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HAMILTON POLICE SERVICES BOARD

- RECOMMENDATION -

**THE HAMILTON POLICE
SERVICES BOARD HAS
AGREED THAT THIS REPORT
AND APPENDIX 'A'
BE MADE PUBLIC**

DATE: February 14, 2020
REPORT TO: Chair and Members
Hamilton Police Services Board
FROM: Eric Girt
Chief of Police
SUBJECT: *Extension Application Pursuant to Section 83(17) of the Police Services Act – OIPRD Complaint Investigation – Constable Paul Manning Badge #835
PSB 20-015*

RECOMMENDATION:

That the Hamilton Police Services Board receive for processing the Application for Extension of the six-month time period for the service of a Notice of Hearing against Constable Paul Manning regarding allegations of misconduct under Part V of the *Police Services Act*, as amended.



Eric Girt
Chief of Police

FINANCIAL / STAFFING / LEGAL IMPLICATIONS:

FINANCIAL – n/a

STAFFING – n/a

LEGAL – The purpose of this report is to comply with the Office of the Independent Police Review Director (OIPRD) direction as set out in its December 20, 2019 correspondence. The Investigation Report into the actions of Constable Manning has substantiated misconduct necessitating an application before the Board for approval of an extension of time to serve a Notice of Hearing on the officer. The initial public complaint was received by the OIPRD on June 19, 2019.

Constable Paul Manning is currently absent from the workplace on [REDACTED] The police service is unable to contact

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Constable Manning for employment purposes [REDACTED]
[REDACTED]

The OIPRD referred the public complaint of Councilor Merulla to the Hamilton Police Professional Standards Branch for investigation on July 12, 2019. The Professional Standards Branch took all required steps to proceed, including notifying Constable Manning of the public complaint and subsequently reaching out to Constable Manning to facilitate an interview through an Order to Attend. The Professional Standards Branch Investigator was subsequently advised that Constable Manning has a [REDACTED] the Officer. In November of 2019, the OIPRD was advised of the [REDACTED] in relation to contacting the officer for employment purposes. The OIPRD was advised that Hamilton Police Professional Standards would be placing the investigation on hold pending the officer's ability to participate.

On December 30, 2019, Hamilton Police Professional Standards received correspondence from the OIPRD Director Sylvana Capogreco dated December 20, 2019 ("Letter of Direction"). This correspondence is attached as **Appendix A** to this Report. The OIPRD directed the Police Service to ensure that the officer was provided with formal notice of the complaint and sufficient opportunity to participate in the process. Further, the Service was to continue with the investigation even if Constable Manning refused to participate. The OIPRD did not address the [REDACTED] ability of the officer to participate. Constable Manning's [REDACTED] remained in effect and Constable Manning did not participate in the investigation.

The OIPRD Letter of Direction further stated that if, at the end of the investigation, there was sufficient evidence to believe on reasonable grounds that misconduct occurred, the Service was required to attempt to service Constable Manning or his counsel with a copy of the Investigation Report and the Notice of Hearing. The Letter of Direction went on to clarify that if Constable Manning or his counsel refused to accept service, the process may be suspended. In light of the timing of the OIPRD Letter of Direction, the Service is required to bring an Extension Application prior to attempting to serve the officer with a Notice of Hearing.

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A copy of the Investigation Report is attached as **Appendix B**. A draft Notice of Hearing and Statement of Particulars is attached as **Appendix C and D**.

Board Authority under section 83(17)

In accordance with section 83(17) of the Act, the Board must determine whether it is reasonable, under the circumstances, to delay serving the notice of hearing on the officer:

If six months have elapsed since the day described in subsection (18), no notice of hearing shall be served unless the board, in the case of a municipal police officer, or the Commissioner, in the case of a member of the Ontario Provincial Police, is of the opinion that it was reasonable, under the circumstances, to delay serving the notice of hearing.

The Board must review the delay as a whole and from an objective standpoint. It is fair for the Board to consider the chronology to determine whether an expeditious investigative process was undertaken as required by the legislation.

BACKGROUND:

Between April 15, 2019 and September 9, 2019, Constable Paul Manning posted profane, abusive and insulting material on the internet about the Complainant. Included in these posts is material that is presented as apparent confidential police information. The contents of the posts violate Hamilton Police Service policies and procedures. On April 28, 2019, Constable Paul Manning was served a copy of the OIPRD complaint by registered mail. He posted the Hamilton Police Service cover page on the Internet with the caption "You can all go f*** yourselves!". On September 9, 2019, Constable Manning posted an Order to Attend and disclosed personal information relating to the address of an officer on the Internet.

Investigative Timeline

The investigation was assigned to the Hamilton Police Service on July 12, 2019.

The complainant was interviewed on August 22, 2019.

An Order to Attend for Interview was provided to Constable Manning on September 9, 2019. There was no response.

