ONTARIO PROVINCIAL POLICE DISCIPLINE HEARING
IN THE MATTER OF ONTARIO REGULATION 268/10

MADE UNDER THE *POLICE SERVICES ACT*, RSO 1990,
AND AMENDMENTS THERETO;

AND IN THE MATTER OF
THE ONTARIO PROVINCIAL POLICE
AND

PROVINCIAL CONSTABLE P.J. (Peter) Van Den DIEPSTRATEN, #8800

NEGLECT OF DUTY

DISPOSITION WITH REASONS

Before:	**Superintendent Mike Bickerton** **Ontario Provincial Police**
Counsel for the Prosecution:	**Ms. Erika Hodge** **Ministry of the Solicitor General**
Counsel for the Defence:	**Mr. James Girvin** **Ontario Provincial Police Association**
Public Complainant:	**Mr. Clinton Robinson**
Hearing Dates:	**June 14, 2021**

This decision is parsed into the following parts:
PART I: OVERVIEW;
PART II: SUBMISSIONS, ANALYSIS AND FINDINGS; and,
PART III: DECISION/DISPOSITION.

PART I: OVERVIEW

Parties to this Hearing

Parties to this Hearing include:

- Provincial Constable (PC) Peter Van Den Diepstraten, represented by Mr. James Girvin;
- Ms. Erika Hodge represented the Ontario Provincial Police (OPP);
- The Public Complainant, Mr. Clinton Robinson.
    - Mr. Robinson did not have legal representation however indicated he understood he had the right to do so. The hearing process and his role in it, was explained to him and he was provided with a copy of the tribunal rules. He participated throughout the hearing process.

Background

This matter had been scheduled for a 5 day hearing on merit, June 14-18, 2021 during which PC Van Den Diepstraten was anticipated to be defending the charge of neglect of duty. Due to the Covid 19 pandemic, the hearing occurred in a blended fashion. The hearing officer, the public complainant, Mr. Robinson, PC Van Den Diepstraten and his counsel Mr. Girvin attended the hearing location in Sault Ste. Marie, Ontario while Ms. Hodge and others participated via video link. Detective Sergeant (D/Sgt) Turner of the OPP attended, in person, to assist Mr. Robinson, if required, with navigating electronic evidence that had been anticipated to be called.

On June 14, 2021, shortly after the commencement of the proceedings, PC Van Den Diepstraten entered a guilty plea. Through his counsel, Mr. Girvin, PC Van Den Diepstraten accepted the allegations in the Notice of Hearing (NOH) as being substantially correct. PC Van Den Diepstraten's guilty plea was accepted and he was found guilty as charged based on clear and convincing evidence outlined in the NOH. Mr. Girvin indicated that he and PC Van Den Diepstraten were aware that the prosecution's position on penalty, on behalf of the OPP was 24 hours and they were prepared to accept this sanction. The prosecution confirmed the stated position on penalty, in effect, making the proposal a joint submission. The public complainant was not in agreement with this position.

The purpose of this decision is to consider and determine the appropriate disposition for the finding related to one count of neglect of duty. What specifically remains at issue in this matter is my acceptance of the joint penalty proposal of 24 hours to be worked by the officer. I must be satisfied the sanction meets the goals of the discipline process including to correct the officer's errant behaviour, deter others from similar misconduct and reassure the public.

In deference of the Supreme Court of Canada decision in *R. v. Anthony-Cook ,* I am aware joint submissions on penalty should be recognized unless doing so would bring the administration of justice into disrepute. To myself, as a layperson, this means that accepting the joint submission would have to cast doubt on the lawfulness, fairness, propriety, and correctness of the proposed penalty.

The analysis that follows is based on submissions of the prosecution, defence counsel, and the public complainant. To assist me in my analysis, I will rely upon commonly held proportionality considerations relevant to this matter. Mitigating and aggravating factors will be balanced and weighed. These factors will provide me guidance to determine if the proposed sanction is appropriate.

Allegations of Misconduct

PC Peter Van Den Diepstraten, #8800 is alleged to have committed neglect of duty in that he without lawful excuse, neglected or omitted to promptly and diligently perform a duty as a member of the Ontario Provincial Police, contrary to section 2(1)(c)(i) of the Code of Conduct contained in the Schedule to Ontario Reg. 268/10, as amended.

