

IN THE MATTER OF
ONTARIO REGULATION 123/89
MADE UNDER THE *POLICE SERVICES ACT* R.S.O. 1990, C.P. 15
AND AMENDMENTS THERETO

AND IN THE MATTER OF
POLICE CONSTABLE NERMIN MESIC BADGE #1787
AND THE
OTTAWA POLICE SERVICE

SENTENCE

APPEARANCES

LARA MALASHENKO

for the Ottawa Police Service

PAM MACHADO

for Police Constable Nermin Mesic

BEFORE:

Terence Kelly, Deputy Chief (Ret)

York Regional Police

Hearing Officer

Sentence Date

SENTENCE

August 31st, 2020.

Deputy Chief Terence Kelly (Ret.) before commencing with sentence in this matter, I wish to thank Ms. Lara Malashenko, the Service prosecutor, and Ms. Pam Machado, counsel for Police Constable Nermin Mesic, for their comments and exhibits entered, all of which have assisted me.

Police Constable Nermin Mesic #1787 has pleaded guilty and been found guilty of two counts of discreditable conduct, laid under the *Police Services Act*.

The guilty plea was advanced with an Agreed Statement of Facts (**Exhibit 5**).

Agreed Statement of Facts

The subject officer, Police Constable Nermin Mesic #1787 is a sworn member of the Ottawa Police Service. Constable Mesic has been a police officer with the Ottawa Police Service since December 2005.

On February 6th, 2016 a member of the public contacted the Gatineau Police Service and reported being threatened by his landlord. The landlord in question is Constable Mesic of the Ottawa Police Service.

The tenant (“Mario Lavoie”) reported that on February 5th, 2016, Constable Mesic contacted him to request the payment of arrears of rent. They agreed to meet at the Tim Hortons located at the corner of Rue Principale and Wilfred-Lavigne in Gatineau, Quebec later that day to discuss.

Upon arrival at the Tim Hortons. Constable Mesic, who was off-duty at the time, told Mr. Lavoie to get into his vehicle. As he entered the vehicle, Mr. Lavoie turned on the voice recorder of his cell phone.

Throughout the drive, Constable Mesic was verbally aggressive towards Mr. Lavoie. He yelled at Mr. Lavoie and demanded that he start calling people in order to get the rent money that was owed him. Constable Mesic ordered Mr. Lavoie to have the money within an hour. Constable Mesic threatened Mr. Lavoie's life and told him to sell his kid or make his wife "do something" for the money. Mr. Lavoie made several phone calls to no avail.

Constable Mesic also made numerous threatening statements towards Mr. Lavoie including:

- (1) "If you think you met bad people, you haven't met bad people. Okay. Because I don't give a shit. For money, people break legs, am I right?"
- (2) "I also have issues with the bank because I'm short. I'm short that I can't pay, okay, and if I can't pay, I'm losing that house and if I lose that house, I'm basically losing the future of my kids, right? And if I lose the future of my kids, you know what happens, it makes me a desperate man. Do you know what a desperate man does"
- (3) "Even Harry told you don't fuck with him, right? [...] Harry told you, "You can't fucking do this." To-to-especially not me. Because what happens is you're jeopardizing yourself, you're jeopardizing your son's future, you already had issues before and now we're having issues again. Right?"
- (4) "I don't care. I don't care. Sell your kid. I don't give a shit. Make your wife do something."
- (5) "I guarantee you. I'm going to spill blood. Okay."

Constable Mesic then decided to drive to the apartment to speak to Mr. Lavoie's girlfriend, however, he missed the exit and drove down Rue des Hautes-Rives to Rue Rober-Dorion E back towards town. He arrived at a dead end at Rue Alexis-Rajotte and brought the vehicle to a complete stop. Constable Mesic ordered Mr. Lavoie to exit the vehicle. Constable Mesic also exited the vehicle and approached Mr. Lavoie and stated:

- (1) "I've told you a couple of times now and I do not give a shit, people for money they kill right? Your life is not worth to me 2000\$ ok?"
- (2) "I will put you in trouble that you will not recuperate for the next 10 years."
- (3) "I guarantee you, I'm going to feed you to the fish."
- (4) "And I don't give a fuck what's going to happen after because you will not be able to – fucking recuperate from that. Do understand that?"

