

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

BETWEEN:

THE HAMILTON POLICE SERVICE

AND

POLICE CONSTABLE KUDO PARK #81

CHARGE: DISCREDITABLE CONDUCT

DISPOSITION WITH REASONS

Before: Superintendent James E. Anderson

Hamilton Police Service

Appearances

Counsel for the Prosecution: Mr. Marco Visentini

Hamilton Police Service

Counsel for the Defence: Mr Belchar Arruda

Hamilton Police Association

Hearing Date: January 15, 2018

1. The exhibits for this matter are listed in 'Appendix A'. To alleviate unnecessary repetition, all exhibits will be referred to by number without preface of 'Appendix A'.
2. The undersigned was designated (exhibit 1) as Hearing Officer in respect to the charge of discreditable conduct against Constable Kudo Park as laid out in the Notice to Hearing (exhibit 3) as follows:

“You are alleged to have committed Discreditable Conduct in that on or about April 26, 2017, being a sworn member of the Hamilton Police Service, you were found guilty of assault contrary to the Criminal Code, a criminal offence that is an indictable offence or an offence punishable on summary conviction, thereby constituting an offence against discipline as prescribed in section 2(1)(a)(ix) of the Code of Conduct, Regulation 268/10, as amended.”

3. Constable Park pleaded guilty to the above referenced charge.
4. An Agreed Statement of Facts (exhibit 4) on which the plea of guilty was made was read to me as follows:

“On April 17, 2015, Police Constable Kudo Park (“Park”) was working in Uniform Patrol in Division 1 in the City of Hamilton, Ontario.

While on duty, Park was involved in the arrest of a male individual, Thomas Schonberger. A physical altercation ensued which resulted in Mr. Schonberger sustaining a fractured right cheekbone.

As a result of the injury to Mr. Schonberger, the Special Investigations Unit (S.I.U.) invoked its mandate and conducted an investigation.

As a result of the investigation, Park was charged by the S.I.U. with assault causing bodily harm, contrary to section 267(b) of the *Criminal Code of Canada*.

A four-day trial was held before the Honourable Justice Gee in the Ontario Court of Justice on December 1 and 2, 2016 and February 2 and 3, 2017.

On April 26, 2017, the Honourable Justice Gee found Park not guilty of assault causing bodily harm. However, Park was found guilty of the lesser and included offence of assault. The Reasons for Judgment are attached hereto as Appendix A. (exhibit 4)

On July 21, 2017, upon considering all of the circumstances, Justice Gee imposed a suspended sentence with probation for a period of 12 months. Justice Gee also imposed a Community Service Order for 50 hours. A Certified copy of the Court Information is attached hereto as Appendix B. (exhibit 4)”

5. I concluded that the facts as accepted were clear and convincing and sufficient for a finding of guilt and to enable penalty to be considered.
6. I was asked to accept a joint-submission as to penalty reached between the prosecution and the defence.
7. Oral submissions with respect to the proposed Joint Penalty were made by both Mr. Visentini for the prosecution and Mr. Arruda on behalf of Constable Park. A proposed penalty of 120 hours was submitted for consideration.
8. Following submissions, and on agreement of both parties, I advised that I would in due time deliver a written decision on penalty with reasons as herein.
9. To be accepted, a joint submission as to penalty must meet the test of fairness as measured not only by being consistent and proportional having regard to specific facts of the case but as well, being consistent with the disposition of cases that may be regarded as similar while recognizing that the facts of each case will vary.
10. I was offered no historical cases with similar elements of the misconduct to consider and assist in determining consistency of penalty from either party.
11. I was referred to the case of *Krug and Ottawa Police Service (2003)* and to the work of Paul Ceyskens in *Legal Aspects of Policing* for factors relevant to an appropriate disposition with respect to sentence.
12. The principles start with the recognition that the public in this Province holds the police in a position of high trust and accountability. It grants that police officers need to exercise force when necessary but expects them to do so with restraint, and to never exceed their authority.
13. As a result, the penalty must be regarded as being in the public interest. Given the facts provided and along with the consideration of the mitigating factors noted below favouring the constable, I am satisfied that the public interest is served with the proposed penalty.
14. The seriousness of the misconduct is a fundamental consideration. The excessive use of force and

subsequent finding of guilt for assault in a criminal court makes this a very serious matter. When an officer is found guilty of assault they risk losing the trust of the public and their colleagues. When trust is gone, their usefulness as a police officer becomes questionable. Constable Park has a road to travel to restore the trust and confidence in him by the public. The actions of Constable Park are mitigated somewhat however by the circumstances surrounding the incident.

15. I am satisfied that the plea and joint submission demonstrates recognition of the seriousness of the offence and acceptance of responsibility by Constable Park. The early plea also brings this matter to an end and in the public interest eliminates a further demand of time and resources.
16. I am satisfied that the officer has by his statements accepted the seriousness of his conduct and demonstrated remorse.
17. I note from the employment history of the constable that this incident took place early into his career, approximately two years, and that other than this incident his employment has been exemplary. A review of Performance Appraisals shows Constable Park as a reliable, committed, and compassionate officer with the support of his peers and supervisors (exhibit 6).
18. I was referred to the details of a work commendation (exhibit 7) and off-duty community volunteerism referred to in the submissions by Mr. Arruda. I am satisfied that they are consistent with those of an exemplary officer.
19. This conduct was in my view a 'one off' occurrence for Constable Park and nothing of the kind is likely to occur in the future.
20. The impact of the public nature of the disciplinary process on the officer and his family were expressed in a statement by Constable Park made through Mr. Arruda. The officer stated that he "regrets any embarrassment this has brought onto his family and the Hamilton Police Service." The financial impact of the jointly submitted penalty on the Park family is approximately \$5,700.
21. I note that by virtue of this charge being outstanding in one sense since 2015, the officer has been deprived of the opportunity to earn extra income by performing voluntary paid duties in the intervening time which would have otherwise have been available to him.
22. It is often not understood that the loss of an opportunity for advancement in the face of a potential penalty as the one imposed, when accepted does operate as deterrence by the officer and others.
23. The importance of the proposed penalty which is accepted comes from the acceptance of conduct as being inappropriate. The boundaries of personal conduct are reinforced here for all officers making clear the significant personal, professional, and financial consequences one will suffer under similar circumstances.
24. It cannot be disputed the negative impact this incident will have on the reputation of the Police Service due to publicity attracted through both the criminal trial and this proceeding. By his

conduct particularly with this quick plea, Constable Park has limited any damage to the reputation of the Police Service.

25. Upon review of the information presented, the filed material, and for the above reasons I am satisfied to accept the joint submission as to penalty. Pursuant to Section 85(1)(f) of the Police Services Act, R.S.O. 1990, Constable Park is ordered to forfeit 120 hours off.

Dated at Hamilton this 27th day of February, 2018

A handwritten signature in black ink, appearing to read "Anderson", with a long horizontal stroke extending to the right.

Superintendent James E. Anderson

Hearing Officer

APPENDIX A

Exhibit No.	Description of Exhibit	Submitter
1	Delegation of Powers and Duties to Hearing Officer	Prosecution
2	Designation as Prosecutor	Prosecution
3	Notice of Hearing	Prosecution
4	Agreed Statement of Facts	Prosecution
4 – Appendix A	R. vs. Park, [2017] O CJ	Prosecution
4 – Appendix B	Criminal Information 15-6668, 16 October 2015	Prosecution
5	KRUG v. Ottawa Police, OCCPS, 21 January 2003	Prosecution
6	Performance Appraisals 2013, 2014, 2015	Defence
7	Commendation Level One	Defence