

OTTAWA POLICE SERVICE DISCIPLINE HEARING

IN THE MATTER OF ONTARIO REGULATION 268/10

MADE UNDER THE *POLICE SERVICES ACT*, RSO 1990, c.P.15 as

THE AMENDMENTS THERETO.

THE OTTAWA POLICE SERVICE

AND

Constable Umer Khan, #1730

DECISION ON DISPOSITION AND SENTENCE

APPEARANCES:

Counsel for the Prosecution: Mr. Benjamin Estwick.

Non-Legal Representation for the Defence: Mike Lamothe.

BEFORE:

Superintendent Chris Rheaume

Ottawa Police Service

Hearing Officer

June 3, 2024

Part I: Overview.

Background of Respondent Officer.

1. The subject officer, Cst. Umer Khan (cadre #1730) is a sworn member of the Ottawa Police Service (“OPS”). Cst. Khan has been a police officer for 21 years, having been initially hired by the York Regional Police on December 2, 2002, before joining the OPS on November 8, 2004.
2. On June 23, 2018, Cst. Khan, while off duty, attended the Casino Du Lac-Leamy with a friend, where both individuals consumed a considerable amount of alcohol. Cst. Khan elected to drive both himself and his friend back to Ontario. During this commute, at approximately 2:00 a.m., a Sureté du Quebec Police officer recorded Cst. Khan travelling 123 kilometers-per-hour in a 70 kilometers-per-hour zone and attempted to conduct a traffic stop. Cst. Khan slowed before rapidly accelerating down Highway Five South near the Fournier Bridge in Gatineau.
3. A pursuit ensued into OPS jurisdiction where Sureté du Quebec officers followed Cst. Khan as he drove onto King Edward Avenue, dodging through traffic. Cst. Khan made a very wide turn into oncoming lanes on Laurier Avenue. While on Laurier Avenue, Cst. Khan ran through a red light, after which he turned right onto Nicholas Street. During the pursuit, the vehicle drove at speeds of up to 100 kilometers per hour in posted 40-kilometre-per-hour zones with both observable vehicle and pedestrian traffic.
4. After the pursuit, which lasted 3.4 kilometers, Sureté du Quebec officers located Cst. Khan in the rear parking lot of 55 Laurier Avenue East, where his passenger appeared to be vomiting. In the parking lot, with weapons drawn, Sureté du Quebec officers removed Cst. Khan from his vehicle, grounding him before placing him under arrest. Cst. Khan was then identified as an OPS officer via driver’s license and police badge. OPS officers were dispatched to the location to assist Sureté du Quebec and confirmed that Sureté du

Quebec police had arrested Cst. Khan for impaired operation of a motor vehicle. Cst. Khan's vehicle was towed.

5. Cst. Khan was transported back to Quebec by Sureté du Quebec officers. He complied with the request for breathalyzer samples: the first at 0324 hours, which read 163mg/100 ml alcohol, and the second at 0344, which read 155/100 ml alcohol. Cst. Khan was criminally charged and released on an appearance notice for Impaired Operation of a motor vehicle, Excess Blood Alcohol (over 80), Flight from Police, and Dangerous Operation of a motor vehicle. Cst. Khan's driver's license was suspended in Quebec for 90 days.
6. On June 25, 2018, a Chief's Complaint was initiated against Cst. Khan. On June 28, 2018, Cst. Khan was transferred from the Airport Division to Front Desk Services in the East Division and placed on administrative duties.
7. On August 21, 2019, Cst. Khan plead guilty before Justice Alexandra Marcil, J.C.Q. of the Cour du Quebec, to Dangerous Driving contrary to section 249(1) of the *Criminal Code of Canada*, to which a conditional discharge was ordered. At the same time, Cst. Khan pled guilty to Operation while Impaired (Over 80) contrary to section 253(1)(b) of the *Criminal Code of Canada*. Cst. Khan was sentenced on September 25, 2020, receiving a \$1000 fine, one year of probation, and a one-year driving prohibition order, which lasted sixteen months due to COVID-19.
8. Cst. Khan undertook a period of absence to facilitate his active mental health recovery. Upon his return, the OPS initiated a formal investigation.
9. On January 4, 2024, Cst. Khan attended a compelled interview with PSU, in which he was cooperative and professional. During this interview, Cst. Khan disclosed he was under stress due to a neighbour dispute that was before the civil court, which has since concluded.

