

**Durham Regional Police Service Discipline Hearing**

**In the Matter of Ontario Regulation 268/10**

**Made Under the Police Services Act, R.S.O. 1990,**

**And Amendments thereto:**

**And**

**In The Matter Of**

**The Durham Regional Police Service**

**And**

**Detective Constable Trevor Kathnelson #3174**

**Charge: Discreditable Conduct (Four Counts)**

**Before:**

**Superintendent (Retired) M.P.B. Elbers  
Ontario Provincial Police Adjudicator**

**Appearances:**

**Counsel for the Prosecution: Mr. Alex Sinclair  
Durham Regional Police Service**

**Counsel for the Defense: Mr. Bill Mackenzie  
Durham Regional Police Association**

**Penalty Decision with Reasons:**

**The Hearing:**

Constable Trevor Kathnelson # 3174 pled guilty on February 20, 2024 at a Police Act Hearing conducted in Whitby, Ontario and was found guilty of One (1) count of Discreditable Conduct pursuant to Section 2 (1) (a) (xi) contained in the Schedule to Ontario Regulation 268/10 as amended.

Three Counts of Discreditable Conduct were withdrawn by the Prosecutor, Mr. Alex Sinclair. Counsel advised the Tribunal that the Four Counts were amalgamated into one Count of Discreditable Conduct as part of the Guilty position to be taken by the officer.

The charge pertains to Constable Kathnelson's actions on April 29, 2023 when he was involved in a single motor vehicle collision. He had been drinking prior to the accident and when approached by a Port Hope Police officer requesting to know if he was "Trevor" he denied his name to the officer. He later reported his vehicle stolen to the Ontario Provincial Police. The OPP conducted an investigation and subsequently charged the officer with Public Mischief. Constable Kathnelson attended the Ontario Court of Justice, Cobourg, Ontario on August 23, 2023 before Mr. Justice S.W. Konyer and pled Guilty to a Criminal Code charge of Public Mischief. He received probation and a \$2000.00 fine.

An Agreed Statement of Fact was tended jointly by Counsel and marked as Exhibit #3.

**AGREED STATEMENT OF FACTS AND JOINT PENALTY SUBMISSION**

**Background:**

1. Detective Constable Kathnelson ("D/Cst. Kathnelson") has been employed by the Durham Regional Police Service (the "DRPS") since April 2002.
2. On October 25, 2023, D/Cst. Kathnelson was charged with misconduct. The Notice of Hearing is attached hereto as Exhibit "A". That notice reflects four (4) counts of discreditable conduct pursuant to Part V of the *Police Services Act*.
3. Pursuant to the within agreement, the prosecution and defense agree that D/Cst. Kathnelson will plead guilty to one (1) count of discreditable conduct which will incorporate the statement of particulars from all the counts listed on the notice. The three other counts of discreditable conduct will be withdrawn.

4. The prosecution and defense submit that the following demotion is an appropriate penalty in the circumstances:
  - a. D/Cst. Kathnelson shall be demoted to the rank of Third Class Constable for one year. After spending one year at the rank of Third Class Constable, he shall be promoted to the rank of Second Class Constable;
  - b. After spending one year at the rank of Second Class Constable, D/Cst. Kathnelson shall be promoted to the rank of First Class Constable;
  - c. Each promotion shall be contingent on D/Cst. Kathnelson receiving a favourable performance appraisal recommending such promotion.

