



**HEARING DECISION
SENTENCE**

Name: Dawn WILSON

Rank: Police Constable

Badge Number: 9761

Case Number: 2010.26

Hearing Date: 2013.09.23

Hearing Officer: Superintendent R. MCELARY-DOWNER

Prosecutor: Inspector R. HEGEDUS

**Defence Counsel:
Or Representative** Ms. J. MULCAHY

**TORONTO POLICE SERVICE DISCIPLINE HEARING
IN THE MATTER OF ONTARIO REGULATION 123/98
MADE UNDER THE *POLICE SERVICES ACT*, RSO 1990,
AND AMENDMENTS THERETO;**

**AND IN THE MATTER OF
THE TORONTO POLICE SERVICE
AND POLICE CONSTABLE DAWN WILSON, #9761**

CHARGES: DISCREDITABLE CONDUCT and UNNECESSARY USE OF FORCE

FINAL DISPOSITION

Before: Superintendent Robin D. McElary-Downer

Ontario Provincial Police

Appearances:

Counsel for the Prosecution: Inspector Rick Hegedus

Toronto Police Service

Counsel for the Defence: Ms. Joanne Mulcahy

Toronto Police Service Association

Disposition Date: September 4, 2013

FINAL DISPOSITION AND REASONS

Background and Disposition

Police Constable Dawn WILSON (WILSON), #9761 pleaded not guilty, but was found guilty of unnecessary use of force, contrary to the *Police Services Act*. The second allegation, discreditable conduct, was dismissed on September 4, 2013.

The incident that gave rise to the finding of guilty is found in my judgement dated June 7, 2013 and the lengthy details leading to it are not necessary to repeat. The incident can be best summarized as this:

On October 19, 2009 WILSON was working uniform duty and assigned to the Toronto Anti-Violence Intervention Strategy (TAVIS), Rapid Response Team. At approximately 6:30 pm she attended near the John Garland Plaza in response to a 'priority radio call' issued by one of her team members. Upon arrival, using her foot, she applied unnecessary force to Mr. Walker, a suspect in custody, handcuffed and under the care of other officers. Mr. Walker was not struggling or resisting arrest at the time of WILSON's action.

On September 4, 2013 the Tribunal resumed to hear disposition submissions. Inspector Hegedus, representing the Toronto Police Service (TPS), submitted the penalty fall in the range of a five to eight day forfeiture. Ms. Mulcahy, representing WILSON, recommended a reprimand be imposed.

I have carefully considered the penalty submissions. In light of the seriousness of WILSON's misconduct and bearing in mind the weight I have placed on the mitigating and aggravating circumstances, the following sanction is to be imposed: Forfeiture of five days.

This sanction is based on the following reasons:

Submissions and Reasons for Disposition

Exhibits

Exhibits tendered during the penalty submissions are listed on APPENDIX 'A' of this decision.

Defence's Submissions

Ms. Mulcahy called five witnesses, who in turn, provided character evidence on behalf of WILSON. The witnesses included: Superintendent Peter Lennox, Unit Commander, 11 Division; Detective Sheri Acciaroli, Criminal Investigations Bureau (CIB); Staff Sergeant Jordon Latter, TAVIS; Detective Sergeant Tony Diviesti, CIB; Detective Myron Chudoba, CIB; and, Detective Constable Joao Durate, CIB. Additionally, a written character reference from Staff Sergeant Ron Reed, TAVIS, was tendered as Exhibit #75.

Ms. Mulcahy submitted WILSON is twenty-eight years old and a post-secondary graduate with honours from Humber College. In May 2007, WILSON was sworn in as a police officer with the TPS and posted to 11 Division. In April 2009 she was temporarily transferred to TAVIS where she served for eighteen months before returning to her home division. WILSON currently is assigned to 11 Division's CIB.

Ms. Mulcahy drew the Tribunal's attention to the case law in the prosecutor's Book of Authorities, Exhibit #73. Case by case, she identified facts that distinguished WILSON's matter from the others. She further tendered her own Book of Authorities, Exhibit #76, as well as five additional cases, Exhibit# 70, A to E. Amongst other things, Ms. Mulcahy highlighted the sanctions imposed and submitted a finding of guilty and reprimand under the *Police Services Act* were not considered lightly and resulted in significant repercussions. Ms. Mulcahy submitted that a reprimand would adequately address the penalty considerations in this manner.