10. Cst. Khan did admit he made a poor decision to drive under the influence of alcohol but denied seeing Sureté du Québec police trying to stop him until he reached the 55 Laurier Avenue East parking lot.
11. Cst. Khan is currently assigned to the professional development centre and has successfully completed his use of force training.

Allegations and Particulars of Misconduct.

1. Constable Khan is alleged to have committed one count of Discreditable Conduct in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the Ottawa Police Service by, being found guilty of the criminal offence, Dangerous Driving contrary to Section 249(1)(a) of the Criminal Code of Canada, on August 21st, 2019, by Honorable Judge Alexandra Marcil, J.C.Q. of the Cour du Québec, thereby constituting an offence against discipline as prescribed in section 2 (1)(a)(ix) of the Code of Conduct, Schedule to Ontario Regulation 268/10, as amended, and therefore contrary to section 80(1) of the *Police Service Act*.
2. Constable Khan is alleged to have committed one count of Discreditable Conduct by acting in a disorderly manner, or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the Ottawa Police Service by, being found guilty of the criminal offence of guilty to over 80 mgs contrary to Section 253(1)(b) of the Criminal Code of Canada, on August 21st, 2019, by Honorable Judge Alexandra Marcil, J.C.Q. of the Cour du Québec, thereby constituting an offence against discipline as prescribed in section 2 (1)(a)(ix) of the Code of Conduct, Schedule to Ontario Regulation 268/10, as amended, and therefore contrary to section 80(1) of the *Police Service Act*.

Plea.

3. A hearing was held on May 6th, 2024, at 10:00 hrs, in which Constable Khan pled guilty

to two counts of Discreditable Conduct. I accepted the guilty plea on clear and convincing evidence.

4. As a result of this plea, a joint submission on penalty was submitted in which both parties agreed that the appropriate disposition for the finding of two counts of Discreditable Conduct would be a demotion from 1st Class Constable to 2nd Class Constable for a period of fourteen (14) months. This was accepted on the Record during the Hearing by Constable Khan on May 6th, 2024, at 10:15 hrs.

Part II: Summary of Misconduct.

Agreed statement of facts.

5. An agreed statement of facts (Exhibit #7) was read on record by the prosecutor, Mr. Benjamin Estwick, on the 6th of May 2024 proceeding as follows:

The subject officer, Constable Khan (cadre, #1730) is a sworn member of the Ottawa Police Service and has 21 years of experience.

On June 23, 2018, Cst. Khan, while off duty, attended the Casino Du Lac-Leamy with a friend, where both individuals consumed a considerable amount of alcohol. Cst. Khan elected to drive both himself and his friend back to Ontario. During this commute, at approximately 2:00 a.m., a Sureté du Quebec Police officer recorded Cst. Khan travelling 123 kilometers-per-hour in a 70 kilometers-per-hour zone and attempted to conduct a traffic stop. Cst. Khan slowed before rapidly accelerating down Highway Five South near the Fournier Bridge in Gatineau.

A pursuit ensued into OPS jurisdiction where Sureté du Quebec officers followed Cst. Khan as he drove onto King Edward Avenue, dodging through traffic. Cst. Khan made a very wide turn into oncoming lanes on Laurier Avenue. While on Laurier Avenue, Cst.

Khan ran through a red light, after which he turned right onto Nicholas Street. During the pursuit, the vehicle drove at speeds of up to 100 kilometers per hour in posted 40-kilometre-per-hour zones with both observable vehicle and pedestrian traffic.

After the pursuit, which lasted 3.4 kilometers, Sureté du Quebec officers located Cst. Khan in the rear parking lot of 55 Laurier Avenue East, where his passenger appeared to be vomiting. In the parking lot, with weapons drawn, Sureté du Quebec officers removed Cst. Khan from his vehicle, grounding him before placing him under arrest. Cst. Khan was then identified as an OPS officer via driver's license and police badge. OPS officers were dispatched to the location to assist Sureté du Quebec and confirmed that Sureté du Quebec police had arrested Cst. Khan for impaired operation of a motor vehicle. Cst. Khan's vehicle was towed.

Cst. Khan was transported back to Quebec by Sureté du Quebec officers. He complied with the request for breathalyzer samples: the first at 0324 hours, which read 163mg/100 ml alcohol, and the second at 0344, which read 155/100 ml alcohol. Cst. Khan was criminally charged and released on an appearance notice for Impaired Operation of a motor vehicle, Excess Blood Alcohol (over 80), Flight from Police, and Dangerous Operation of a motor vehicle. Cst. Khan's driver's license was suspended in Quebec for 90 days.