**Agreed Statement of Facts:**

5. For the purposes of a plea of guilty to one count of discreditable conduct and joint submission on penalty, the prosecution and defense agree to the following facts:
  - a. In the late afternoon of April 29, 2023, D/Cst. Kathnelson was off duty. He arranged to meet a friend at the Park and Ride in the Municipality of Port Hope, Ontario and then go to a restaurant for drinks. D/Cst. Kathnelson consumed two (2) alcoholic beverages prior to leaving his residence and driving to the Park and Ride in his pick-up truck.
  - b. D/Cst. Kathnelson picked his friend up at the Park and Ride and drove them to the Thirsty Goose restaurant on Highway 2 in Port Hope.
  - c. While at the Thirsty Goose, D/Cst. Kathnelson ordered three (3) alcoholic beverages. D/Cst. Kathnelson consumed two (2) of the beverages and exited the restaurant prior to finishing the third.
  - d. After leaving the Thirsty Goose, D/Cst. Kathnelson drove his friend back to the Port Hope Park and Ride.
  - e. Shortly thereafter, D/Cst. Kathnelson was involved in a single motor vehicle accident while driving his pick-up truck at Ontario Street and Molson Street in Port Hope.
  - f. D/Cst. Kathnelson left the scene of the accident. He drove his heavily damaged vehicle approximately 500 meters into a gas station and truck stop parking lot. He did not report the accident as was required under the Ontario *Highway Traffic Act*.
  - g. In an effort to evade officers who were responding to the collision, D/Cst. Kathnelson ran to the Comfort Inn hotel on Northumberland Country Road 28 in Port Hope. D/Cst. Kathnelson arranged for the friend with whom he attended the Thirsty Goose earlier that evening to pick him up and drive him home.
  - h. On or about April 29, 2023, D/Cst. Kathnelson, attempted to escape potential criminal and civil liability after being involved in the above-noted collision.
  - i. While at the Comfort Inn hotel in Port Hope, a Port Hope Police Officer who was investigating the collision asked if he was “Trevor”, to which D/Cst. Kathnelson stated that he was not.

- j. On or about April 29, 2023, in a further effort to avoid detection, D/Cst. Kathnelson falsely reported to the Ontario Provincial Police (“OPP”) that his vehicle was stolen.
- k. The OPP’s investigation revealed that D/Cst. Kathnelson’s vehicle was not stolen. On May 18, 2023, D/Cst. Kathnelson attended the OPP station in Cobourg where the OPP charged him with the criminal offence of Public Mischief for falsely reporting his vehicle stolen.
- l. Further, on May 18, 2023, members of the Port Hope Police Service attended at the OPP station and charged D/Cst. Kathnelson with Fail to Remain, contrary to section 200(1)(a) of the *Highway Traffic Act*.
- m. On or about August 23, 2023, at the Ontario Court of Justice in Cobourg, D/Cst. Kathnelson entered a plea of guilty to the offence of Public Mischief contrary to section 140(1)(c) of the *Criminal Code* (the “Guilty Plea”).
- n. D/Cst. Kathnelson received a \$2,000.00 fine and six (6) months of probation. A copy of D/Cst. Kathnelson’s Conviction Record and Probation Order is attached hereto as Exhibit “B”.

**Plea:**

- 6. D/Cst. Kathnelson pleads guilty to the following misconduct:
  - a. One count of Discreditable Conduct, contrary to section 2(1) (a) (xi) of the Code of Conduct, Ontario Regulation 268/10, and therefore, contrary to section 80(1) (a) of the *Police Services Act*, R.S.O. 1990, c. P. 15.

**Joint Submission on Penalty:**

- 7. The parties acknowledge the presence of aggravating and mitigating penalty disposition factors.

**Aggravating Factors:**

- 8. In particular, the parties recognize the presence of certain aggravating factors.

**Seriousness of the misconduct:**

- a. D/Cst. Kathnelson’s misconduct is a serious matter.
- b. DRPS members are expected to conduct themselves professionally and in accordance with the laws they are sworn to uphold at all times. D/Cst. Kathnelson’s conduct fell below this standard. As a result of D/Cst. Kathnelson’s illegal conduct, he was charged with and convicted of a *Criminal Code* offence.

**Public Interest:**

- a. The community has an interest in knowing that its police officers will act in accordance with the laws they are sworn to uphold. The public holds the police in a position of high trust and accountability.

Police officers engaging in illegal conduct erodes this public trust. It is extremely important that the DRPS demonstrate that its members are held to the high standard of professionalism and integrity expected of them.