Constable Mesic then told Mr. Lavoie to get back in the vehicle and drove away. Constable Mesic continued to make further threats while driving the vehicle, including:

- (1) "If there is any damage in the house and all that stuff, I will come back after you?"
- (2) "Mario, if you fuck me over money, you know you can't hide from me right?"
- (3) "You know I'm going to come after you, I'm going to find out where you live, I'm going to find out how you live, and I'm going to – I'm going to bury you. I'm going to feed you to the fish. Okay. With a big brick around your neck. Do you understand that?"
- (4) "I'm a very nice guy with a very short fuse. Okay. If this happens, to actually burn out my fuse, I'm telling you, you will have none at all".
- (5) "Second thing is, you speak to anybody about this and it comes back to me at all, I guarantee you..."
- (6) "And you leaving is not an option."
- (7) "You don't have money, I will find you. I guarantee you I will find you, I will bury you. Then you can explain to your kids and the rest of your family how bad of a landlord I was. Okay. 'Cause I can't give a fuck, just five days ago, you had the money and you fucked with me."
- (8) "I will fucking take your kid and I will sell it. I don't give a fuck."
- (9) "There are two ways of dealing with it: Whether legit or with a paper or with force. Okay and I've done both, and I'm not going to fuck around with you. I've tried to be nice with you..."

Constable Mesic ultimately advised Mr. Lavoie that he had until 12:00 p.m. the following day for payment and then drove him back to a church parking lot located across the street from Tim Hortons. At that point Constable Mesic told Mr. Lavoie to get out of the vehicle.

On February 5th, 2016, fearful for his safety and well-being, Mr. Lavoie reported the incident to the Gatineau Police Service and provided them with the voice recording. He advised them that he did not want to press charges but wanted the incident on file in case anything were to happen to him.

On February 7th, 2016, Constable Mesic phoned Mr. Lavoie and left a message with Mr. Lavoie's girlfriend. Mr. Lavoie returned Constable Mesic's call that afternoon and again recorded the conversation. During the conversation, Constable Mesic ordered Mr. Lavoie to begin moving out of the residence immediately and threatened to hang Mr. Lavoie by stating:

(1) "Yeah, you don't – you shouldn't – you can't feel safe. Tonight you're back in – in the house, I'm going to walk in there and I'm going to hang you."

Fearful for his life, Mr. Lavoie contacted Gatineau Police Service, reported the threat, and provided them with the voice recording.

On February 7th, 2016, Constable Mesic was arrested and charged by the Gatineau Police Service with Uttering Threats contrary to s. 264. 1 (1)(a) of the *Criminal Code of Canada* (Criminal Code), Assault contrary to s. 266 of the *Criminal Code*, Forcible Confinement contrary to s. 279(2) of the *Criminal Code*, and Intimidation contrary to s. 423(1)(a) of the *Criminal Code* in relation to a landlord and tenant dispute.

On February 25th, 2019, Constable Mesic appeared before the Honourable Justice Norm Boxall of the Ontario Court of Justice and pled guilty to Uttering Threats pursuant to s. 264. 1(1)(a) of the *Criminal Code*. He was sentenced and given an absolute discharge. The remaining charges were withdrawn at the request of the assistant Crown Attorney

In his decision, Justice Boxall is clear that the decision he rendered is the result of a plea and also has no bearing on Constable Mesic's employment status.

On February 8th, 2016, Constable Mesic was suspended from the Ottawa Police Service and a Chief's Complaint was generated. An investigation was launched by the Ottawa Police Service Professional Standards Section.

On March 28th, 2019, Constable Mesic provided a statement to the Professional Standards investigators. During his interview, he acknowledged that the voices on the recordings dated February 5th, 2016 and February 7th, 2016, are Mr. Lavoie and himself. Constable Mesic acknowledged making threats on both these dates and acknowledged driving Mr. Lavoie to a dead-end off of Highway 148. He stated that on the night of the threats made on February 5th, 2016, he was exhausted from working nights and wanted Mr. Lavoie to know that he was serious about paying the arrears of rent.

Constable Mesic explained to the investigators that despite no longer working night shifts when the February 7th, 2016 threats were made, he was not thinking straight and admitted that he lost control on both occasions when he threatened Mr. Lavoie. He further advised PSS investigators that he is well-known for saying "stupid shit" that he should not say.

Constable Mesic told investigators that he initially planned on driving Mr. Lavoie to Mr. Lavoie's residence to speak with Mr. Lavoie's girlfriend and to take anything of value until he was paid. Constable Mesic abandoned that idea during the drive as he was worried that Mr. Lavoie may later contact the police and inform them that Constable Mesic took his television and other items of value.