Particulars of Allegations (edited):

On or about Wednesday, November 12, 2019 while on-duty PC Van Den Diepstraten attended a residence at 267 Highway 563 Batchewana Bay, Fisher Township. While in attendance at the residence it is alleged he committed the following neglect of duty:

- Entered the residence without proper invitation to do so and without the authorization of a warrant.
- Served a subpoena and failed to leave the residence immediately after completion of the service, despite witness #1 and Mr. Robinson explicitly asking him to leave.
- Despite no authority to enter or remain in the residence, PC Van Den Diepstraten remained in the residence for approximately 20 minutes, which aggravated the situation.

- His failure to leave the residence when requested, in the absence of authority to enter or remain, turned him into a trespasser when he was given a reasonable opportunity to leave and chose not to.

PC Van Den Diepstraten knew or reasonably ought to have known his actions and communications committed the misconduct of neglect of duty.

Plea and Finding

At the outset of the hearing on June 14, 2021, P/C Van Den Diepstraten entered a plea of guilty to the charge of neglect of duty and was subsequently found guilty based on clear and convincing evidence. Mr. Girvin, on behalf of PC Van Den Diepstraten indicated the facts as alleged in the NOH were substantially correct.

Disposition

After carefully considering the submissions of the parties I find the sanction proposed by Ms. Hodge, prosecuting counsel and Mr. Girvin, defence counsel is properly within the range available for similar misconduct. In respect of the mitigating and aggravating circumstances I find the proposed penalty is appropriate, fair, and consistent, and will meet the stated goals of discipline.

I order PC Van Den Diepstraten be accessed 24 hours to be worked at the direction and discretion of his Detachment Commander/Regional Command.

Exhibits

The exhibits for this matter are listed in Appendix A.

PART II: SUBMISSIONS, ANALYSIS AND FINDINGS

Oral Submissions. *The following are considered and overview and are not intended to include all submissions. Cases cited by counsel will be analysed elsewhere in this decision.*

Prosecution; Ms. Hodge

- PC Van Den Diepstraten was found guilty of one count of neglect of duty under the *Police Services Act* and suggested the proposed penalty of 24 hours was proportionate and consistent.

- Ms. Hodge indicated that, had a full hearing occurred as was anticipated, the penalty position of the prosecution was going to be 24 hours.
- The often referenced text *Legal Aspects of Policing* [1] outlined factors to be considered in determining an appropriate penalty.

Ms. Hodge addressed the following considerations as follows:

Public Interest was an aggravating factor citing OPP Police Orders section 6.1.10 professionalism in the OPP.

- PC Van Den Diepstraten entered the residence of Mr. Robinson without lawful authority and remained there despite having been asked to leave.
- PC Van Den Diepstraten exceeded his authority and his behaviour eroded trust and confidence held by the public.
- PC Van Den Diepstraten's actions negatively affected Mr. Robinson and Ms. Smith.
- Cited *Bierworth and the OPP* [2] addressing public interest.

Damage to the reputation of the OPP and the effect of publicity are somewhat aggravating as two articles have been published online in relation to this matter.

- Cited *Martin* [3] outlining damage the reputation of a police service that could occur should an officer's misconduct become known should be considered.
- If PC Van Den Diepstraten's misconduct should further become known, damage to the reputation of the OPP will result.

The seriousness of PC Van Den Diepstraten's misconduct is aggravating and he knew or ought to have known the level of seriousness.

- PC Van Den Diepstraten was an experienced officer and knew or ought to have known OPP expectations. He entered a private residence without authority yet he had options available to him rather than his chosen course of action.
- PC Van Den Diepstraten should have left when he was asked and the incident could have been avoided.

By pleading guilty PC Van Den Diepstraten has acknowledged his wrong doing and recognized the seriousness of his misconduct. This was a mitigating factor.

[1] *Legal aspects of policing*. Scarborough, Ont: Carswell, Ceyssens, P. (1994)
[2] Exhibit 9 – Prosecution Book of Authorities – Tab 1: *Bierworth and the OPP*, November 27, 2017
[3] Exhibit 9 – Tab 5: *Martin v. Windsor Police Service*, 2009 ONCPC 10

PC Van Den Diepstraten enjoyed a lengthy positive work history and this was a mitigating factor. PC Van Den Diepstraten's positive work history is linked to his anticipated ability to reform and rehabilitate and is mitigating.