Need for Deterrence:

- a. It is crucial that D/Cst. Kathnelson's penalty serve as a general deterrent for all DRPS members to inform them that the DRPS will not condone members breaking the law and that they will be held to account for their actions.
- b. Additionally, the penalty must act as a specific deterrent for D/Cst. Kathnelson to prevent reoccurrence and to warn him that his behaviour is unacceptable.

Damage to the Reputation of the DRPS:

- a. D/Cst. Kathnelson's misconduct damaged the reputation of the DRPS in the eyes of the public. His conduct was investigated by the Port Hope Police Service and the OPP, and ultimately resulted in a public court proceeding and guilty plea.
- b. Further, D/Cst. Kathnelson's misconduct was reported by several news media outlets, which identified him as a member of the DRPS.

**Mitigating Factors:**

9. The parties submit that the presence of mitigating circumstances in the present matter support the imposition of a reduced penalty.

Meaningful Cooperation in the Discipline Process:

- a. D/Cst. Kathnelson's guilty plea and joint submission on penalty demonstrate that he has accepted responsibility for his misconduct.
- b. D/Cst. Kathnelson's guilty plea and joint submission on penalty have eliminated the need for a hearing and potential appellate proceedings.
- c. D/Cst. Kathnelson cooperated during the DRPS Professional Standards Unit investigation and admitted the conduct at issue.

Employment History:

- a. D/Cst. Kathnelson has over 21 years of service with the DRPS with no record of formal discipline.
- b. D/Cst. Kathnelson's record of employment is positive. His most recent performance reviews are favourable. A copy of his 2016 Performance Management Plan ("PMP") is attached hereto as Exhibit "C". A copy of his 2018 PMP is attached hereto as Exhibit "D". A copy of his 2019 PMP is attached hereto as Exhibit "E". A copy of his 2021 Performance Review Form is attached hereto as Exhibit "F". A copy of his 2022 Performance Review Form is attached hereto as Exhibit "G"

Rehabilitation Potential:

- a. D/Cst. Kathnelson's cooperation during the Professional Standards Unit investigation and his guilty plea demonstrate his recognition of the impropriety of his behavior.
- b. D/Cst. Kathnelson's lack of prior formal disciplinary history with positive performance reviews are indicative of his rehabilitative potential.

Effect on the Officer:

- a. The proposed penalty will be of financial consequence to D/Cst. Kathnelson.

**Joint Submission on Penalty:**

10. In light of the above, the parties jointly submit that the following penalty shall be imposed pursuant to section 85(1)(c) of the *Police Services Act*:
  - a. D/Cst. Kathnelson shall be demoted to the rank of Third Class Constable for one year. After spending one year at the rank of Third Class Constable, he shall be promoted to the rank of Second Class Constable;
  - b. After spending one year at the rank of Second Class Constable, D/Cst. Kathnelson shall be promoted to the rank of First Class Constable;
  - c. Each promotion shall be contingent on D/Cst. Kathnelson receiving an acceptable performance appraisal recommending such promotion.
11. The parties note that D/Cst. Kathnelson is currently off work on a medical leave and that the penalty noted above will not be implemented until he returns to work.
12. The parties acknowledge and agree that this penalty is based on the unique circumstances of this case, not all of which are referenced herein, and this is not to be relied upon as a precedent in other matters.
13. The parties jointly request that Supt. Elbers (Ret.) remain seized with this matter in the event that any issues arise subsequent to his decision.

## **Findings:**

A One (1) day Disposition Hearing was conducted in Whitby, Ontario on February 20, 2024.

Mr. Alex Sinclair representing the Durham Regional Police Service and Mr. Bill Mackenzie representing Detective Constable Trevor Kathnelson #3174 has proposed a joint submission of Demotion from First Class Constable to Third Class Constable for a period of twelve (12) Months and subject to an acceptable Performance Review be elevated to Second Class Constable for a period of twelve (12) months and after an acceptable Performance Review be elevated to First Class Constable pursuant to Section 85(1) (c) of the Police Services Act. This demotion will become effective when Detective Constable Kathnelson returns to work as he is on Medical leave at this time.

