

OTTAWA POLICE SERVICE DISCIPLINE HEARING

IN THE MATTER OF ONTARIO REGULATION 268/10  
MADE UNDER THE *POLICE SERVICES ACT*, RSO 1990,  
AND THE AMENDMENTS THERETO;

THE OTTAWA POLICE SERVICE

AND

CONSTABLE PAUL STAM, #2233

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DECISION ON DISPOSTION

Before: Supt. Don Sweet

Counsel for the Prosecution: Christiane Huneault

Counsel for the Defence: Mr. Mike Lamothe

Hearing Date: Tuesday January 10<sup>th</sup> , 2017

This decision consists of four parts: PART 1: OVERVIEW; PART II: SUMMARY OF MISCONDUCT AND, PART III: ANALYSIS and PART IV: DISPOSITION ON PENALTY

## **PART 1: OVERVIEW**

### **Allegations and Particulars of Misconduct include the following;**

It is alleged that Cst Paul Stam committed Discreditable Conduct, in that between October 1<sup>st</sup> 2015 and October 28<sup>th</sup>, 2015, you acted in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the Ottawa Police Service in that you failed to serve or notify of 3 Provincial Offence Notice Warnings you produced, contrary to section 2(1)(a)(xi) of the Code of Conduct, Ontario Regulation 268/10, as amended, and therefore contrary to section 80(1) of the *Police Services Act of Ontario*.

It is further alleged that Cst Paul Stam committed Discreditable Conduct, in that between October 1<sup>st</sup> 2015 and October 28<sup>th</sup>, 2015, you acted in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the Ottawa Police Service, when you produced a Provincial Offence Notice Warning in which no evidence to support the offence was apparent or existed, contrary to section 2(1)(a)(xi) of the Code of Conduct, Ontario Regulation 268/10, as amended, and therefore contrary to section 80(1) of the *Police Services Act of Ontario*.

### Plea

I first want to thank both prosecutor, Ms. Christiane Huneault and Defence, Mr. Lamothe, for their input and ability to reach a joint plea and agreement on penalty.

I previously accepted the guilty plea on Monday December 5<sup>th</sup>, 2016. As a result of this plea, a joint submission of penalty was provided; whereas both parties agreed to and jointly submitted that the appropriate disposition of the findings of Discreditable Conduct is as follows;

A demotion to second class constable for a period of 4 months in accordance with section 85(1) (c) of the *Police Services Act*.

## **PART II: SUMMARY OF MISCONDUCT**

The following exhibits were tendered:

- Exhibit #1: Hearing Officer Designation
- Exhibit #2: Prosecutor's Designation – Huneault
- Exhibit # 3: Notice of Disciplinary Hearing
- Exhibit #4: Notice of Increased Penalty
- Exhibit #5: Agreed Statement of Facts
- Exhibit #6: Joint Submission on Penalty

### **Particulars of Counts**

An agreed statement of facts was presented to the Tribunal as follows;

## Agreed Statement of Facts

1. The subject officer, Constable Paul Stam (cadre # 2233), is a sworn member of the Ottawa Police Service (OPS). Constable Stam has been a police officer since 2011.

### **Professional Standards Section Audits PON Traffic Stops**

2. On November 3<sup>rd</sup>, 2015, the OPS Professional Standards Section (PSS) conducted a quality assurance audit related to issuing Provincial Offence Notice (PON) warnings to members of the public. The goal of this audit was to verify that OPS members were both properly warning drivers and using sound practices during PON traffic stops.

### **PSS Investigates Constable Stam's PON Warnings**

3. The PON audit identified issues with Constable Stam's PON warnings and was referred to PSS for further investigation. PSS subsequently detected inconsistencies in Constable Stam's conduct when issuing PONs to the public. Specifically, Constable Stam did not follow OPS policies and procedures, including Policy 6.13 Provincial Offence Notices.
4. PSS investigators detected issues with three of Constable Stam's PON traffic stops:
  - i) Call 15-250259
  - ii) Call 15-271036
  - iii) Call 15-275490

#### **i) Call 15-250259**

5. On October 1<sup>st</sup>, 2015, Constable Stam engaged in a traffic stop for the offence of no validation on plate. Constable Stam entered two PON warnings on the system:
  1. PON 4615249Z for the offence of drive motor vehicle- no validation on plate, s7(1)(c)(i) *HTA*, and
  2. PON 4615250Z for the offence of fail to notify change of address, s9(2) *HTA*.
6. Constable Stam provided the driver with a verbal warning for failing to affix a current validation sticker to the driver's license plate; the driver acknowledged receiving this warning (PON 4615249Z).
7. The driver denied being warned about failing to notify the change in address and the officer's duty book does not note whether a warning was issued. Constable Stam failed to serve or notify the driver of failing to notify the change in address (PON 4615250Z).