PC Van Den Diepstraten's misconduct was contrary to public trust and the values of the OPP. General and specific deterrence are aggravating as the penalty needs to send a clear message to PC Van Den Diepstraten and other members of the OPP that this behaviour will not be tolerated. The penalty of 24 hours will achieve this purpose.

With respect to consistency of disposition Ms. Hodge suggested a broad range of penalty was available and submitted the *Cheung* and *McGrath* [4] case as being on point with the misconduct of PC Van Den Diepstraten. The case involved officers who entered a private residence without authority. The officers in *Cheung and McGrath* received 24 hours.

Ms. Hodge submitted *Hartnett et al* [5] and identified some comparable circumstances to PC Van Den Diepstraten's misconduct. The officer(s) in this matter received five days. Ms. Hodge addressed other cases addressed below and suggested the range of penalty is from a reprimand to five days and that 24 hours, in the case of PC Van Den Diepstraten was appropriate.

Defence; Mr. Girvin

Mr. Girvin indicated PC Van Den Diepstraten had pled guilty and this was a joint penalty submission. Mr. Girvin referenced the *Anthony- Cook* [6] decision, a criminal matter, and explained that *PSA* hearings should be guided by Supreme Court of Canada decisions and a hearing officer should accede to a joint penalty submission.

> ***N.B.*** *I asked Mr. Girvin and Ms. Hodge if they were aware of any authority speaking to the status and/or standing (paraphrased) of a public complainant regarding joint penalty submissions. Neither counsel was aware of any. Mr. Girvin pointed out that in Cheung and McGrath the public complainant was dissatisfied with the disposition imposed by the hearing officer and wanted a harsher sanction, however, this concern was not specifically addressed in the decision of the Ontario Civilian Police Commission (ONCPC).*

Mr. Girvin referenced his case submissions (detailed analysis below) and outlined similar and distinguishing characteristics from the misconduct of PC Van Den Diepstraten. Mr.

[4] Exhibit 9 – Tab 2: *Cheung and McGrath v. Toronto Police Service*, 2010 ONCPC 3
[5] Exhibit 9 – Tab 3: *Hartnett, Maclean and Robinson v. Peterborough Lakefield Community Police Service and Sean O'Brien*, 2009 ONCPC 13
[6] *R. v. Anthony-Cook*, 2016 SCC 43 (CanLII), [2016] 2 SCR 204

Girvin acknowledge that the *Cheung and McGrath* shared similarities to the matter of PC Van Den Diepstraten.

Mr. Girvin suggested PC Van Den Diepstraten had pled guilty and that the joint penalty position was within the range available to me. Mr. Girvin suggested, as stated by *Ceyssens* that in *PSA* tribunals corrective dispositions should prevail over those which are punitive. In this case, PC Van Den Diepstraten is a 26 year member with a positive career and his misconduct is not indicative of his usual conduct nor is there a pattern of transgression. PC Van Den Diepstraten has demonstrated his ability to reform and rehabilitate.

Public Complainant; Mr. Robinson

Mr. Robinson was displeased the matter was resolved by a guilty plea without the case proceeding to a full hearing because the evidence did not get heard and he did not get an opportunity to tell his side of the story. He indicated this incident had a negative effect on him, his wife and his family. Mr. Robinson disagreed with the proposed 24 hour disposition suggesting it should be more severe. Mr. Robinson indicated he knew there were other incidents involving PC Van Den Diepstraten. Mr. Robinson asked rhetorically what would have happened to him if he had behaved the same way as PC Van Den Diepstraten. Mr. Robinson indicated the reputation of the OPP was his top concern in this ordeal. Mr. Robinson addressed the public trust and public interest and suggested that, in his community there was no longer trust of the OPP and specifically with PC Van Den Diepstraten.

Prosecution Book of Authorities

Provincial Constable Bierworth and the OPP, November 2017

The underlying facts in *Bierworth* are not analogous to the matter of PC Van Den Diepstraten. *Bierworth* was found guilty in criminal court of impaired driving. Ms. Hodge submitted the case in relation to addressing public interest specifically the correlation between public trust and cooperation.

The general principles outlined in *Bierworth* are familiar to me. I did not find the case of to offer particular assistance with respect to assessing a fair and proper disposition.