Mr. Sinclair and Mr. Mackenzie supplied me with three (3) cases to assist me in determining an appropriate disposition. These three cases Bennet, Cooke and Bressette are found in Exhibit #4. Bennett and Cooke speak to the issues of Joint Submissions supplied by Counsel and submitted to the Tribunal. I am thoroughly aware of these two cases and have acknowledged this to Counsel. Bressette deals with failing to remain at the scene of an accident and is also alcohol related.

The cases offered by Mr. Sinclair and Mr. Mackenzie, are offered as guidance from Counsel to assist the Tribunal in accepting the proposed demotion for this officer from First Class Constable to Third Class Constable in the prescribed periods and elevation processes upon receiving acceptable Performance Reviews.

In Williams and the Ontario Provincial Police, the Commission identified three key elements a Hearing Officer must take into account when imposing a penalty. These include: the nature of the seriousness of the misconduct, the ability to reform or rehabilitate the officer and the damage to the reputation of the Police Force that will occur if the officer remained on the Force.

Accountability, ethical behaviour and conduct are at a standard much higher than the public we serve. It is generally known and an accepted fact that the law requires a higher standard of conduct with Police Officers in their private lives than the ordinary citizen.

Credibility, honesty, integrity are characteristics that are earned. As one elevates him / herself through the ranks of this proud organization those characteristics are more revered and treasured. It helps to create the professional image and excellence that the Durham Regional Police officers strive to maintain.

The public observes and evaluates the police 24-7. We, as individuals and as a professional organization must be mindful of this fact. Our members, while on or off duty, must conduct themselves in a professional manner at all times.

The most recent application of the test for discreditable conduct in Ontario confirms that the test is “primarily an objective one” and that the conduct must be measured against the “reasonable expectations of the community”.

The Ontario Civilian Commission on Police Services has articulated the following approach regarding the meaning of “likely” to bring discredit upon the reputation of the police force:

*The measure used to determine whether conduct has been discreditable is the extent of the potential damage to the reputation and image of the service should the action become public knowledge.*

In considering a proper disposition the Tribunal must consider a number of issues. The Disposition should agree with the purpose of affecting a proper discipline process where it meets the standard for the Service in employing discipline in the workplace and the responsibility to treat the respondent officer fairly and also the actions incurred if a complainant is involved to assist in their reconciliation of the matter.

The overall purpose of the discipline process is to apply corrective measures to correct improper behaviour according to the standards of the discipline process and that of the affected Police Service in accordance with their policies and procedures that all officers are to adhere to in their policing duties.

I must be guided by the OCCPS decision of Schofield and Metropolitan Police Service.

*“Consistency in the disciplinary process is often the benchmark of principles. The penalty must be consistent with the facts, and consistent with similar cases that have been dealt with on earlier occasions.”*

Detective Constable Kathnelson is a twenty two (22) year member of the Durham Regional Police Service.

I find the submissions contained in Exhibit #3 which were submitted jointly by Mr. Sinclair and Mr. Mackenzie speaks adequately to the submission for a demotion for this officer. There is no need to repeat those comments and I fully support them as well.

The public must be confident that the police will strive to set the example for those in the community. Anything short of this will be seen as a contradiction and serve no other purpose but to undermine the efforts of all serving officers and the explicit goals of the Durham Regional Police Service.

It is important to consider the interest of the community and of the Service at large. I must stress to Detective Kathnelson that this offence is a serious matter and that you exhibited reckless behaviour. Not only did you cause a single motor vehicle accident you also deceived two separate Police Services. This is totally unacceptable behaviour and more severe when committed by a well- respected police officer.



I know Counsel have stated there are mitigating factors for the Tribunal to consider because you have a stellar career. I accept that you have acknowledged your behaviour and have shown remorse.

Counsel has indicated that you were respectful when you were arrested by another police service and was cooperative at all times. This was a serious criminal act and you exhibited a lack of respect for public safety and the law. As I have stated earlier, it is common knowledge that the public holds police in a position of high trust and accountability. The Durham Regional Police Service is constantly engaged in efforts to deal with traffic safety and that the public has high expectations of the Durham Regional Police Service and its members in dealing with these issues.