Ms. Mulcahy then reviewed the disposition considerations and offered the following:

1. Public interest has been met in that the matter was driven by a public complaint and investigated by the Office of the Independent Police Review Director, (OIPRD) which resulted in a directed hearing.
2. Defence has accepted the seriousness of the misconduct: a Hearing was held and a finding of guilty was rendered.
3. Recognition of the seriousness of the misconduct: It cannot be viewed negatively that WILSON exercised her right to have a hearing.
4. Handicap: WILSON has experienced stress and other health related issues since the allegation first came to light.
5. Provocation: The provocation in this matter was the 'priority call' to which WILSON responded. In the finding of guilty, WILSON's immediate desire to come to the aid of her colleagues was noted and respected by the Hearing Officer.
6. Employment history: WILSON's career is unblemished. Her Internal Resume reflects continuous learning, a Commander Commendation and two Commander Awards. There is also a letter of commendation from Chief Blair in regard to WILSON's performance during the G20. WILSON's probationary evaluations were very positive as well as the two that fell during her advancements from third to first class constable.
7. Potential to rehabilitate: WILSON has proven her potential to rehabilitate and this was heard in Superintendent Lennox's testimony.
8. Effect on family: WILSON is very close to her family and should a sanction of days follow, it will require her to be away from her family.
9. Consistency: A reprimand is consistent with other cases whereas a forfeiture of eight days is not. Any sanction is deemed serious, including a reprimand.
10. Specific and general deterrence: This matter has taken a personal toll on WILSON. The finding of misconduct precludes WILSON from entering a promotional process for two years. The McNeil report and subsequent posting of WILSON's misconduct on the OIPRD website serve as a general deterrence.
11. Damage to reputation of the police service: It is acknowledged that anytime an officer is found guilty of misconduct, it negatively affects the Service's reputation.
12. Effect of publicity: Defence is unaware of any publicity in this matter.

Ms. Mulcahy urged the Tribunal to acknowledge WILSON's excellent performance and impose a reprimand.

Public Complainant's Submissions

Inspector Hegedus informed the Tribunal the public complainant would not be attending nor did she wish to convey submissions.

Prosecutor's Submissions

Inspector Hegedus began by addressing two of Ms. Mulcahy's points. First, the commendation from Chief Blair was actually a letter of thank you, rather than a commendation. Second, in regard to WILSON's health issues, Inspector Hegedus advised he has not been privy to any medical information or notes to support this.

Inspector Hegedus drew the Tribunal's attention to the cases found in the defence's Book of Authorities. By case, he identified facts that distinguished WILSON's matter from the others.

Inspector Hegedus submitted the objective of police discipline is to correct errant officer behaviour. He turned to his Book of Records, Exhibit #72, and pointed to WILSON's Oath of Office, an oath that was taken on May 10, 2007 to discharge her duties faithfully, impartially and according to law. He pointed to the legislated hiring criteria that require police candidates to be of good moral character. He pointed to the TPS Governance, Standards of Conduct and Core Values. Specific to the Core Values, Inspector Hegedus referred to the 2000 *Toronto Police Service v. Boucher* decision where the Hearing Officer stated:

These Core Values are not merely good suggestions; they are at the very heart of our existence.

Inspector Hegedus submitted the TPS goes to great lengths to hire suitable candidates. He submitted it is well established that police officers are subject to a higher standard than members of the public. WILSON violated her oath of office and fell below the standard of expected conduct.

Inspector Hegedus submitted that anytime an officer is found guilty of misconduct, the matter is considered very serious. The Service's reputation is a fragile thing and reliant on the public's support. This was highlighted by a public complainant who took exception to WILSON's behaviour. He submitted the Service can only function with the support of the public and when misconduct is committed, the trust is breached.

In regard to the provocation consideration, Inspector Hegedus submitted officers are expected to exercise self-restraint.

Inspector Hegedus submitted WILSON has performed her duties well since the misconduct and as such she has demonstrated her potential to reform. Inspector Hegedus advised that any sanction to follow WILSON's misconduct is a consequence of her action.