Martin v. Windsor Police Service, 2009 ONCPC 10

Ms. Hodge submitted *Martin* with respect to the effect of publicity on the reputation of the police service. Ms. Hodge further indicated that, to her knowledge, the matter involving *Martin* had been reported on twice, online, in the past. The misconduct in *Martin* is not analogous to that of PC Van Den Diepstraten.

In their analysis ONCPC wrote:

> *"There is no doubt, that should a member of the public be advised of the full extent Constable Martin's deceptions, the reputation of the Service and, by implication, the integrity of its officers, who have committed no misconduct, could be called into question".*

I am mindful of Mr. Robinson's submissions regarding the negative effect PC Van Den Diepstraten's misconduct had on him and his family as well as the lack of trust the community has in PC Van Den Diepstraten and, by extension, the OPP. This matter has received at least some publicity. There was no evidence as to the actual extent of community awareness and its effect on the reputation of the OPP. I agree with the notion put forth by Mr. Robison and Ms. Hodge that if the community is indeed already aware of PC Van Den Diepstraten's misconduct, or should they become aware of the circumstances, actual damage or potential future damage to the reputation of the OPP is likely. I will address this further elsewhere.

Cheung and McGrath v. Toronto Police Service, 2010 ONCPC 3

The officers involved in this matter were charged and found guilty of discreditable conduct. Despite the differing misconduct offence, the underlying facts are reasonably analogous with some distinguishing characteristics.

The officers were unlawfully in the complainant's residence and their interactions resulted in an altercation culminating in his arrest. The circumstances of the officers being present are different than those faced by PC Van Den Diepstraten, but their decision to remain in the residence, as in the case before this tribunal, was unlawful.

While not diminishing or trivializing the effect on Mr. Robinson and his family there is no evidence that PC Van Den Diepstraten's misconduct on the day in question resulted in the arrest and detention of anyone. I further note, and as suggested by Mr. Girvin, the Court in the criminal trial associated with charges laid against the complainant in *Cheung and McGrath* had concerns about one of the officer's perceived aggressiveness and questioned his veracity. The officers were assessed a disposition of 24 hours.

Hartnett, Maclean and Robinson v. Peterborough Lakefield Community Police Service and Sean O'Brien. 2009 ONCPC 13

In this matter officers attended a residence to make an arrest. Neither of the occupants within the residence were the person being sought. Entry to the residence was denied by the lawful occupant but the officers entered by other means, departed, then re- entered the residence. The officers knew they required further judicial authorization to enter the residence i.e. a "[7]*Feeney*" warrant and were in the process of obtaining one. Despite knowing this, the officers entered the residence twice, without proper authority. The officers were assessed five days which I equate to 40 hours.

The distinguishing features include but are not limited to the fact that the officers knew and sought further authorization to effect their purpose yet continued to enter the house twice without proper authority or legal authorization. The officers involved in *Hartnett* et al did not benefit from mitigation associated to a guilty plea. The general misconduct is, however, analogous to that of PC Van Den Diepstraten.

Elliott v. Durham Regional Police, 2007 ONCPC 1

The underlying facts in this misconduct are relatively distinguishable from that of PC Van Den Diepstraten. In this matter officer King, a junior member at the time, was investigating what could be described as a suspicious person incident. He attended at the public complainant's residence as a possible culprit associated to the occurrence. A physical confrontation ensued and the public complainant was arrested and charged. The officer received a reprimand and was required to attend training.

The general principle of the necessity for officers to act with proper authority is analogous to the matter before me. I do not find the case significantly analogous except to note that a reprimand and training could be considered at the low end of disposition available for related similar behaviour.

OPP and PC J.R. Maguire, March 5, 2012

This was a matter where a rather junior officer conducted an unlawful search of a vehicle. The underlying facts are not particularly on point with the matter of PC Van Den Diepstraten. PC Maguire was assessed 32 hours. PC Van Den Diepstraten's misconduct is perhaps more serious as it occurred at a residence rather than in a vehicle on a highway.