Constable Mesic also acknowledged being aware of the formal eviction process in Quebec. Constable Mesic explained to investigators that Mr. Lavoie had a history of late payments and that on December 5th, 2015, he went to Mr. Lavoie's residence and served him with a typed eviction notice instead of going to the Tribunal and getting the appropriate form. Constable Mesic's wife who was in the car at the time,

watched Mr. Lavoie take the copy of the eviction notice and throw it to the ground. Constable Mesic stated that the eviction notice was a “bluff” and was intended to show that he was serious.

I accept the pleas based on the facts in this case. The facts stated and agreed to, provide clear and convincing evidence of the alleged misconduct strongly supporting Police Constable Mesic’s plea of guilty. If not for the guilty plea before this Tribunal, which I take into account as a mitigating factor and recognition of his misconduct, I would consider a greater penalty.

Due to the circumstances surrounding the alleged misconduct, notwithstanding Constable Mesic’s guilty pleas and the Agreed Statement of Facts, I believe the allegations when taken in the broader context of employee/employer relations, indicates it is prudent to provide written reasons for my findings.

Analysis and Decision

Both the Service prosecutor and defence counsel spoke to a number of relevant factors to be taken into account when assessing penalty. When assessing what might be the appropriate penalty for such behaviour, a Hearing Officer is obliged to take into account a number of factors. In *Williams and Ontario Provincial Police (1995) 2 O.P.R. 1047 O.C.C.P.S.*, the Commission identified three key elements. These include: the nature and seriousness of the misconduct in question; the ability to reform or rehabilitate the officer; and the damage that would occur to the reputation of the Police Service. The Counsel also noted other factors that can be relevant; either aggravating or mitigating the penalty depending on the misconduct in question. These include the officer’s employment history and recognition of the seriousness of the transgression.

Public Interest

The police officer is the person most responsible for initially setting the wheels of the administration of justice in motion and therefore the general public cannot be expected to respect the law if it does not **respect** and believe in the dedication and integrity of the Police Service.

A police officer's conduct ought to set an example for the community to follow and thus any shortcomings in their conduct will colour the image of the Police Service in the eyes of the public.

The well-entrenched penalty factors described in the jurisprudence of police discipline: the public interest, the nature of the misconduct, and the damage to the reputation of the police service all relate, in my view, to the concept of public trust in policing, and our willingness and ability to address wrong doing when it surfaces.

The public trust in policing remains fragile and the actions of an individual officer can influence many. Public trust for policing ebbs and flows, dependent on a variety of influences. While support and trust must be continually earned, it takes very little to destroy it.

It is appropriate to consider public expectations as one of the considerations in the determination of an appropriate penalty. The penalty must impress the public that misconduct on an officer's part attracts appropriate sanctions. The public confidence in the provision of Police Services is affected by the actions of its police officers.

It is no exaggeration to say that the police cannot successfully carry out their task of maintaining law and order without the support and confidence of the general public.

Seriousness of the Misconduct

The seriousness of the offence is, of course, the primary consideration. In this particular case, the actions and behaviour of Police Constable Nermin Mesic were clearly inappropriate and an embarrassment to the Ottawa Police Service.

The evidence presented to this Trier of Fact demonstrated the public interest was not first and foremost in the mind of Police Constable Mesic. Professionalism and integrity cannot be compromised. The public

is entitled to have high expectations of a Police Service and its members. To retain this trust and confidence, they must be professional and ethical in everything they do. It is incumbent upon police services to ensure only those members who have exhibited self-discipline in adherence to the policies and procedures of the Service are entrusted to perform duties within their Service.

Police officers perform difficult and sometimes disagreeable tasks on a daily basis, the circumstances of which seldom come to the attention of the general public. By contrast, acts of misconduct such as those committed by Constable Mesic receive considerable attention, are not easily forgotten, and serve to tarnish the image of policing.

The conduct of Constable Mesic in these matters is completely at variance with the high standards expected of members of the Ottawa Police Service. Informed officers possess a sense of responsibility to the Service of which he or she is a part, and to the community, which they serve. It is unfortunate that when faced with this situation Constable Mesic would not permit himself to be guided by his better judgment and responsibility and utilise the available remedies under the *Landlord and Tenant Act* to deal with this issue.

Recognition of the Transgression

This is important for several reasons: it speaks to the acceptance of responsibility by the officer for his action and recognition of his accountability to society, notwithstanding he would be aware of his misconduct.

Clearly Constable Mesic's plea of guilty, at the first opportunity, indicates he recognizes the mistakes he has made and accepts full responsibility for his actions.

