

ONTARIO CIVILIAN COMMISSION ON POLICE SERVICES

IN THE MATTER OF a hearing under section 65(9) of the Police Services Act R.S.O. 1990, c. P. 15 as amended into the conduct of Chief Blair Maclsaac of the Pembroke Police Service

Presiding Members:

Murray W. Chitra, Chair
Noëlle Caloren, Member

Appearances:

Chris Diana, Prosecutor
Fred Fischer, Counsel, Chief Blair Maclsaac

Hearing Date: January 17, 2007

On June 22, 2006 the Ontario Civilian Commission on Police Services received a request from the Pembroke Police Services Board pursuant to section 65(9) of the Police Services Act R.S.O. 1990, c. P. 15 as amended (the "Act") to conduct a disciplinary hearing into alleged misconduct by Chief Blair Maclsaac.

The Allegations:

As a result, Chief Maclsaac was served with a Notice of Hearing with the following allegations:

1. THAT you are guilty of Misconduct contrary to Section 74(1) of the Police Services Act of Ontario R.S.O. 1990 and amendments thereto, in that you did, while in the capacity of Chief of Police of the Pembroke Police Service, commit the offence of Discreditable Conduct as set out in section 2(1)(a)(Vii) of the Code of Conduct, Schedule 123/98 of the Revised Regulations of Ontario 1990 and amendments thereto, by assaulting another member of the Pembroke Police Service, specifically that, on or about the 12th day of May, 2005, you assaulted Constable Jeff Cotnam of the Pembroke Police Service by slapping him on or around the head.
2. THAT you are guilty of Misconduct contrary to Section 74(1) of the Police Services Act of Ontario R.S.O. 1990 and amendments thereto, in that you did, while in the capacity of Chief of Police of the Pembroke Police Service, commit the offence of Discreditable Conduct as set out in section 2(1)(a)(xi)

of the Code of Conduct, Schedule 123/98 of the Revised Regulations of Ontario 1990 and amendments thereto, by acting in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the police force, specifically that, on or about the 12th day of May, 2005, you assaulted Constable Cotnam of the Pembroke Police Service by slapping him on or around his head.

3. THAT you are guilty of Misconduct contrary to Section 74(1) of the Police Services Act of Ontario R.S.O. 1990 and amendments thereto, in that you did, while in the capacity of Chief of Police of the Pembroke Police Service, commit the offence of Discreditable Conduct as set out in section 2(1)(a)(iii) of the Code of Conduct, Schedule 123/98 of the Revised Regulations of Ontario 1990 and amendments thereto, by engaging in oppressive or tyrannical conduct towards an inferior in rank, specifically that, on or about the 23rd day of October, 2005, you stated words to the effect of “well that’s a career limiting move” and “good young lad on the right path and then boom” in response to Constable Cotnam’s indication that he was preparing books for a meeting of the Pembroke Police Association.
4. THAT you are guilty of Misconduct contrary to Section 74(1) of the Police Services Act of Ontario R.S.O. 1990 and amendments thereto, in that you did, while in the capacity of Chief of Police of the Pembroke Police Service, commit the offence of Discreditable Conduct as set out in section 2(1)(a)(xi) of the Code of Conduct, Schedule 123/98 of the Revised Regulations of Ontario 1990 and amendments thereto, by acting in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the police force, specifically that, on or about the 23rd day of October, 2005, you stated words to the effect of “well that’s a career limiting move” and “good young lad on the right path then boom” in response to Constable Cotnam’s indication that he was preparing books for a meeting of the Pembroke Police Association.
5. THAT you are guilty of Misconduct contrary to Section 74(1) of the Police Services Act of Ontario R.S.O. 1990 and amendments thereto, in that you did, while in the capacity of Chief of Police of the Pembroke Police Service, commit the offence of Discreditable Conduct as set out in section 2(1)(iii) of the Code of Conduct, Schedule 123/98 of the Revised Regulations of Ontario 1990 and amendments thereto, by engaging in oppressive or tyrannical conducts towards an inferior in rank, specifically that, on or about the 26th day of October, 2005 you approached Constable Cotnam, squeezed his bicep, patted his shoulder and stated words to the effect of “Career killer. Association man”.

6. THAT you are guilty of Misconduct contrary to Section 74(1) of the Police Services Act of Ontario R.S.O. 1990 and amendments thereto, in that you did, while in the capacity of Chief of Police of the Pembroke Police Service, commit the offence of Discreditable Conduct as set out in section 2(1)(a)(xi) of the Code of Conduct, Schedule 123/98 of the Revised Regulations of Ontario 1990 and amendments thereto, by acting in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the police force, specifically that, on or about the 26th day of October, 2005, you approached Constable Cotnam, squeezed his bicep, patted his shoulder and stated words to the effect of "Career killer. Association man".