[7] R. v. Feeney, 1997 CanLII 342 (SCC), [1997] 2 SCR 13

OPP Police Orders 6.10.10

The following excerpt depicts OPP policy with respect to professionalism:

> *The conduct of an employee, both on and off duty, is scrutinized and applied to the OPP as a whole. The more professional the conduct, the higher the public's confidence and co-operation. Similarly, this generates greater personal pride in the employee and the OPP. Positive relationships are essential to our business. Such relationships depend on mutual respect and understanding, appropriate attitudes and behaviours.*

Defence Book of Authorities

Gottschalk and the Toronto Police Service, 2003 CanLII 85796 (ON CPC)[8]

This matter involved an officer with the rank of Superintendent. As Mr. Girvin indicated, the matter is not particularly analogous except that for neglect of duty the officer received a reprimand.

Neild and the OPP, November 2016[9]

Neild involved a sergeant being found guilty of neglect of duty related to a death investigation involving an unsolved motor vehicle accident. The outcome related to *Neild's* neglect was, at least in part, arguably a contributing factor to the motor vehicle collision remaining unsolved. The sergeant received 24 hours.

Dickinson and the OPP, February 2018[10]

Officer Dickinson failed to appropriately inquire and investigate the well-being of vulnerable persons in a residence. Days after his attendance one of the occupants was found deceased and a second vulnerable person, due to her developmental challenges, had remained in the house with her deceased family member for quite some time. I find this misconduct was more serious than that of PC Van Den Diepstraten. PC Dickinson was assessed 35 hours.

[8] Exhibit 8 – Defence Book of Authorities, Tab 1 - *Gottschalk and the Toronto Police Service, [2003] CanLII 85796 (ON CPC)*
[9] Exhibit 8, Tab 2: *Neild and the OPP, [Nov2016]*
[10] Exhibit 8, Tab 3: *Dickinson and the OPP*, [Feb2018]

Considerations:

I will now turn my mind to some of the commonly accepted and referenced penalty considerations. My goal is to determine whether or not the jointly proposed penalty of 24 hours strikes a balance between the expectations of the community, the prescribed standards of the OPP and fairness to the subject officer. In achieving this I am also mindful of the test outlined in *Anthony- Cook* and ask myself; would accepting the joint penalty proposal bring the administration of Justice into disrepute?

I must be attentive to the negative and disturbing impact of PC Van Den Diepstraten's misconduct on Mr. Robinson and his family at the time the incident occurred and the impression it continues to leave with them and the community at large regarding the officer and, by extension, the OPP. It was clear that Mr. Robinson understandably remained distraught and concerned about what occurred.

As previously alluded to, the goals of the discipline process are to correct errant behaviour, deter others from similar misconduct, and uphold public trust being ever cognizant that consistency is the hallmark of fairness.

Seriousness of the Misconduct

The adage *"a person's home is their castle"* comes to mind when assessing the seriousness of PC Van Den Diepstraten's misconduct. It alludes to the right every person has to sanctity and security when in their own home against unreasonable actions of, in this case, the police. This sanctity should never be violated by the police who have sworn an oath and are duty bound to preserve and protect people's personal and property rights enshrined in the *Charter of Rights and Freedoms*.

PC Van Den Diepstraten entered Mr. Robinson's home without proper authority and remained there for an extended period of time even after being asked to leave thus making himself, for all intents and purposes, a trespasser. PC Van Den Diepstraten is a senior experienced officer and should have known the law and his authorities to enter a dwelling. Knowing the law and authorities therein are essential to the effective execution our duties as police officers. PC Van Den Diepstraten could have considered de-escalation by leaving the residence when asked to do so. Instead he exacerbated the situation by choosing to remain there.

The seriousness of the misconduct is aggravating and weighty.

Recognition of the Seriousness of the Misconduct

PC Van Den Diepstraten, represented by counsel, has pled guilty and accepted the facts as alleged in the notice of hearing. In doing so he clearly and unequivocally acknowledged his wrong doing. PC Van Den Diepstraten has signified he has recognized the seriousness of his misconduct and was willing to accept the disposition proposed by the OPP.

Through his counsel, Mr. Girvin, PC Van Den Diepstraten apologized to Mr. Robinson and others for his misconduct. While I give credit for the officer apparently instructing his counsel to apologize on his behalf, PC Van Den Diepstraten was present in the hearing room with Mr. Robinson. I find the apology, whether or not it was accepted by Mr. Robinson, may have been more impactful and would have appeared more genuine had the officer spoke it himself.

Recognizing and acknowledging his wrongdoing constructively informs PC Van Den Diepstraten's ability to reform and rehabilitate from similar behaviour in the future.