Inspector Hegedus submitted the penalty must demonstrate that WILSON's conduct will not be tolerated. He submitted the TPS takes a serious approach to any misconduct and as such dedicate significant resources to investigate, monitor and report matters to senior command and the Board.

Inspector Hegedus submitted the reputation of the Service was impacted by WILSON's misconduct given her action was observed by the public complainant.

Inspector Hegedus reviewed the cases found in his Book of Authorities and highlighted similar facts and sanctions consistent with his recommendation. He summed up by listing the following mitigating and aggravating factors:

1. WILSON has a positive and clear service record - mitigating
2. Her misconduct has not been repeated - mitigating
3. She continues to be positive - mitigating

4. There was no negative publicity - mitigating
5. WILSON was doing her duty to come to the aid of a co-worker - mitigating
6. The incident was witnessed by a member of the public - aggravating
7. The public complainant knew WILSON was a police officer - aggravating
8. WILSON had a duty to care for the prisoner - aggravating
9. WILSON used unnecessary force - aggravating

Discussion

I have reviewed all exhibits and considered Ms. Mulcahy and Inspector Hegedus' submissions. For ease, I have grouped my comments under the captioned considerations: Public interest; seriousness of the misconduct; provocation; employment history; potential to rehabilitate; general and specific deterrence; damage to the Service's reputation; and, consistency in penalty.

Public interest

At the heart of all police disciplinary matters is the consideration for public interest. In this matter, WILSON's misconduct eroded the public's trust and confidence when she unnecessarily applied force to a suspect who was under the care of other officers. Her force came without provocation – the suspect was handcuffed, laying on the ground and not resisting. A member of the public who witnessed WILSON's misconduct knew it was wrong and this led to a third party complaint and investigation by the OIPRD.

Significant authorities are granted to police in order to carry out their duties and the public justifiably expect police not to abuse these authorities, especially given the incidental restrictions that flow when one's freedom is removed. The misconduct that gives rise to this disposition is destructive and scratches the hard earned trust the TPS has built with its community. The public need to be assured the TPS does not condone nor tolerate conduct such as WILSON's and those officers who cross the line will be held accountable. In this matter, the public interest is at the core of the penalty consideration and considered an aggravating factor.

Seriousness of the misconduct

The seriousness of WILSON's unnecessary force cannot be understated. Police officers are afforded significant powers to remove an individual's freedom, and it is for this reason they are responsible for the handling of persons in custody with the greatest due diligence, care, attention and caution. This holds true for every police officer, whether they initiated an arrest or have contact with a prisoner after the fact.

It has been said many times in many police disciplinary decisions that a police officer's conduct is held to a higher standard than the people they serve. Putting this into the context of WILSON's misconduct, police officers are expected to exercise control and restraint over themselves, despite the dynamics of a situation; something she clearly failed to do. She applied with her foot, unnecessarily and without provocation, force to a man who was lying on the ground in handcuffs and not resisting. He was vulnerable and her conduct was not justified.

An officer's conduct is codified in the *Police Services Act* where the criteria for hire in section 43(1)(d) states the individual must be of good moral character¹. There is nowhere in the *Act* that indicates a date of expiry of good moral character or loosening of such, as long as the officer is so employed.

¹ Exhibit #72-2

The TPS Core Values reinforces good moral character and establishes the Service's expectations of officer conduct. This said, WILSON's conduct fell short of the standard set for police officers. Unnecessary use of force is at the high end of seriousness, and unless mitigated, warrants a severe sanction.

Ms. Mulcahy suggested the 'priority call' served as provocation to WILSON's misconduct. While it certainly triggered WILSON to respond quickly, I cannot accept it provoked her to commit the misconduct. I do however find other mitigating circumstances.

I take into consideration WILSON's limited experience on the job at the time of her misconduct. She thought she heard the word 'gun' when the priority call was broadcasted. Her adrenaline was clearly at a high when she arrived at the plaza, as evidenced by leaving her scout car running and unsecured but stopping to secure another scout car. She led her partner on a run, covering nearly one hundred seventy-five metres before arriving at the location where the priority call had been issued.