The hearing into these matters was scheduled for January 17, 18 and 19, 2007 in Pembroke, Ontario.

The Joint Submissions:

Chief Maclsaac appeared before us on the morning of January 17, 2007. At the commencement of proceedings, Mr. Diana and Mr. Fischer indicated that they had reached an agreement on the disposition of the charges. This consisted of an Agreed Statement of Fact, an Agreement for Disposition and a Joint Submission on Penalty.

Mr. Diana read the Agreed Statement of Fact. It stated:

1. Chief Blair Maclsaac has been a member of the Pembroke Police Service since 1995 and Chief of Police since May of 1999.
2. On May 12, 2005, Constable Cotnam was on duty and present at the Pembroke Police Station. Sergeant Rob Dickie asked Constable Cotnam and Constable Dillon Gerundin to meet him in his office to discuss a recent meeting of Sergeants that he had attended. In the course of that meeting, Chief Maclsaac entered the room. Constable Cotnam's back was toward the door and Chief Maclsaac. Sergeant Dickie said something to the effect of "your ears must be burning" to Chief Maclsaac. Following a brief conversation, Chief Maclsaac slapped Constable Cotnam on the right side of his head with an open hand and walked out the door. Constable Cotnam turned around and said "That's assault" to Chief Maclsaac as Chief Maclsaac walked out of the door.

3. On May 12, 2005, Constable Cotnam was a Second Class Constable. He was promoted to First Class Constable effective May 30, 2005.
4. On October 23, 2005, Constable Cotnam attended at the Pembroke Police Station to complete the financial report for the Annual General Meeting of the Pembroke Police Association (the "Association"). He was off-duty. He was working on a computer in the report room. Constable Gerundin was also in the report room working on paperwork. Chief Maclsaac entered the room, approached Constable Cotnam and asked what he was doing. Constable Cotnam told Chief Maclsaac that he was checking e-mail and doing the books for the Annual General Meeting. Chief Maclsaac said in response, "Well, that's a career limiting move". Chief Maclsaac then turned to face Constable Gerundin and said to him, "too bad, good young lad on the right path then boom, and so early, eh Dillon."
5. On October 26, 2005, Constable Cotnam was on duty. He was speaking to Sergeant Dickie in the dispatch area when Chief Maclsaac approached him. Chief Maclsaac stood a few inches from his face, squeezed his left bicep with his right hand, and said to Constable Cotnam, "Career Killer. Association man". Without saying anything further, Chief Maclsaac patted his left shoulder and walked away while shaking his head.
6. Chief Maclsaac states that at all material times he acted without ill intent, but understands that his conduct was inappropriate and takes full responsibility for his actions.

Based on this Agreed Statement of Fact, Chief Maclsaac pled guilty to Counts 1, 2, 4, 5 and 6 contained in the Notice of Hearing set out above. Count 3 was withdrawn by Mr. Diana.

We concluded that the Agreed Statement of Fact contained clear and convincing evidence sufficient to support findings of guilt with respect to five counts to which Chief Maclsaac had tendered guilty pleas. Accordingly, we entered convictions with respect to Counts 1, 2, 4, 5 and 6.

Mr. Diana, then read the Joint Submission on Penalty. It stated:

The Prosecutor and Chief Maclsaac agree to the following penalty:

- (a) A period of unpaid suspension to run from January 1, 2007 - April 1, 2007, the details of which are as follow:

- (i) Unpaid suspension of 30 days for guilty pleas on Counts 1 and 2;
 - (ii) Unpaid suspension of 30 days for guilty plea on Count 4;
 - (iii) Unpaid suspension of 30 days for guilty pleas on Counts 5 and 6;
 - (iv) The periods of suspension described above are to run consecutively; and
 - (v) Chief Maclsaac, if he chooses, can draw upon his accumulated bank time from January 1, 2007 to February 28, 2007 but cannot draw upon any bank time or other vested right to be paid further to his employment as Chief of Police from March 1 to April 1, 2007;
- (b) Chief Maclsaac will personally apologize to Constable Cotnam;
 - (c) Chief Maclsaac will write a letter of apology to the Association in a form to be agreed to by the Prosecutor;
 - (d) Chief Maclsaac will complete the following training courses offered by the Ontario Police College within the next ten months:
 - (i) L.E.A.D.E.R. Course;
 - (ii) Emotional Intelligence; and
 - (iii) Building Leadership Strength through Self-Awareness.

Apart from this Joint Submission, Mr. Fischer then spoke on behalf of Chief Maclsaac. He stated that it has always been Chief Maclsaac's intention to create and establish an open and collegial workplace. Mr. Fischer repeated that Chief Maclsaac had never acted with ill intent towards Constable Cotnam, but acknowledged in retrospect that his actions were inappropriate and accepted full responsibility.