In the criminal proceeding before The Honourable Justice N.D. Boxall dated February 25th, 2019 on page 42 of the Sentence stated, and I quote, *"I give Constable Mesic credit for his plea of guilty, his expression of what I take to be very sincere remorse and embarrassment about what's occurred, and the fact that he also sought some counselling on a personal level and with respect to anger management, so that if he ever again was in a situation where he felt frustrated or aggrieved he would handle himself better."* Unquote.

On page 49 of the Sentence, The Honourable Justice N.D. Boxall stated, and I quote: "It is critical to appreciate that Constable Mesic is not receiving a discharge because he is a police officer. In fact, if he was otherwise employed and an ordinary landlord, the issue of a discharge given his character, would not be in issue. If the case was otherwise resolved, a discharge would be the routine disposition. The issue in this case arose not whether a police officer is given additional consideration, but rather the reverse, that being a police officer should be disentitled to one. In all of the circumstances of this case, it is my view that the appropriate sanction is to grant him a discharge..." Unquote.

On page 53 of the Sentence, The Honourable Justice N.D. Boxall stated, and I quote: *"I can add however, though, that my observations of Constable Mesic in court and my reading of the material before me, and Constable Mesic's what I accept as sincere remorse, indicate to me that Constable Mesic has learned through this process and has learned a lot about the human condition, the court process and the impact of this processes on persons who appear before the court. This may in fact enhance his ability as a police officer to understand and deal with many of the citizens he would interact with as a police officer in the future if he is permitted to do so, knowing the power and the effect on a person who is either arrested, fingerprinted, detained in custody pending a show cause, or in fact just facing a charge. It's sometimes difficult to understand all of that impact unless one has been through it."* Unquote.

I am mindful it is essential for the Tribunal to assess the prospect of rehabilitation of an officer whenever a suitable disposition is being devised. In *Ceyssens' Legal Aspects of Policing* the Commission offered the following analysis. "...rehabilitation is a very important and significant factor when considering an appropriate penalty...the Commission believes that unless the offence is so egregious and unmitigated the opportunity to reform should be a significant consideration."

Defence counsel spoke to the good service record of Constable Mesic over his twenty years of service with Ottawa Police Service. That the conduct of Constable Mesic was a mistake, a serious error on his part, made in the heat of the moment over ongoing difficulties with one of his tenants.

When reviewing Constable Mesic's potential to reform or rehabilitate, I have also considered the recognition of the seriousness of the misconduct, employment history and the numerous letters of support from within the police service, members of the community and crown counsel. It is clear from these documents Constable Mesic throughout his career has acted in a professional manner. I believe that these factors can be closely associated to his potential to reform.

A letter of support, dated May 31st2014 from a young lady arrested for impaired driving, arrested by Constable Mesic, particularly struck me. She wrote:

"I will never forget how it felt to have you put these handcuffs on me that night. I cannot tell you how it felt to be put in the back of your police cruiser and I certainly can't tell you how it made me feel to hear that cell door slam shut behind me...I'm going on my 6th year of sobriety...6:00 p.m. December 18th. To be exact. My fondest memory of that most god-awful night is of you reaching through those cell door bars and shaking my hand and saying, "This is not the end of the world, things will get better." Nermin, I simply cannot tell you how much that meant to me. I have thought of that moment often throughout the last seven years and wanted to reach out to you many, many times to tell you that."

In determining a suitable disposition in this matter, the Tribunal has heard the submissions representing the position of both parties and has given careful consideration to this information. After a finding of guilt, the Tribunal must determine if the proposed sanction achieves the objectives set out above; balancing all of these factors will assist in the final decision. The misconduct relative to this charge has been adequately described by the prosecution and the defence has consented to its substance. Additionally, the joint submission on penalty has established aggravating and mitigating factors that speak to the appropriateness of the recommended penalty.

In addition to the Agreed Statement of Facts submitted at the hearing, there was an agreement that the appropriate disposition for the finding of two counts of Discreditable Conduct is a demotion in rank.

Constable Mesic will be demoted from First Class Constable to Second Class Constable for a Period of 12 months on the following terms:

- a. **The progression from Second Class to First Class Constable is contingent upon the successful completion of job competencies;**
- b. **Any performance issues will be identified by the Employer within the first six months of the demotion.**
- c. **Ongoing therapy/counselling with his treating practitioners.**

This penalty is submitted in accordance with sections 85 (1) (c) of the Police Services Act.

Terence Kelly, Deputy Chief (Retired)

York Regional Police

Hearing Officer

August 31st, 2020