**ii) Call 15-271036**

8. On October 23<sup>rd</sup>, 2015, Constable Stam engaged in a traffic stop for the offence of driving with a burnt out headlight. Subsequently, Constable Stam entered two PON warnings:
  1. PON 4620822Z for the offence of drive without proper headlights- motor vehicle, s62(1) *HTA*, and
  2. PON 4620823Z for the offence of drive motor vehicle- no currently validated permit, s7(1)(a) *HTA*.
9. The driver provided all the required documents to the officer.
10. Constable Stam verbally warned the driver for the burnt headlight; the driver acknowledged receiving this warning (PON 4620822Z).
11. The driver alleged the permit was valid at time of the stop and the basis for this warning was not indicated in the officer's duty book. Constable Stam issued the warning for no currently validated permit without apparent evidence to support the offence (PON 4620823Z).

**iii) Call 15-275490**

12. On October 28<sup>th</sup>, 2015, Constable Stam engaged in a traffic stop for the offence of having no validation on plate. Constable Stam entered three PON warnings into the system:
  1. PON 4621409Z for the offence of drive motor vehicle- validation improperly affixed, s7(1)(c)(i) *HTA*;
  2. PON 4621410Z for the offence of fail to surrender insurance card, s3(1) *CAIA*; and
  3. PON 4621411Z for the offence of entire plate not plainly visible, s13(2) *HTA*.
13. The driver provided all required documents to the officer.
14. Constable Stam served the driver with a warning for improperly affixing the validation sticker; the driver acknowledged receiving this warning (PON 462140Z).
15. The driver denies receiving warnings for failing to surrender the insurance card or failing to keep the plate completely visible; the officer's duty book did not indicate these warnings were given. Constable Stam failed to serve or notify the driver of PON 4621410Z and PON 4621411Z.

## **Constable Stam's Prior Work History**

16. Constable Stam has no serious prior discipline issues with PSS.
17. In 2013, Constable Stam received a commendation for demonstrating outstanding skill, judgment, and bravery when responding to a call for service.

## **PART III: DISPOSITION**

I would like to start my comments as it relates to disposition on penalty by first outlining the objectives of discipline:

These objectives are to:

- Correct unacceptable behavior
- Deter others from similar behavior
- Assure the public that the police are under control

To determine an appropriate disposition a variety of considerations apply to the process.

The case law enumerates factors such as deterrence, provocation and managements approach to the misconduct. Other factors can be relevant to aggravating and mitigating a penalty; these include officer's employment history and the recognition of seriousness of the misconduct. I agree that the proposed joint position on penalty addresses these important penalty factors.

I will now highlight several of the areas I took into consideration for this disposition;

The first consideration I would like to review is that of:

### **Public Interest**

One of the objectives of police discipline is the protection of the public. Any penalty I impose must impress upon the public that misconduct on an officer's part attracts appropriate sanctions. One of the Legislative purposes of the PSA is to increase confidence in the provision of police services in Ontario, including disciplinary matters.

In policing it is imperative that the public have faith in police officers in order for the police service to effectively carry out its function. Public interest requires that all persons interest must be protected, the officer, the public and the persons affected. The public and the Service have an expectation that officers will fulfill their duties and abide by their oath.

Cst. Stam's standard of conduct in this matter fell well below the reasonable expectation the public and the service has of its police officers. It is unacceptable when a police officer

intentionally misrepresents the truth and/or fails to notify a member of the public of a PON warning documented on their driving record. These facts will no doubt affect the confidence of community members who trust officers to enforce laws in a truthful manner and it is unacceptable when a police officer fails to notify a member of the public of a PON warning documented on their driving record.

The next penalty consideration is:

### **Seriousness of the Misconduct**

Cst Stam's behaviour is serious in nature. This misconduct resulted in an inaccurate PON warning being uploaded into the electronic OPS records management system. It is also deemed serious the fact Cst. Stam repeatedly failed to notify drivers that he was issuing PON warnings.

This is not misconduct that can be explained as an isolated momentary lapse of judgment. There is no excuse for his behavior. Cst. Stam will now be McNeil positive and will be subjected to cross examination on the facts surrounding his misconduct in an attempt to impeach his credibility and reliability. There is no doubt this type of misconduct will have an impact on the officers ability to give evidence in future matters and as a result creates additional risks to investigations he may be involved in, in the future.

The next area I wish to address when considering penalty is the,

### **Recognition of the Seriousness of Misconduct**

Constable Stam has pleaded guilty at the very first opportunity and by doing so acknowledges responsibility for his actions. This is a significant mitigating factor and I acknowledge that he has accepted responsibility for his actions.

Cst. Stam fully cooperated with the Professional Standard investigation.

### **I will now speak to the Potential to Reform or Rehabilitate the Police Officer**

Constable Stam was hired by the Ottawa Police in 2011. Cst Stam has no previous discipline and there is no indication in any performance reviews or employment records that there have ever

been any issues surrounding performance or conduct issues. Although his actions in this case were misguided, there is no reason to believe that his behaviour will re-occur.

### **Effect on Police Officer and Police Officer's Family**

The impact of the proposed disciplinary and corrective measures on a police officer and on the police officer's family is a factor that must be considered. The penalty sought in this case will have an impact on Cst. Stam, both financially and professionally. Constable Stam will suffer harm to his reputation, which undoubtedly, will cause him and his family stress. Constable Stam will be McNeil positive and, therefore, will often be questioned about these charges while testifying.

