wiles meets expectations and exceeds in some areas of the Durham Regional Police Service performance expectations. A 2009 Performance Review was also submitted where Constable Wiles meets expectations of the Service and also areas that Constable Wiles needs to improve where noted.

These documents can be considered as mitigating factors to consider in this disposition in relation to this officer.

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 organization those characteristics are more revered and treasured. It helps to create the professional image and excellence that the Durham Regional Police Service officers strive to maintain.

Mr. Johnstone also produced one witness to assist his submission for dismissal against Constable Craig Wiles.

Deputy Chief Paul Martin is a twenty two and one half (22.5) year member of the Durham Regional Police Service. He has been the Deputy Chief of the Service since February 2012. He testified that the two largest costs to the Police Service are Payroll and Liability – Risk Management. The two biggest liability issues against Police Services are motor vehicle collisions and excessive use of force. Deputy Chief Martin outlined to the Tribunal that during Constable Wiles eight (8) year career with the Durham Regional Police Service he has had difficulties. He has had numerous criminal complaints lodged against him. He has been involved in four assault offences, has been convicted criminally, been suspended and demoted for one year. He has also served at the front desk to keep him off the road for six months. Martin testified that Wiles has problems interacting with people. Wiles does lay numerous charges and naturally this places him in more interactive positions with people who at times are not always cooperative with police officers. Martin testified that the Service has placed him with numerous coach officers over his years of employment with the Service. Martin testified that the usefulness of this officer was in question. Martin testified this officer was still a liability issue for the Service. He testified that Wiles position on the Service undermines the public confidence that the public has with the Service.

Disposition Considerations:

A number of issues must be considered in Police Act disciplinary matters.

1. Public Interest

It is important to consider the public interest. It is common knowledge that the public holds police in a position of high trust and accountability. Constable Wiles was found Guilty of Neglect of Duty and Unlawful or Unnecessary Exercise of Authority. At the time of this indiscretion, Constable Wiles had seven years police experience. As I have previously stated in my decision, it is my belief that an arrest was not warranted. I further stated the following;

It is my belief and I do find that Constable Wiles over reacted to the situation. Policemen are to be in control of their actions at all times. This does not always apply to civilians. Policemen are trained. If people shout obscenities and create disturbances police officers are trained to deal with these situations.

Constable Wiles reacted to the comments and actions of Gamble and decided to arrest at this time. I was not present and I believe that Wiles would also be aware that Gamble would be upset with being stopped and charged again. This does not make it right as Gamble is the author of his own misfortune in this incident. As policeman we know that there are times that you listen to the rant of a client and you engage in the proper format to de-escalate the situation and in this instance that would be to " let go of the tickets" as opposed to escalating the decision with banter or engaging in a " tug of war" with a disgruntled client.

When an arrest is unnecessary and an individual's right to freedom has been removed, however briefly, that matter is serious. The arrest of Edward Gamble was unnecessary. His personal freedom was removed. He was assaulted and handcuffed. His injuries were minor, but unnecessary. He was placed in a cruiser and transported to a Durham Regional Police station where he could not leave voluntarily.

An officer with seven years of service knows or ought to know, that he must acquire all available information and seek guidance or assistance if necessary from his peers or Supervisors if he is unsure before he deprives someone of their liberties. I can understand how Constable Wiles could have become frustrated or annoyed by the actions of Gamble, however this is where a professional police officer rises to the top, and does not allow oneself to slip to the behaviour of the people he is confronted with if they are loud and abusive or calm and polite as this situation has been described.

It is therefore extremely important that the Durham Regional Police Service demonstrate that members will be held to that standard.

2. Seriousness of the Misconduct

Any deceptive or aberrant behaviour displayed by a police officer in any police service is serious.

The public confidence in the police is one of an expectation that the law will be upheld.

