



TORONTO POLICE SERVICE DISCIPLINE HEARING

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

IN THE MATTER OF THE THE TORONTO POLICE SERVICE
AND POLICE CONSTABLE ANDREW KEOWN (10716); (He/Him)

Charge: Discreditable Conduct (2 Counts) (Case 37.2018)
Discreditable Conduct (Case 67.2019)

DISPOSITION DECISION

Hearing Officer: Superintendent Shane Branton; Toronto Police Service; (He/Him)

Prosecutor: Inspector Lisabet Benoit, Toronto Police Service; (She/Her) Defence

Counsel: Mr. D. Butt; (He/Him)

Case Number: 37.2018 & 67.2019

Hearing Dates: 2023.11.20

Decision Date: 2023.12.05

Before commencing my decision in this matter, I would like to thank Mr. Butt, Defence Counsel, and Inspector Benoit, the Service Prosecutor, for their submissions as to the allegations of misconduct and exhibits tendered, all of which have assisted me in reaching my decision.

Note: This decision is divided into three parts: PART I: OVERVIEW; PART II: THE HEARING; PART III: ANALYSIS

PART I: OVERVIEW

Background

1. Constable Andrew Keown (10716) commenced his employment with the Toronto Police Service (TPS) in 2014. Constable Keown presently holds the classification of First Class Constable and is assigned to 53 Division.

Allegations of Misconduct

2. Constable Andrew Keown (10716), being a member of the Toronto Police Service, you are alleged to have committed misconduct in that you are guilty of a criminal offence that is an indictable offence or an offence punishable upon summary conviction, contrary to Section 2(1) (a) (ix) of the Schedule Code of Conduct of Ontario Regulation 268/10 and therefore, contrary to Section 80(1)(a) of the Police Services Act, R.S.O. 1990 as amended.

Representation

3. The prosecutor, Inspector Lisabet Benoit represented the TPS. Constable Keown was represented by Mr. Butt. Constable Keown did not appear. The hearing was held in Absentia. On his behalf, with instructions counsel Mr. David Butt entered a plea of guilty on the count of Discreditable Conduct in Case 67.2019.

Hearing in Absentia

4. On November 20th, 2023 the Prosecution, Inspector Benoit requested to proceed in 'absentia'. She began by filing an affidavit of Service from Ms. Stacey Found (Exhibit 9). This affidavit contained the following information:

Prosecution has attempted to proceed with this matter several times.

On February 8, 2022, this matter was scheduled for a hearing to take place on November 14-17, 2022. On February 11, 2022 Ms. Found served counsel a Tribunal Notice of Hearing. Ms. Ahumada acknowledged receipt of Ms. Found's email. Prosecutions was unable to proceed with the hearing in November of 2022.

On February 28, 2023, the matter was scheduled for a hearing in the tribunal. The Hearing was scheduled for September 5th to 8th, 2023. Ms. Found sent Mr. Lacy the Tribunal Notice of Hearing on March 6, 2023. Mr. Lacy acknowledged receipt the same day.

The Hearing needed to be rescheduled again as new counsel was needed to be assigned to PC Keown.

The matter was scheduled on October 24, 2023 for a hearing with a date of November 24, 2023. The Tribunal Notice of Hearing was sent on October 26, 2023. Mr. Butt acknowledged receipt of the Notices of Hearing on November 10, 2023.

5. Inspector Benoit filed two cases in support of proceeding in Absentia. Cameron and the Durham Regional Police Service, OCPC, 2021 (Exhibit 10) and Manning and the Halton Regional Police Service, 2021 (Exhibit 11).
6. The Prosecution submitted that there was no medical information provided to substantiate PC Keown for not attending this hearing.

7. Inspector Benoit submitted that PC Keown is aware of this date and requested to proceed in Absentia.

Defence Submissions Regarding Hearing in Absentia

8. Defence Counsel, Mr. Butt appeared electronically and made the following comments:

PC Keown is permanently disabled from policing. He (Mr. Butt) is content to proceed in his absence. He has received instructions to plead guilty to these proceedings.

Mr. Butt entered all exhibits on consent.

Mr. Butt submitted that there was proper Notice of Service and took no issues for the test in proceeding in Absentia.

Decision to proceed in Absentia

9. I reviewed the documentary evidence in regards to the service of the Notices of Hearing. I found the *affidavit* evidence of Ms. Found credible and reliable – it was clear, concise and aligned neatly with the documentary evidence presented. I accepted their affidavit to be true. I am satisfied the Notices of Hearing Ms. Found forwarded to counsel for PC Keown; Mr. Butt, were in fact served on the officer. As such, I found the evidence clear and convincing that PC Keown had received notice of his alleged misconduct and consequent orders to attend the tribunal.

10. Relying on the comments made by Counsel Mr. Butt, I was content the officer was informed the tribunal had the power to proceed in his absence.

11. I am satisfied the legislative authority found in the section 7(1) and 7(3) of the Statutory Powers and Procedure Act (SPPA) permits PSA tribunals to proceed in absence of a party provided they received notice of the proceeding. In this case, notice to Constable Keown has been proven based on clear and convincing evidence.