While impactful to Cst. Stam, it is the result of the deliberate behavior of Cst. Stam and the responsibility and subsequent consequences must fall squarely on his shoulders.

### **Another factor I took into consideration when considering penalty is Specific and General Deterrence**

Police officers are held to a higher standard. The Ottawa Police Service does not condone behavior as exhibited by Cst. Stam.

The penalty in this case should send a clear message to the public and all officers in the service that this type of conduct is not acceptable and will not be tolerated. The public must be reassured that they will be dealt with by the police in a professional manner.

The penalty for Cst. Stam's misconduct must be met with serious consequences. The penalty must be serious enough to deter him from ever considering acting in a similar manner again and appearing before this Tribunal. The penalty must be a reminder to Cst. Stam that he must ensure he advises drivers when he issues PON warnings.

As for general deterrence, the penalty must be serious enough to also send a message to other officers in order to deter them from this type of conduct. The Service wants to send a clear message that the misrepresentation of information when issuing PON warnings will not be tolerated.

The next area I would like to address is:

### ***Reputation of the Police Force and Effect of Publicity***

The misconduct exhibited by Cst. Stam will come to the attention of the public and the other Ottawa Police Service members. The disciplinary decision will be posted on the Ottawa Police Service webpage for members and public to read.

This incident has the potential to have a serious effect on the reputation of the police service. The actions of Cst. Stam will no doubt affect the confidence of members of the community in all future interactions with the police. The community has a basic expectation that police officers are acting in an honest manner and will only issue Provincial Offence Notice Warnings that are supported by evidence and will notify drivers when issuing PON warnings.

### **Consistency of Disposition**

In relation to consistency of disposition I was provided the details of three similar cases revolving around the similar charges faced by Cst. Stam. While not an exact fit for these particular circumstances in case law decision, it does act as a starting point when considering penalty.

In Cst. Covic and OPS (June 2, 2016) the officer issued 4 PON warnings to 2 separate individuals without sufficient evidence to substantiate the offences. The officer also failed to make any notes on 26 PONs. The officer plead guilty to Discreditable Conduct and Insubordination. The Hearing Officer accepted the joint position on penalty and ordered a Demotion for a period of 7 months. The Hearing Officer in that matter considered the following mitigating factors: officer was cooperative with investigation, plead guilty on 1st appearance, officer remorseful, no previous disciplinary history and a positive personnel file.

In Cst. Tierney (July 11, 2016) the officer issued 15 PON warnings without sufficient evidence to substantiate the offences. Cst. Tierney also failed to serve and/or verbally warn 5 different drivers of valid PONS warnings. In addition, the officer also failed to make any notes on 154 valid PONs. The officer plead guilty to two counts of Discreditable Conduct and one count of Insubordination. The Hearing Officer accepted a joint position on penalty and order a Demotion for a period of 12 months. In that matter I was the Hearing Officer and considered the following mitigating factors: officer was cooperative with investigation, plead guilty on 1st appearance, officer remorseful, no previous disciplinary history and a positive personnel file.

In Cst. Ellis (September 7<sup>th</sup>, 2016) the officer issued 33 PON to 31 separate individuals without sufficient evidence to substantiate the offences. Cst. Ellis also failed to serve and/or verbally warn 8 different drivers of valid PONS warnings. In addition, the officer also failed to make any notes on 5 valid PONs. The officer plead guilty to two counts of Discreditable Conduct and one count of Insubordination. The Hearing Officer accepted a joint position on penalty and ordered a Demotion for a period of 18 months. The Hearing Officer considered the following mitigating factors: officer was cooperative with investigation, plead guilty on 1st appearance, officer remorseful, no previous disciplinary history and a positive personnel file.

Having considered the above cases I agree that the proposed penalty is within the acceptable range of penalty for cases involving misrepresentation of facts.

***In conclusion***

It is my opinion that the suggested penalty reflects both the mitigating and aggravating factors:

Such as:

As to ***mitigating*** factors,

The officer acknowledged the misconduct.

Cst. Stam pleaded guilty to the matter before me today. His plea eliminated the need for a trial that would have involved calling members of the public and fellow officers to testify.

Cst. Stam has no previous misconduct.

These mitigating factors speak to a positive employment history, lack of previous misconduct and the recognition of misconduct.

As to ***aggravating*** factors,

The misconduct of Cst. Stam was serious and not in keeping with the expectations of the Ottawa Police Service.

The reputation of the police service has been tarnished in the mind of the public, the 3 drivers in question and other police officers.

These aggravating factors speak to the damage to the reputation of the police service, the public interest and the seriousness of the misconduct.

**PART IV: DISPOSITION**

Having regard to the aforementioned points, I agree with the joint submission concerning penalty in this matter. Misconduct has been proven on clear and convincing evidence and the purpose of the discipline process can be met by imposition of the proposed penalty.

Cst. Paul Stam, please stand, you will be demoted to second class constable for a period of 4 months in accordance with section 85(1)(c) of the *Police Services Act of Ontario*.

Dated at Ottawa this 10<sup>th</sup> day of January 2017.

Superintendent Don Sweet #817  
Hearing Officer