The noted factors illustrate WILSON's immediate and understandable desire to come to the aid of her colleagues – they do not portray an officer who had time to plan ahead, nor do they hint at any preconceived notion to commit misconduct. What happened after she arrived remains inexcusable, however, it is helpful to know her misconduct occurred without thought or plan – but rather in the moment. I consider the seriousness of WILSON's misconduct somewhat less aggravating when I take these facts into consideration.

Provocation

Unlike other cases that have been tendered for consideration, WILSON's misconduct lacked provocation. She arrived on scene after the suspect had been handcuffed. He was vulnerable and not deserving of the impropriety committed against him.

Employment history

At the time of the misconduct, WILSON had only thirty months service and leading up to this incident, her employment record was unspotted. While I believe it aggravating that WILSON's misconduct arose so early in her career, I am faced with other compelling evidence that creates distance from this concern.

WILSON had a favourable probationary period and I base this on her positive performance evaluations². What becomes atypical of WILSON's employment history, are the evaluations that follow during her third and second class constable periods. Specifically, she was rated numerous times with 'superior' and 'exceeds' in the performance evaluations³ that covered May 2008 to February 2010. I find this extraordinary and not generally typical of an officer with such limited experience.

I further note WILSON was committed to continuous learning and the recipient of commendations for intelligence gathering, recovery of a stolen bicycle and a community service initiative. Based on this evidence, I conclude WILSON was embarked on a path to consistently do and give her very best. Quite simply, her performance was setting her apart as a top drawer officer. I find WILSON's employment record extremely positive, mitigating and weighty.

² Exhibit #72-13

³ Exhibit #72-13

Potential to rehabilitate

It has taken nearly four years to see this matter through. Ms. Mulcahy correctly stated it has been over WILSON's head for more than half of her career. How unfortunate, given the weight any matter such as this has on an officer. Generally, unresolved disciplinary matters take a toll both professionally and personally and this is often seen in the officers' day-to-day performance.

While there is no question this matter has played on WILSON's mind, she has not allowed it to affect her performance. This I heard from the character witnesses and it was echoed repeatedly in her most recent evaluations that ended in 2011 and 2012⁴. Her performance ratings ranked exceptionally high, and I can only conclude this is a testament to an officer who has held her head high and moved forward despite the weight she carried.

The six character witnesses were consistent in expressing their accolades in regard to WILSON's performance, dependability, commitment and personal attributes. Post the misconduct, WILSON has been the recipient of two additional commendations. It was clear from the character witnesses that the TPS remains confident in WILSON's abilities and her misconduct was out of character.

As with her employment record, I find WILSON's ability to rehabilitate mitigating and will weigh it accordingly.

General and specific deterrence

The TPS Governance Standards of Conduct⁵ articulates the Service's pride in its history, a history replete with acts of courage and commitment, service and sacrifice. It further talks of the grave implications when public trust is lost. Officers need to understand that despite how well a police service is thought of, public trust is fragile at the best of times and an act of misconduct such as WILSON's can shake this trust. A strong message to all officers needs to be sent that those who abuse their authority and commit unnecessary use of force will be held accountable.

I accept that the weight of the allegations and finding of misconduct has had a negative impact on WILSON. This understandably occurs when an officer's conduct comes under scrutiny. However, I am also very mindful that the impact on WILSON pales when compared to the impact of two others, the public complainant and suspect who was in custody. A sanction, more than a reprimand sends a clear message to all involved parties, that the TPS does not take lightly misconduct of this nature.

Damage to the reputation of the police service

In this matter, the TPS's reputation has potentially been damaged. WILSON's misconduct provoked a by-stander, who was unknown to the person in police custody, to take action and lodge a public complaint. The complaint led to a hearing where a finding of guilty was rendered based on clear and convincing evidence. I find, as a fact, WILSON's misconduct has brought the fine reputation of the TPS into disrepute. This is an aggravating factor and it will be weighed accordingly in the penalty disposition.

Consistency in penalty

It has been said in many police discipline decisions that consistency of penalty in like matters is the

⁴ Exhibit #72-13

⁵ Exhibit #72-4

hallmark of fairness. I am further very mindful that any sanction bears significant impact on an officer. However, the merits of the misconduct must attract the appropriate sanction.