Mr. Fischer stated that Chief Maclsaac was very, very sorry for any ill effects that his actions may have had on Constable Cotnam or the Service. He expressed the hope that this hearing, his acceptance of responsibility and the actions that he has committed himself to as a penalty might bring closure and redress for all those concerned.

Decision:

We agreed to accept the Joint Submission on Penalty and indicated that our rationale for so doing would be reflected in written reasons to follow. These are those reasons.

A police officer is entitled to plead guilty to charges of misconduct. As well, the prosecution and defence counsel may elect to table a Joint Submission on Penalty before a hearing panel. That panel is obliged to review the submission to ensure that the penalty being proposed is reasonable and takes into account the appropriate sentencing factors.

When assessing penalty there are a number of key factors to be weighed. These include public interest, the nature and seriousness of the misconduct, recognition of the seriousness of that misconduct, employment history, ability to reform or rehabilitate, specific and general deterrence, the effect on the officer and his or her family and importance of consistency.

A chief of police is the senior law enforcement officer in any community. This is a significant responsibility. A chief of police is expected to effectively manage his or her service and provide the necessary leadership, example and direction.

Specifically, section 41(1) of the Act states:

41(1) The duties of a chief of police include,

- (a) in the case of a municipal police force, administering the police force and overseeing its operation ...
- (b) ensuring that members of the police force carry out their duties in accordance with this act and regulations and in a manner that reflects the needs of the communities, and that discipline is maintained in the police force;

Part V of the Act provides a chief of police with broad powers to ensure that discipline is maintained. As well, section 120(4) of the Act provides that a chief of police plays an important advisory role to his or her board in collective bargaining.

In the case before us, Chief Maclsaac pled guilty to five counts of misconduct. As noted above, we were satisfied that there was sufficient factual foundation before us to support these pleas. The charges in question arose from the actions of Chief Maclsaac on three separate occurrences directed at a junior constable in May and October of 2005.

One count was for assault. Section 2(1)(a)(vii) of O. Reg. 123/98 (the "Code") deems it be discreditable conduct if any chief of police "assaults any other member of a police force".

Three counts were for violation of section 2(1)(a) (xi) of the Code. That provision deems it to be discreditable conduct for a chief of police to act "in a disorderly

manner or in a manner capable prejudicial to discipline or likely to bring discredit upon the reputation of the police force”.

One count was for violation of section 2(1)(a)(iii) of the Code. That makes it a disciplinary offence when a chief of police “is guilty of oppressive or tyrannical conduct towards an inferior in rank”.

These are serious matters. There is no question in our mind that the actions of Chief Maclsaac were thoughtless and inappropriate. Chief Maclsaac’s conduct was prejudicial to discipline, the proper functioning of the established chain of command and demonstrated a failure of both judgment and leadership.

Such conduct on the part of the senior law enforcement officer in a community is contrary to the public interest. It warrants both specific and general deterrence. It calls for a meaningful penalty.

That being said, this case demonstrates a number of significant mitigating factors. First and foremost is Chief Maclsaac’s guilty plea and unqualified acceptance of responsibility. This no doubt spared the officer who was the object of his conduct and the Pembroke Police Service the consequences of a lengthy and difficult hearing.

This, along with Chief Maclsaac’s agreement to apologize to both the affected officer and Pembroke Police Association demonstrates a clear recognition on his part of the seriousness of his actions.

Chief Maclsaac has a positive employment history extending to his initial appointment as Deputy Chief of Police of the Pembroke Police Service in 1995. This is to his credit, particularly in the context of the application of principles of progressive discipline.

Further, Chief Maclsaac has agreed to complete a number of courses directed at improving his leadership skills. This speaks directly to potential for rehabilitation.

No doubt, these public proceedings have been difficult for both Chief Maclsaac and his family.

For the above-noted reasons, we are satisfied that the proposed three-month suspension, apologies and training is a reasonable penalty that properly takes into account the relevant sentencing factors. It is our expectation that this penalty will be fulfilled as described.

Section 31 of the Police Services Act sets out the responsibilities of police services boards. Specifically, section 31(1)(e) speaks to the board’s responsibility to “direct the chief of police and monitor his or her performance”.

It is our expectation, therefore, that the Pembroke Police Service Board will ensure that the terms of Chief Maclsaac's penalty are met.

Finally, in the interest of both the police service and the community, we wish to express the hope that both the Chief of Police and members of the Pembroke Police Service put these matters behind them and move forward.

DATED AT TORONTO THE 31st OF JANUARY, 2007.

Murray Chitra
Chair, OCCPS

Noëlle Caloren
Member, OCCPS