When an officer is involved in a situation involving drinking and driving the public interest is high and there is serious damage to the programs and reputation of this proud organization. The community has become less tolerant of drinking and driving. The courts take this problem more serious with increased fines and penalties. This intolerance is compounded when it is committed by a police officer and is a significant aggravating factor.

The Durham Regional Police Service through its prosecutorial team has stated that there is a significant need for deterrence in drinking and driving police discipline cases. Detective Constable Kathnelson you can be grateful that the actions you performed on this day led to a single motor vehicle collision and not one that resulted in injuries or death to another citizen of this community. A penalty must be provided to Detective Kathnelson that will leave no doubt in his mind how serious this Tribunal considers his actions. The need for a strong message to others is required so that Durham Regional Police officers are aware what the consequences for drinking and driving, deceiving other Police Services in an investigation that you are the primary suspect and how serious senior management will deal with these cases.

Pleading guilty to disciplinary allegations constitutes recognition of the seriousness of the misconduct, which is a mitigating factor for the Tribunal to consider. Detective Kathnelson through his guilty plea to the disciplinary charge of Discreditable Conduct demonstrates his recognition of the seriousness of her misconduct.

His guilty plea and cooperation in this proceeding demonstrate his recognition of the seriousness of his misconduct and are mitigating factors in consideration of an appropriate penalty.

Consideration of an officer's employment history is a standard factor to consider. It can serve as both a mitigating and aggravating factor. Detective Kathnelson as previously stated does not have any prior discipline on record. He has served for twenty two years now with the Service. His stellar performance reviews, lack of discipline and length of service on record all serve as mitigating factors in this file.

It is commendable that Detective Kathnelson recognizes and accepts that his actions were irresponsible and unacceptable as a police officer. My only hope now is that Detective Kathnelson learns from this indiscretion at this Tribunal and continues to uphold the core values of a police office, the policies of the Service and conduct himself accordingly.

An officer's potential to rehabilitate is an important consideration. As already indicated, Corrective Dispositions should prevail, where possible. Police Service Act case law has held that unless the offence is so egregious and unmitigated, the opportunity to reform should be a significant consideration

The proposed penalty offered by Counsel poses a hardship to Detective Kathnelson and his family. He has accepted this and wishes to move on with his life and put this incident behind him. The Durham Regional Police Service views this misconduct as serious and is cognizant that a penalty must be imposed to protect the interest of the public we serve.

Detective Kathnelson, as a senior member of this organization, you have conducted yourself with a total lack of professionalism, judgement and courtesy, which is expected of all members of the Durham Regional Police Service.

I commend you for attending your Hearing in Whitby, Ontario on February 20, 2024 with your Counsel, Mr. Mackenzie and pleading Guilty to the misconduct charge as quickly as you have done. It was obvious to me that you wished to put this situation behind you. I will take into consideration your forthright manner in assessing the appropriate disposition.

I may have been more inclined to administer a more stringent penalty if it were not for the positive comments and observations relayed to me by Counsel and the supporting documentation that was presented to the Tribunal.

I have considered the submissions by Counsel, the agreed statement of facts and the joint penalty submission agreed to by Counsel and Detective Kathnelson.

**Disposition:**

*In light of the seriousness of these allegations and bearing in mind all the evidence placed before me, Detective Trevor Kathnelson #3174 will be demoted from his position of First Class Constable to Third Class Constable for a period of twelve (12) months following an acceptable Performance Review will be elevated to Second Class Constable where he will serve twelve (12) months at this rank and after an acceptable Performance Review will be returned to the rank of First Class Constable.*

*This demotion will become effective upon the return to the Durham Regional Police Service for this officer from his Medical leave.*

*The Penalty is pursuant to Section 85 (1) (c) of the Police Service Act.*

---

**M.P.B. Elbers, Superintendent**

**February 26, 2024**