On August 21, 2019, Cst. Khan plead guilty before Justice Alexandra Marcil, J.C.Q. of the Cour du Quebec, to Dangerous Driving contrary to section 249(1) of the *Criminal Code of Canada*, to which a conditional discharge was ordered. At the same time, Cst. Khan pled guilty to Operation while Impaired (Over 80) contrary to section 253(1)(b) of the *Criminal Code of Canada*. Cst. Khan was sentenced on September 25, 2020, receiving a \$1000 fine, one year of probation, and a one-year driving prohibition order, which lasted sixteen months due to COVID-19.

On January 4, 2024, Cst. Khan attended a compelled interview with PSU, in which he was cooperative and professional. During this interview, Cst. Khan disclosed he was under stress due to a neighbour dispute that was before the civil court, which has since

concluded.

Sgt. Menard was assigned to investigate allegations of professional misconduct. He interviewed Cst. Khan after his finding of guilt on the Criminal matter. Cst. Khan showed substantial remorse and regret for his actions at several points during his interview.

Sgt. Menard formed reasonable grounds to believe misconduct occurred on the part of Cst. Khan and charged him with two counts of discreditable conduct. Cst. Khan was fully cooperative during the PSU interview.

Summary of Evidence and Exhibits.

6. As part of this hearing, the Prosecution presented the following exhibits and no witnesses:
 - Ottawa Police Service Hearing Officer Designation – Superintendent Chris Rheume (Exhibit #1)
 - Ottawa Police Service Prosecutor Designation – Ms. Christiane Huneault (Exhibit #2)
 - Ottawa Police Service Prosecutor Designation – Ms. Vanessa Stewart (Exhibit #3)
 - Notice of Disciplinary Hearing (Exhibit #4)
 - Notice of increased penalty (Exhibit #5)
 - Ottawa Police Service Prosecutor Designation – Mr. Benjamin Estwick (Exhibit #6)
 - Agreed Statement of Facts (Exhibit #7)
 - Joint Submission on Penalty – (Exhibit #9)
 - Book of Authorities (Exhibit # 10.1, 10.2, 10.3, 10.4, 10.5,10.6 & 10.7)
7. Defence presented reference and commendation letters on behalf of Cst Khan (Exhibit #8). Defense called no witnesses.

Part III: Analysis.

8. I will start my decision on penalty by first outlining the objectives of police discipline, which are to:
 - i) Correct unacceptable behaviour;
 - ii) Deter others from similar behaviour; and
 - iii) Assure the public that the police are under control.

9. To assist me in achieving these objectives, I am guided by the foundational principles that govern the determination of an appropriate disposition in police disciplinary proceedings. Those principles are described in the Annotated Police Services Act (Ceyskens & Childs) as follows:

The first principle is that the disposition should fully accord with the purposes of police discipline processes, which are as follows: the employer's interest in maintaining discipline in the workplace; the rights of a respondent officer suspected of misconduct being treated fairly; the public interest: ensuring a high standard of conduct in the constabulary, and public confidence in the constabulary; and where members of the public are involved the process should ensure that the interests of those individuals is protected.

The second principle, which flows from the move towards a more remedial philosophy, as noted above, dictates that a corrective disposition should take precedence over a punitive disposition, where possible.

The third principle is the presumption of the lowest disposition – that a respondent police officer is entitled to the most favourable disposition in the circumstances of the case, where possible.

The fourth principle is proportionality, requiring that the tribunal consider all applicable mitigating and aggravating considerations, and then weigh those applicable factors appropriately.

The fifth principle is that the law holds police conduct to a higher standard. Court and tribunal decisions have consistently embraced the concept that police officers should be held to a higher standard of behaviour compared to other employees or members of the public.