Constable Wiles' conduct was unprofessional and he abused his authority. He performed an unnecessary arrest which culminated in injury to the complainant. The injuries were significant enough for his transport to a Hospital and attendance of a physician to evaluate the injuries. Yes, some of these injuries were also caused by the "*officer needs assistance call*" that Wiles placed to the Communication Center. This resulted in further strikes to Mr. Gamble.

This is a significant action against him by the Durham Regional Police Service.

3. Recognition of the Seriousness of the Misconduct

The actions of Constable Wiles have affected his career. I believe that he understands that today. I believe that this officer sees clearly how his actions and lack of professionalism have dictated the shortcomings that bring him before me today. The public observes and evaluates the Police 24-7. We, as individuals and as a professional organization must be mindful of this fact. Our members, while on patrol and off duty, must conduct themselves in a professional manner at all times.

4. Employment History

Constable Wiles joined the Durham Regional Police Service in 2004. During his policing career, Wiles has demonstrated that he is a hard working member of the organization. It appears that Wiles excels in the traffic enforcement areas of deployment. He is also a SOCO officer and has some recognition letters on file to attest to his identification skills at crime scenes. It is his high enforcement contact with civilians that has been problematic for Wiles on occasion. He has been disciplined in the past for improper behaviour. He has been charged criminally as well. The Service has undertaken to place him with Coach Officers from time to time which appears to be successful at the time, however, there seems to be a lack of close supervision by his employer to follow up and keep him under control. He is presently been found Guilty on other charges under the Police Act and a Disposition has not been rendered. Unnecessary or Unlawful Exercise of Authority is one of the charges that a finding of guilt was made by another Adjudicator.

The totality of work performance acts as a mitigating factor in my decision. The additional charges, close supervision and previous demotion of one year act as aggravating factors to consider in my disposition penalty.

5. Need for Deterrence

It is necessary to consider a general deterrence for all members. The penalty must reflect that the Durham Regional Police Service will not tolerate unacceptable behaviour. The standard of conduct for all police officers is by nature of the profession higher than what is expected of others.

General deterrence in this situation offers the Adjudicator in this matter the opportunity to remind all members of this organization that an arrest of an individual is a significant action against that person and it cannot and should not be exercised or performed casually or especially when it is unnecessary.

This disposition must indicate to the policing community that individuals who contemplate this type of behaviour do so at their own considerable peril and preclude any significant leniency in dealing with matters of this nature. As a result, the disposition in this matter ought to leave no doubt as to probable consequences of misconduct in this regard.

There must also be specific deterrence for the member to send a message that individuals will be held accountable for their conduct. While considering the mitigating factor, such as generally positive work record, the Durham Regional Police Service must deliver a penalty that not only prevents recurrence, but also adequately protects the public.

6. Ability to Reform or Rehabilitate the Officer

Constable Wiles acted in a manner that is clearly unacceptable of a Police Officer. Unlawful or Unnecessary Exercise of Duty and Neglect of Duty are serious offences that cannot be tolerated in this organization. The possibility of recurrence must clearly be examined.

Short of dismissal, it is unknown to this Tribunal or the Durham Regional Police Service whether this conduct will continue by these officers. The proposed penalty submissions submitted by Counsel in this matter suggest to me that this officer can be rehabilitated with an appropriate disposition penalty.

7. Damage to the Reputation of the Force

The Conduct exhibited by this officer while on duty in Oshawa is deplorable and will cause damage to the reputation of the Durham Regional Police Service.

It is unknown to me to what the extent of publicity or the knowledge of the events is to the residents of Durham Region. To some degree it does not matter as the incident has affected all involved and has caused damage to the organization.

It is our commitment and the Public's expectation that we the Durham Regional Police Service conduct ourselves 24-7, three hundred and sixty five days of the year with a degree of professionalism and commitment for policing excellence. Nothing less is acceptable.

8. Handicap and Other Relevant Person Circumstances

There are no considerations before this Tribunal that are apparent or give cause for consideration.

9. Effect on the Police Officer's Family

There is no doubt that Constable Wiles will suffer from the penalty disposition to be imposed. Dismissal, Demotion, forfeiture of hours will have an impact on Constable Wiles. I have given this situation serious consideration in determining an appropriate disposition.