Inspector Hegedus and Ms. Mulcahy have tendered a number of cases to guide me. I will only recite those which I find most like.

*Partridge*⁶

Partridge is a 1998 Durham Regional Police Service case where an officer arrested and incarcerated a female for public intoxication. The suspect scratched Constable Partridge's face while her one hand was handcuffed to a ring on the wall and in retaliation, he hit and kicked her. Constable Partridge was convicted of criminal assault and later sanctioned six days in his police disciplinary tribunal.

Similar to WILSON, Constable Partridge had an exemplary service record and was highly regarded by his service. They both unnecessarily applied force to an individual who was in custody and restrained. Unlike WILSON, Constable Partridge was an acting sergeant at the time of the incident. The more obvious difference was there was clear evidence of provocation in *Partridge*.

*Turgeon*⁷

Turgeon is a 1999 OPP matter where a seasoned officer apprehended a young offender in possession of a stolen van. For no justifiable reason, Constable Turgeon pushed the suspect against the van and shortly after threatened to take him to a remote area where he would be forced to talk. Back at the detachment, Turgeon hit the offender in the face, again for no justifiable reason. Constable Turgeon was sanctioned ten days.

Similar to WILSON, Turgeon's unnecessary force against the offender was without provocation.

*Batista*⁸

In May 2003, police were on duty monitoring a demonstration in Ottawa. A man, who officers mistakenly believed to be in violation of his bail, was arrested and handcuffed. Acting Sergeant Batista was summoned and deployed his taser twice when the suspect refused to walk to the cruiser. The Hearing Officer found Acting Sergeant Batista's force was unnecessary and he received a reprimand.

This case is similar to WILSON's in that Acting Sergeant Batista became involved after the suspect had been restrained. Both WILSON and Batista shared excellent service records and were highly regarded by their services.

The disparity between the two cases lies in the officers' years of experience and the fact that Batista was serving in the capacity of supervisor. The Hearing Officer took into account Acting Sergeant Batista lost his acting status which amounted to nearly ten thousand dollars, whereas WILSON's allegation of misconduct did not preclude her advancement to first class constable.

⁶ Exhibit #76-12 *Durham Regional Police Service v. Partridge*, 1998

⁷ Exhibit #73-H *Turgeon v. Ontario Provincial Police*, OCCPS 1999

⁸ Exhibit #76-1 *Batista v. Ottawa Police Service*, OCCPS 2007

*Racette*⁹

Racette is a 2011 Toronto Police Service case which followed a criminal finding of assault. The *Racette* matter began when the officer stopped a stolen vehicle and then became momentarily pinned between vehicles when the driver sped away. The stolen vehicle eventually crashed and as other officers were attempting to handcuff the non-compliant suspect, Constable Racette kicked him in the upper body. Constable Racette was sanctioned five days. Provocation was considered a significant mitigating factor.

Similar in fact, both WILSON and Racette had junior service at the time of their misconduct and both are from the same service. Their incidents occurred within months of each other and other than one minor spot on Racette's file, both enjoyed positive employment histories.

I have found the above cited cases very helpful. Their penalties range between a reprimand and forfeiture of ten days. The cases illustrate that regardless of provocation, there is neither tolerance nor excuse for unnecessary force. The cases repeatedly held that police are held to a higher standard of conduct, they are well trained in personal control, and raise the question - If the police can't control themselves, who then can the community count on?

Having weighed the mitigating and aggravating factors and using the cases as a guide, I am satisfied I have reached a fair and measured sanction.

Before I dispose of this matter, I think it important to repeat some of my comments that I shared with WILSON during the Tribunal. Outside this one incident, I have been struck by her above average performance and the high regard her supervisors hold her in. I do not believe this incident defines who she truly is. It happened, it was wrong, and now it is time to put it behind and move forward.

Disposition

I have carefully considered the facts presented in this matter. In light of the seriousness and bearing in mind the weight I have placed on the mitigating and aggravating circumstances, I order the following sanction be imposed:

WILSON will forfeit five days pursuant to ss 85(1)(f) of the *Police Services Act*, R.S.O. 1990.