10. In *Legal Aspects of Policing*, Paul Ceyskens outlines the steps that a decision-maker should follow to properly adhere to the proportionality principle:

It is a “fundamental proposition” that a disposition must be proportionate to the misconduct, “given due regards to those special considerations applicable to service in the police force. Proportionality is arguably the most complex of the five principles that govern the process of crafting an appropriate disposition, and requires three decisions:

- First, a decision-maker must identify which disposition considerations are *relevant* to the matter in question.
- Second, a decision-maker must determine whether the relevant disposition considerations are *mitigating, aggravating or neutral*.
- Third, the decision-maker must *properly balance* (or appropriately “weigh”) the identified relevant considerations in accordance with the factual background of the matter, and the competing interests. Thus “a decision-maker must give proper weight to the relevant factors in a particular case,” and a “proper balance” is of “utmost importance.” In Ontario, although the Commission frequently cites various disposition considerations as “key factors”, it has stated that “there is no requirement that any one factor be given more weight than another,” while at the same time stating that a hearing officer need not give all the factors equal weight and one factor can support the highest penalties, if appropriate.

11. Mr. Ceyskens lists 15 factors which now routinely guide the proportionality analysis of police discipline adjudicators in Ontario. I will speak to seven of the established 15 disposition considerations: public interest; seriousness of the misconduct; recognition of the seriousness of the misconduct; employment history; deterrence; damage to the reputation of the police service; and consistency of disposition. I am satisfied that these factors sufficiently capture all the relevant issues and considerations in the present matter.

Public Interest.

12. The prosecution submitted the decision of Cst David Grady vs The Ontario Provincial Police, where the Hearing Officer held that, “The public needs to maintain confidence in the ability of the OPP to hold its officers accountable for their actions, especially in relation to incidents that have fallen far below public expectations”. Police officers must be held to a higher standard and are accountable to the public. Police officers are expected to uphold the law and conduct themselves accordingly, with professionalism and integrity. Police officers must always conduct themselves professionally, whether on duty or off duty.

13. From the evidence presented in the criminal trial and disciplinary hearing, it is clear that Constable Khan did drive his vehicle in a dangerous manner and was guilty of driving his motor vehicle while under the influence of alcohol while having his blood alcohol levels over 80mgs. Constable Khan was found guilty in the Court Proceedings by Honorable Judge Alexandra Marcil and his sentence was a \$1000 fine, one-year probation and a one-year driving prohibition order which lasted 16 months due to COVID-19. The public must be assured that its police officers will always demonstrate professionalism in their actions--whether they are on duty or off duty. Constable Khan has eroded public trust by engaging in this type of behavior.

14. In determining an appropriate disposition in this matter, I consider the public interest in Constable Khan's actions to be an aggravating factor.

Seriousness of the Misconduct.

15. I concur with Mr. Estwick's assertion that the offences that Cst Khan was charged with and found guilty of rightfully fall within the classification of serious misconduct. These charges are of a serious nature and should be dealt with appropriately.

16. In *Devine vs the O.P.P.*, the Hearing officer stated:

It is clear that drinking and driving is conduct which constitutes serious misconduct. It is conduct which cannot be tolerated and for which a substantial penalty must be assessed.

17. The seriousness of the misconduct is further aggravated by the fact that Constable Khan has been a police officer for over twenty-one (21) years. Moreover, Constable Khan has experience working as a Coach Officer and multiple training certifications and, therefore, he ought to have used better judgement than that exhibited in the facts of this matter.

18. In light of the foregoing, I consider the seriousness of Constable Khan's misconduct to be an aggravating factor.

Recognition of the Seriousness of the Misconduct.

19. To the credit of Constable Khan, during his interview with Professional Standards, he told Sergeant Menard that he expressed sincere remorse and regrets for his actions. Cst Khan disclosed that he was under stress due to a neighbor dispute, and he made a poor decision to drive under the influence of alcohol. He was ashamed of what he did, and this demonstrates his appreciation and recognition of the seriousness of his misconduct.

20. I consider Constable Khan's recognition of the seriousness of his misconduct a mitigating factor for the purposes of determining a proportionate disposition.

Employment History.

21. As addressed above, Constable Khan has over 21 years of policing experience. While Constable Khan's extensive experience as a police officer suggests that he should have known better than to drive under the influence of alcohol and in a dangerous manner, I consider Constable Khan's employment history a mitigating factor for the purposes of determining an appropriate disposition given his positive employment record and commendations.

Deterrence.

22. With respect to general deterrence, every sworn officer must know fully well that they are held to a higher standard, and that they must not drive while under the influence of alcohol and in a dangerous manner. Mr. Estwick cited the case of Constable Favretto vs the Ontario Provincial Police:

A penalty must be tailored to both punish and deter while not causing undue or excessive hardship. The penalty of dismissal is the ultimate penalty. It should be reserved for the most serious offences committed by a police officer where there is no hope for rehabilitation, there are no significant mitigating factors and where the police officer is of no further value to the police service or the community in general.