Recognition of the seriousness of the misconduct is mitigating.

Public Interest

In many ways police officers are an important part of the community. In smaller, less populated communities, such as where Mr. Robinson resides, officers often individually become well known by local citizens. Irrespective of location, officers are expected to uphold higher standards of behaviour than others in our society. Officers must work to establish and maintain trust and solidify a reputation for fairness, even-handedness, and professional conduct at all times. Police cannot carry out their role without the trust, support and confidence of those we serve.

Through his misconduct PC Van Den Diepstraten has shaken the public trust and public confidence that the OPP and its members will conduct themselves with professionalism and within the bounds of accepted practices, policy and procedures. As previously mentioned, PC Van Den Diepstraten violated the sanctity of Mr. Robinson's home. The citizens we serve would feel affronted and dismayed that PC Van Den Diepstraten conducted himself in the manner he did.

The public interest is aggravating.

Damage to the Reputation of the OPP

This tribunal heard that the matter related to PC Van Den Diepstraten's misconduct had been reported by the media, online, at least twice. There was no indicia that would allow me to quantify the actual damage that has already occurred to the reputation of the OPP. Certainly, in the mind of Mr. Robinson and his family the reputation of the OPP has been significantly tarnished. I sincerely hope that, in time, the OPP will be able to regain the trust and faith they may have once enjoyed from Mr. Robinson and others involved.

I know that the media often reports on police discipline matters and has access to tribunal decisions. I infer that should this matter receive further media attention or should otherwise become known to the community; further damage to the reputation of the OPP will likely result.

Damage to the reputation of the OPP is aggravating.

Employment History

Both Mr. Girvin and Ms. Hodge submitted PC Van Den Diepstraten has enjoyed a positive 26 plus year career with no current history of discipline or performance issues. Ms. Hodge further indicated PC Van Den Diepstraten had received commendations during his career. No documentation was referenced or submitted. I know that during the Covid 19 pandemic accessing detailed personnel records, normally available, has been difficult. I am satisfied that Mr. Girvin and Ms. Hodge had sufficient information available to them in order to have made their submissions in this regard.

An employee with a positive employment record over a 26 year career is worthy of consideration. There was no evidence of a pattern of similar poor decision making resulting in misconduct on the part of PC Van Den Diepstraten. Aided by verbal submissions I infer that the behaviour described in the NOH is anomalous for PC Van Den Diepstraten and is therefore unlikely to recur. An employee with an extended period of positive behaviour and performance is more likely to learn from their mistakes and to benefit from progressive discipline.

PC Van Den Diepstraten's employment history is mitigating.

Ability to Reform and Rehabilitate

PC Van Den Diepstraten has pled guilty and acquiesced to a proposed joint penalty submission in acknowledging his wrong doing. This is generally indicative of positive introspection and of sound character. I consider this, in combination with his positive employment history to bode well for PC Van Den Diepstraten's ability to rehabilitate.

Both prosecuting and defence counsel made submissions representing that PC Van Den Diepstraten is expected to learn from his disciplinary experience and is unlikely to repeat similar behaviour. I accept and agree with their assertions.

PC Van Den Diepstraten's ability to reform and rehabilitate is mitigating.

General and Specific Deterrence

With respect to general deterrence, all officers need to understand that behaviour similar to this misconduct will not be tolerated by the OPP and will result in significant consequences. The police being accountable for our actions is essential to public trust. I have found PC Van Den Diepstraten's behaviour undermined both the public trust and OPP values. The OPP, as an employer, has significant policy outlining clear expectations regarding professional conduct and deportment.

The public needs to experience and observe that officers are held accountable in order to uphold the high professional and ethical standards expected of them. PC Van Den Diepstraten has accepted responsibility for his misconduct and I am hopeful he has learned important lessons throughout this process and will conduct himself differently in the future.

PC Van Den Diepstraten must be conscious of the fact that should he commit similar misconduct in the future, a more significant sanction is probable. The proposed disposition will send a meaningful message that officers must conduct themselves to a higher standard and must know their legal authorities when engaging citizens. This is especially true when the persons involved are in their home.

I find that the proposed sanction adequately addresses both specific and general deterrence. I am hopeful that deterrence would always result from a disciplinary finding of guilt and the resulting penalty, at least to a degree. I therefore consider the need for deterrence a marginally aggravating factor.