Robin D. McElary-Downer
Superintendent
OPP Adjudicator

Date decision electronically delivered: September 23, 2013

⁹ Exhibit #76-8 *Racette v. Toronto Police Service*, 2011

APPENDIX 'A'
Final Disposition Exhibits - WILSON

- 72 Book of Records
- 72-1 Oath of Office – Constable Dawn Wilson
- 72-2 PSA – Criteria for Hiring
- 72-3 PSA – Duties of a Police Officer
- 72-4 Forward from Chief of Police – Standards of Conduct
- 72-5 From the Chief – The Importance of Maintaining Public Trust
- 72-6 From the Chief – Professionalism and Public Trust
- 72-7 Toronto Police Service – Core Values
- 72-8 blank
- 72-9 blank
- 72-10 Internal Resume – Constable Dawn Wilson
- 72-11 TPS 950 & Information from Personnel File – Constable Dawn Wilson
- 72-12 Awards Recommendations - Constable Dawn Wilson
- 72-13 Evaluations/Performance Appraisals - Constable Dawn Wilson
- 73 Book of Authorities
- 73-A *Bright v. Konkle, Board of Enquiry 1997*
- 73-B *Carson v. Pembroke Police Service, OCCPS 2001*
- 73-C *Carson v. Pembroke Police Service, OCCPS 2006*
- 73-D *Toronto Police Service v. Boucher, 2000*
- 73-E *Shofield v. Toronto Police Service, OPC 19844*
- 73-F *Picknell v. Ontario Provincial Police, Board of Enquiry 1992*
- 73-G *Toronto Police Service v. Upson, 1998*
- 73-H *Turgeon v. Ontario Provincial Police, OCCPS 1999*
- 73-I *Toronto Police Service v. Sordon, 2004*
- 73-J *Toronto Police Service v. Edgar and Gresty, 2005*
- 73-K *Toronto Police Service v. D'Souza, 2006*
- 73-L *Toronto Police Service v. Racette, 2011*
- 73-M *Toronto Police Service v. Needham, 2012*
- 73-N *Pinto v. Toronto Police Service, OCPC 2011*
- 74 Internal memo to Inspector Lennox from Inspector Fernandes, 2011
- 75 Staff Sergeant Ron Reed letter
- 76 Book of Authorities

APPENDIX 'A'
Final Disposition Exhibits - WILSON

- 76-1 *Batista v. Ottawa Police Service*, OCCPS 2007
- 76-2 *Toronto Police Service v. Ward*, 1999
- 76-3 *Mills v. Toronto Police Service*, Board of Inquiry 1987
- 76-4 *Toronto Police Service v. Roy*, 1994
- 76-5 *Kerr v. Toronto Police Service*, 1981 O.P.R. 508
- 76-6 *Toronto Police Service v. Walker*, 2007
- 76-7 *Toronto Police Service v. Flis and Grande*, 2008
- 76-8 *Racette v. Toronto Police Service*, 2011
- 76-9 *Halton Regional Police Service v. Couce*, 1997
- 76-10 *Toronto Police Service v. Kellock*, Police Complaints Board 1984
- 76-11 *Niagara Regional Police Service v. Parker*, 2006
- 76-12 *Durham Regional Police Service v. Partridge*, 1998
- 76-13 *Toronto Police Service v. Shirley*, 1993
- 76-14 *Picknell v. Ontario Provincial Police*, Board of Inquiry 1993
- 76-15 *Peterborough Lakefield Police Service v. Taylor*, 2013
- 77 *D'Souza v. Toronto Police Service*, OCCPS 2007
- 78 *Toronto Police Service v. Pinto*, 2009
- 79-A *Bradford v. Metropolitan Police Service*, Board of Inquiry 1992
- 79-B *Brazeau v. Metropolitan Toronto Police Service*, Board of Inquiry 1995
- 79-C *Gibbs v. Metropolitan Toronto Police Service*, Board of Inquiry 1998
- 79-D *Foster v. Saskatchewan Teacher's Federation*, (Sask. C.A.) 1992
- 79-E *Blakely v. Quinte West Police Service*, [2007] O.J. No. 319
- 80 Chief's communique tracking form