12. Lastly, I found the case authorities presented by Inspector Benoit instructive. Occasions have arisen in the past where a tribunal has moved forward despite the absence of the party / subject officer. Based on the merits of each case, the Commission supported the decision of the adjudicator to move forward. In addition to a party simply failing to attend their hearing on the day of, I am of the mind that extenuating and persuasive circumstances and evidence must exist before a decision to hold a hearing in absentia is made, especially when the stakes are high, as they are with this case. The prosecutor has on several occasions informed this tribunal that she is seeking PC Keown's termination from employment if he is found guilty. I am satisfied that more than ample evidence and circumstances in this matter do exist to support a hearing in absentia.
13. The principles of procedural fairness and natural justice are not restricted to just PC Keown, but they apply also to the TPS and public at large. I am guided by these principles in making my decision to hold or not to hold the hearing despite of the officer's absence.
14. Weighing all these considerations and reasons, I granted the Inspector's request to proceed in absentia in accordance with section 7(1) and 7(3) of the SPPA.

Plea

15. On Monday, November 20th, 2023 Counsel David Butt appeared for PC Andrew Keown (10716), entered a guilty plea to a Notice of Hearing (Count 2) and was found guilty of Discreditable Conduct, contrary to the Police Services Act.

Decision

16. Following my analysis of the evidence, on clear and convincing evidence I find PC Keown guilty of one count of Discreditable Conduct in case 67.2019.

Case 37.2018, Discreditable Conduct (2 Counts), will be marked withdrawn at the request of the Prosecution.

PART II: THE HEARING

Exhibits

17. The exhibits for this matter are listed in Appendix 'A', attached hereto. To avoid repetition, all exhibits will be referred to by number without the preface of Appendix 'A'.

Representation

18. In this matter, Mr. Butt represented PC Keown and Inspector Benoit represented the Toronto Police Service.

Witnesses

19. No witnesses were called by the Prosecution or the Defence.

Submissions

Prosecution Submissions

20. The Prosecutor – Inspector Benoit began her submissions by entering the following exhibits: Certified Copy of Criminal Information of Andrew Keown (Exhibit 12); Guilty Plea Transcript of Andrew Keown, July 19, 2019 (Exhibit 13); Reasons for Sentencing of Andrew Keown, August 19, 2019 (Exhibit 14).

21. The Prosecutor relied upon the exhibits filed as clear and convincing evidence to

substantiate the finding of guilt. PC Keown was charged on June 6, 2018. He pled guilty on July 19, 2019 and given a four month conditional sentence on August 19, 2019. There was no appeal filed.

Defence Counsel Submissions

22. Mr. Butt acknowledge the facts and the criminal finding of guilt. He also acknowledged the finding of guilt for the misconduct on clear and convincing evidence.

Prosecution Reply:

23. Nil.

PART III: ANALYSIS

Analysis and Decision:

24. A decision was made by this tribunal to proceed in Absentia of PC Andrew Keown.

25. In reviewing Exhibit # 12, a certified copy of the criminal information for Andrew Brian Keown (August 18, 1986), the information indicates that he pled guilty to Count 1. Count 1 of the information is as follows:

Andrew Brian Keown on or about the 6th day of June in the year 2018 at the City of Toronto in the Toronto Region did commit an assault on Debra Backstein, contrary to section 266 of the Criminal Code of Canada.

The plea took place before the Honourable Justice K.L. McLeod in Brampton, Ontario.

26. In reviewing Exhibit # 13, a transcript of the proceeding of Andrew Keown pleading guilty before Justice McLeod, it revealed the details of the assault and the facts that Andrew Keown plead guilty to.

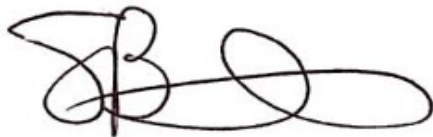
27. A review was completed of Exhibit # 14, a transcript of reasons for sentencing. The transcript provides the reasoning for the sentence that was given out by Justice McLeod after PC Keown was convicted of the offence of assault under section 266 of the *Criminal Code*.

28. Following my analysis of the evidence, the submissions made by both the Prosecution and Defence, I find that Andrew Keown was found guilty of a criminal offence. Therefore on clear and convincing evidence I find that PC Keown is guilty of one count of Discreditable Conduct in case 67.2019.

29. The Prosecution requested that both counts of Discreditable Conduct in case 37.2018 be marked as withdrawn.

Disposition:

The disposition submissions in this matter under the *Police Services Act* are scheduled to take place on February 8th, 2024.

A handwritten signature in black ink, appearing to be 'SB' with a large flourish extending to the right.

Shane Branton
Superintendent
Hearing Officer

December 5th, 2023

Appendix 'A' - List of Exhibits 67/2019 Constable Andrew Keown (10716)

- Hearing Officer R. Hussein Letter of Delegation (2019) **(Exhibit 1)**
- Prosecutor J. Jamshidi Letter of Designation **(Exhibit 2)**
- Hearing Officer R. Hussein Letter of Delegation (2020) **(Exhibit 3)**
- OPC Decision – Sgt Mauro and Thunder Bay Police Service **(Exhibit 4)**
- Ruling on Motion to Adjourn Sine Die **(Exhibit 5)**
- Prosecutor L. Benoit Letter of Designation **(Exhibit 6)**
- Hearing Officer S. Branton Letter of Delegation **(Exhibit 7)**
- Prosecutor M. Chinneck Letter of Designation **(Exhibit 8)**
- S. Found affidavit of Service **(Exhibit 9)**
- Cameron and the Durham Regional Police Service, OCPC, 2021 **(Exhibit 10)**
- Manning and the Halton Regional Police Service, 2021 **(Exhibit 11)**
- Certified Copy of Criminal Information of Andrew Keown **(Exhibit 12)**
- Guilty Plea Transcript of Andrew Keown, July 19, 2019 **(Exhibit 13)**
- Reasons for Sentencing of Andrew Keown, August 19, 2019 **(Exhibit 14)**