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The Investigation Report was completed on November 12, 2019. It was reviewed and approved by Superintendent Goodes-Ritchie on November 15, 2019. The complainant and the OIPRD were advised of the status of the investigation by way of correspondence dated November 22, 2019. The OIPRD correspondence in response was received on December 30, 2019.

The initial six month time frame to serve the Notice of Hearing was **January 12, 2020**.

The late receipt of the OIPRD correspondence has necessitated this Extension Application.

Request for Extension

This Extension Application is submitted for the approval of the Board for the service of a Notice of Hearing against Constable Manning. The Investigation Report has substantiated eight allegations of misconduct against Constable Manning in relation to his use of social media.

The draft Notice of Hearing and Statement of Particulars are attached as Appendix C and D to this Extension Application.

Process

Extension Applications have historically been heard in an *in camera* session of the Board. This has been a standard practice across the Province. The decision of the Ontario Court of Appeal in *Canadian Broadcasting Corporation v. Ferrier* released on December 27, 2019 ("Ferrier Decision") must now be addressed by the Board prior to confirming its process under section 83(17) of the Act.

The Ferrier Decision involved a challenge to the Thunder Bay Board's decision to hold an Extension Application process *in camera*. The Court of Appeal held that a decision maker or Board must consider each application in light of its authority to hold a closed meeting/hearing under section 35(4) of the Act. Section 35 states that police services board meetings are presumptively open and this is consistent with section 2(b) of the *Charter of Rights and Freedoms*. Section 35(4) permits closed meetings/hearings to protect intimate financial or personal matters. The Board must balance the right to an open meeting (section 2(b)) with the statutory objectives to protect intimate financial or personal matters and consider the following contextual factors:

- Whether the issue before the Board involves a systemic issue or more individualized complaint;
- Whether the issue has generated keen public interest;

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- Whether the media has become involved;
- Whether information sought to be protected has already been publicized;
- Whether there is a need for transparency in a highly contentious issue;
- The nature of the information sought to be protected;
- The sensitivity of the information sought to be protected;
- Where individuals are involved, the desirability of protecting a complainant/witness/informant;
- The type of harm likely to be caused by the publication of the information;
- Whether the prohibiting of the publication of parts of the information would provide protection.

While it may be desirable to protect the reputational interests of the Complainant, it is likely that the Extension Application will be made public by the officer rendering a closed meeting moot. This is a process to be determined by the Board.

The following procedural steps will have to be addressed or taken by the Board:

- Confirm whether the Extension Application will be dealt with in the public or closed session of the Board meeting.
- The Board is to only receive the Application at this meeting.
- The Respondent Officer must be provided with a full copy of this Extension Application including all appendices. He must be provided with an opportunity to file written submissions in response to the Extension Application.
- The Complainant must also be provided with the complete Extension Application and be granted an opportunity to file written submissions.
- In addition to receiving a copy of this Extension Application, the OIPRD is to be provided with copies of any written submission received from the Respondent Officer and Complainant and be provided with a further opportunity to reply if necessary.

EG/L. Bordeleau

*Attachments: Appendix A – OIPRD Response Letter
Appendix B – Investigative Report
Appendix C – Notice of Hearing
Appendix D – Statement of Particulars*

cc: Eric Girt, Chief of Police
Nancy Goodes-Ritchie, Superintendent – Professional Development Division
Marco Visentini, Legal Counsel

**THE HAMILTON POLICE
SERVICES BOARD HAS
AGREED THAT THIS REPORT
AND APPENDIX 'A'
BE MADE PUBLIC**



655 Bay Street 10th Floor Toronto, ON M7A 2T4

December 20, 2019

Via Email: lstack@hamiltonpolice.on.ca

Chief Eric Girt
Attn: Lysha Stack
Hamilton Police Service
Box 1060, LCD 1
155 King William Street
Hamilton ON L8N 4C1

Dear Chief Girt:

RE: OIPRD File No.: 190012190
Public Complainant: Salvatore Merulla

On June 19, 2019, the Office of the Independent Police Review Director received the above-noted complaint against Constable Paul Manning. The complaint was referred to your service for investigation on July 12, 2019. Further to your recent correspondence received November 25, 2019, it is my understanding that the investigation has been stood down as a result of Constable Manning's inability to participate in the investigation process.

While I understand your concern over procedural fairness and appreciate your efforts to provide the officer with adequate opportunity to participate in the investigation, the *Police Services Act* does not sanction any interruption in an investigation due to the officer's [REDACTED]. While the six-month timeframe for conducting the investigations stipulated in the Act is not a statutory limitation, it is clear from the language of subsection 83(17) and the case law that investigations need to be completed expeditiously. I note that there are no exceptions under the Act that would allow undue delay in the process.

Accordingly, once you are satisfied that the officer has been provided with formal notice of the complaint and sufficient opportunity to participate in the process, please continue with the investigation, even if Constable Manning refuses to participate. At the conclusion of your investigation, should you find sufficient evidence to believe on reasonable grounds that misconduct has occurred, please attempt to serve



Constable Manning or his counsel with a copy of your investigative report and the notice of hearing.