The penalty imposed in this matter must impress upon all police officers the message that they cannot drink and drive while under the influence of alcohol nor in a dangerous manner.

23. In terms of specific deterrence, it is evident that Constable Khan now recognizes that his actions of driving while under the influence and driving dangerous constitutes a serious matter and there is no evidence before me to suggest that there is a likelihood that he will reoffend in the future. Constable Khan has had his license suspended for 16 months due to COVID-19 (should have been 12 months) and he has an understanding of the requirement to refrain from driving a vehicle while under the influence of alcohol. However, misconduct must be met with profound consequences to ensure clear deterrence in the subject member.

24. Mindful of the objectives of police discipline enumerated at the beginning of this decision, I regard the need for effective general and specific deterrence to be an aggravating factor in the present matter.

Damage to the Reputation of the Police Service.

25. Through the evidence presented, I am left with no doubt that the actions of Constable Khan have strained the reputation of the Ottawa Police Service, particularly by the fact that Constable Khan committed discreditable conduct by being found guilty of the criminal offence of Dangerous Driving and being guilty to over 80 mgs under section 253(1)(b). Constable Khan breached this trust to the public by being found guilty in Criminal Court by being charged with Dangerous Driving and over 80mgs, thereby damaging the reputation of the Ottawa Police Service as well as other police services.

26. I consider the damage to the reputation of the Ottawa Police Service to be a factor that aggravates the appropriate penalty for Constable Khan's misconduct.

Consistency of Disposition.

27. Consistency of disposition is particularly relevant to the determination of an appropriate penalty in the present circumstances. Mr. Estwick spent considerable time outlining case law to support his position that the joint submission on penalty constitutes a fair and reasonable sanction for Constable Khan.

28. Mr. Estwick referred me to a similar of fact case that addresses misconduct involving an officer that abused his spouse. In *Cst Grady vs the Ontario Provincial Police* (December 18, 2018), Constable Grady was demoted from first-class constable to second-class constable for 16 months. At the conclusion of the term and subject to a satisfactory work performance evaluation, Constable Grady would then be reinstated at first-class constable.

Summary of Findings.

29. I have taken into consideration several mitigating factors in reaching a disposition. Constable Khan acknowledges and accepts his actions and the harm that they have caused to himself and the Service. His guilty plea is viewed as further acceptance. Constable Khan possesses a positive employment history spanning the course of his career.
30. In determining an appropriate disposition in this matter, I have also assigned weight to various aggravating factors. The seriousness of the misconduct itself commands a disposition that will send a clear message of deterrence to all Ottawa Police Service officers that there must and will be severe consequences for officers that are found guilty in criminal court of drinking and driving while under the influence of alcohol and driving in a dangerous manner. The public interest and the loss of trust resulting from a police officer being found guilty in a criminal court of these offences has caused considerable damage to the reputation of the Ottawa Police Service, which has had an aggravating effect on my determination of a proportionate disposition.
31. Finally, I am also mindful of the significant body of jurisprudence, within and beyond the realm of police discipline, which supports the notion that joint submissions should be accorded a high level of deference and are not to be disregarded unless there are good and cogent reasons for doing so.

Part IV: Disposition on Penalty

Disposition.

32. I have taken into thoughtful consideration the agreed statement of facts, the submissions of the parties, relevant case law, and the applicable principles of disposition to come to a fair and fitting decision. Discreditable conduct has been proven on clear and convincing evidence. The joint submission on penalty has been of assistance in reaching a decision and I see no argument or sound reason to vary from the penalty agreed to by the parties.

33. I order that Constable Khan be demoted from 1st Class Constable to 2nd Class Constable for a period of **fourteen (14) months** in accordance with section 85(1)(f) of the *Police Services Act*.

Dated at Ottawa, this 3rd day of June 2024.



Superintendent Chris Rheume
Hearing Officer.

Appendix A: Book of Authorities.

AUTHORITIES	TAB
<i>Cst Grady vs the Ontario Provincial Police</i>	4
Seriousness of the Misconduct	
<i>Cst Devine vs the Ontario Provincial Police</i>	2
Deterrence	
<i>Cst Favretto vs the Ontario Provincial Police</i>	3