10. Management Approach for Misconduct

The Durham Regional Police Service has a clearly defined Performance Management Program and Disciplinary Process. Due to the serious nature of this misconduct, while ~~off~~ ^{on} duty, I have not given undue consideration for this issue. The Durham Regional Police Service does not condone or accept this type of behaviour from its officers.

11. Provocation

There are no considerations before the Tribunal that are apparent or give cause for consideration.

12. Procedural Fairness Considerations

There are no considerations before this Tribunal that are apparent or give cause for consideration.

13. Consistency of Penalty

I have considered the seventeen (17) cases presented to me by Counsel. As I communicated earlier in this disposition the cases presented to me are not on point, however they were instructive for disposition considerations.

In Schofield vs. Metro Toronto Police (1994) the Commission stated:

“Consistency in the discipline process is often the earmark of fairness. The penalty must be consistent with the facts and consistent with similar cases that have been dealt with in earlier occasions.”

I will deal with the two Counts under the Police Services Act that Constable Craig Wiles was found guilty on September 07, 2012 as one penalty as the charges relate to the same incident

The Blowes-Aybar case speaks to removing a person’s freedom without just cause. Mr. Mackenzie has referred to this case in his submission.

The Blowes-Aybar case is instructional to that point. As we all know, all cases are different in substance and fact. This being said, again it addresses the power a Police Officer possesses and the use or improper use of this power, can affect the Officer and tarnish the image and reputation of the Service for whom he/she is employed. In this circumstance it is the Durham Regional Police Service.

Mr. Mackenzie has supplied six cases and I have considered the King case when it reminds Adjudicators to consider the relevant points of Disposition as I have done in this decision. Williams and Guenette are instructional; however they are more serious than this case as they deal with sexual assault and theft.

Mr. Johnstone has supplied numerous cases as well. They too like, Kenny, Groot, Venables and Gregg are instructional, however they deal with Impaired Driving, failure to investigate an occurrence and serious assault cases not like the case before me today. Dismissal and demotion is a main theme.

It is my belief that Constable Wiles needs to control his temper and his attitude when in uniform while on active duty. He has failed to do this on numerous occasions. He has been suspended and demoted in the past for this very problem.

He has been disciplined and supervisory staff has placed him with Coach Officers, however there is no follow up being completed by the supervisors. Deputy Chief Martin has testified that Wiles is a liability to the Service.

I believe it is now time for Management of the Service to sit down with this officer and develop a plan where he is monitored closely, where goals and expectations must be met by this officer. If the goals and recommendations are not met there should be no doubt left in this officers' mind what the repercussions will be. Dismissal at that point is the next viable option and if he returns to the Tribunal with similar indiscretions as these, Dismissal in my mind from the Service is the only option to consider.

Some police services have called this strategy a last chance agreement.

The conduct of this officer was deplorable and he must continue his counseling sessions.

I believe this officer has learned a great deal from this entire process and I must consider this element in my disposition considerations.

The disposition of this matter must reflect the serious nature of Constable Wiles' actions.

If it were not for the positive performance evaluations and letters of appreciation the disposition would have been more severe.


Striving for consistency in a disposition is a balancing act, involving a number of considerations that speak to the specifics of the misconduct, the environment in which the misconduct occurred, the action or inaction of the management of the service and other issues.

Disposition:

In light of the seriousness of this allegation and bearing in mind all the evidence before me, Constable Craig Wiles will be demoted from First Class Constable to Second Class Constable for a period of fifteen (15) months and upon completion of the fifteen month term will be reinstated to First Class Constable at the same Pay level that he was before his demotion.

Constable Wiles is to continue his Counseling sessions and report back to the Management of the Service where applicable.

Remedial Training at the Ontario Police College or through In Service training internally ought to be given to this officer for him to meet the standards of a member of the Durham Regional Police Service.



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

December 07, 2012
Date