If neither Constable Manning or his counsel will accept service, the process may then be suspended. In my view, these steps are all necessary in order to satisfy your obligations under subsection 83(17) of the *Police Services Act* to serve a notice of hearing within a reasonable time.

Should you have any questions or concerns, please do not hesitate to contact my office.

Yours truly,



Sylvania Capogreco
Independent Police Review Director

Morin, Lois

From: Merulla, Sam
Sent: March-04-20 11:41 AM
To: Morin, Lois
Cc: Doug Burns
Subject: Re: Correspondence

Ms. Morin;

I'm in strong support of the extension.

Thank you,

Sam,

Councillor Sam Merulla,
Ward 4, East Hamilton,
71 Main St., W., 2nd., Floor,
Hamilton, ON., Canada,
City Hall; 905.546.4512

On Mar 4, 2020, at 11:37 AM, Morin, Lois <Lois.Morin@hamilton.ca> wrote:

Good morning.

Attached please find correspondence with respect to the Application for Extension Pursuant to Section 83(17) of the Police Services Act.

If you have any questions, please do not hesitate to contact me.

Thank you.

Lois
Lois Morin
Administrator
Hamilton Police Services Board
155 King William Street
Hamilton, ON L8N 4C1
Phone: 905-546-2727
Fax: 905-546-4720
E-mail: lois.morin@hamilton.ca<<mailto:lois.morin@hamilton.ca>>
[/www.hamiltonpolice.on.ca](http://www.hamiltonpolice.on.ca)<<http://www.hamiltonpolice.on.ca/>>

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<M-Extension Application Notification.pdf>

<20-015 Extension Application Purusant to Section 83(17) of PSA - Cst Paul Manning.pdf>

Morin, Lois

From: Belchior Arruda <barruda@hpa.on.ca>
Sent: March-04-20 4:12 PM
To: Morin, Lois
Subject: RE: Correspondence

Hi Lois,

I just wanted to confirm that I have sent the correspondence to Mr. Manning and he has confirmed receipt. On a side note Mr. Manning believes that there is a conflict of interest with the below noted members of the Hamilton Police Services Board due to there relationship with the complainant Mr. Merulla. As a result Mr. Manning is requesting that they recuse themselves from this process due to the conflict of interest.

Mr. Tom Jackson
Mr. Chad Collins
Chair Fred Eisenberger

Regards

Belchior Arruda
Chief Administrative Officer
Hamilton Police Association
T: 905-574-6044 Ext 103
C: 905-745-9995
F: 905-574-3223

From: Morin, Lois <Lois.Morin@hamilton.ca>
Sent: Wednesday, March 4, 2020 11:37 AM
To: Belchior Arruda <barruda@hpa.on.ca>
Subject: Correspondence

Good morning.

Attached please find correspondence to Mr. Paul Manning with respect to the Application for Extension Pursuant to Section 83(17) of the *Police Services Act*.

If you have any questions, please do not hesitate to contact me.

Thank you.
Lois

Lois Morin
Administrator
Hamilton Police Services Board

155 King William Street
Hamilton, ON L8N 4C1
Phone: 905-546-2727
Fax: 905-546-4720
E-mail: lois.morin@hamilton.ca / www.hamiltonpolice.on.ca

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Morin, Lois

5.1 d)

From: Merulla, Sam
Sent: April-08-20 3:29 PM
To: Morin, Lois
Subject: Re: Correspondence
Attachments: M-Extension Application Notification.pdf; ATT00001.htm

I'm in strong support of the extension.

Thank you,

Sam,

Councillor Sam Merulla,
Ward 4, East Hamilton,
71 Main St., W., 2nd., Floor,
Hamilton, ON., Canada,
City Hall; 905.546.4512

On Apr 8, 2020, at 3:03 PM, Morin, Lois <Lois.Morin@hamilton.ca> wrote:

Good afternoon.

This email is to advise you that the Police Services Board meeting scheduled for April 16, 2020, has been cancelled for public safety reasons and as such the Extension Application will be dealt with at the Board meeting scheduled to take place on May 14, 2020.

Thank you.
Lois Morin

Lois Morin

Administrator
Hamilton Police Services Board
155 King William Street
Hamilton, ON L8N 4C1
Phone: 905-546-2727
Fax: 905-546-4720
E-mail: lois.morin@hamilton.ca / www.hamiltonpolice.on.ca

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From: Morin, Lois
Sent: March-04-20 11:37 AM
To: Merulla, Sam
Subject: Correspondence

Good morning.

Attached please find correspondence with respect to the Application for Extension Pursuant to Section 83(17) of the *Police Services Act*.

If you have any questions, please do not hesitate to contact me.

Thank you.

Lois

Lois Morin

Administrator
Hamilton Police Services Board
155 King William Street
Hamilton, ON L8N 4C1
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