Consistency of Disposition

It has been my experience that *PSA* dispositions for similar misconduct offences often present a wide range of penalties. This is because each case has unique factors that mitigate or aggravate deliberations to varying degrees. Each case has distinguishing features or circumstances worthy of specific consideration tailored to and dictated by the distinctiveness of the particular matter.

I have provided analysis above of cases submitted by prosecuting and defence counsel. I am satisfied based on submissions that the range of sanction for similar misconduct

offences includes, but is not necessarily limited to, being from a reprimand to 40 hours (5 days). I am satisfied that both the prosecution and defence counsel have carefully researched and considered jurisprudence and that the proposed penalty is within the range of acceptable penalties for analogous misconduct.

I find the circumstances in *Cheung and McGrath* while not exactly the same scenario, are sufficiently comparable to PC Van Den Diepstraten's misconduct. The involved officers were assessed 24 hours.

For reasons stated I do not find that the jointly proposed disposition of 24 hours would bring the administration of Justice into disrepute.

Mr. Robinson's Disagreement with the Proposed Disposition

Mr. Robinson was treated as an equal party to this tribunal as the public complainant. I am aware through training and experience that the *PSA* and jurisprudence have made this an essential requirement in the police accountability process. There are, for the most part, no procedural barriers in place with respect to public complainants in *PSA* tribunals governed by the tenet of *procedural fairness and natural justice*.

Significant efforts were undertaken to ensure Mr. Robinson was aware he could be represented by legal counsel and to explain the steps, processes and procedures of this tribunal so that he could participate meaningfully. This included an OPP Detective Sergeant being assigned to assist Mr. Robinson in navigating electronic evidence if required. Additionally this included the offer extended to and accepted by Mr. Robinson to address this tribunal and to make submissions.

Acknowledging Mr. Robinson is an equal party in this tribunal, I am not aware of any statute, law, or jurisprudence that would lead me to infer that a public complainant's status as "a party" would extend to the requirement for a public complainant having to agree with or consent to a joint submission on penalty before it can be accepted. When canvassed, neither involved counsel were aware of any authority requiring this.

I consider Mr. Robinson as a "victim," of sorts, of an OPP officer's misconduct. As such I do not consider him to be dispassionate or impartial due to his reasonable and bona fide belief that he and his family were personally wronged, as indeed they were, by PC Van Den Diepstraten. Mr. Robinson's submissions were heard, considered and were regarded as noteworthy in these proceedings. I completely understand Mr. Robinson's position. I am also aware that police disciplinary hearings are to be corrective in nature and are not to be interpreted as excessively punitive or to serve the explicit and singular purpose of retribution.

I find that to have required Mr. Robinson's consent to the proposed disposition would have been conspicuously prejudicial, inappropriate and may well have brought the administration of justice into disrepute, from the officer's perspective, in respect of the Supreme Court of Canada decision in *Anthony-Cook.*

Conclusion

PC Van Den Diepstraten has recognized his misconduct and accepted his employer's position on penalty. I give PC Van Den Diepstraten credit for this and, for reasons outlined above, anticipate that he has learned from this experience and is unlikely to repeat similar behavior.

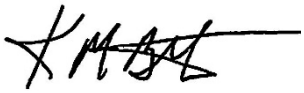
PC Van Den Diepstraten's misconduct resulted in significant feelings of mistrust and a lack of faith in the OPP on the part of Mr. Robinson and possibly others. This is the unfortunate and often inevitable outcome of events and misconduct of this nature.

On behalf of the OPP I apologize to Mr. Robinson, his family, and any others involved for the angst one of our officers has caused. I sincerely hope that in time Mr. Robinson and others can move past this unsavory experience with the OPP and regain the faith in our officers that they may once have had.

PART III: DISPOSITION

After carefully considering the submissions of the parties I find the sanction proposed by Ms. Hodge, prosecuting counsel and Mr. Girvin, defence counsel is properly within the range available for similar misconduct. In respect of the mitigating and aggravating circumstances I find the proposed penalty is appropriate, fair, and consistent and will meet the stated goals of discipline.

I order PC Van Den Diepstraten be accessed 24 hours to be worked at the direction and discretion of his Detachment Commander/Regional Command.



K.M. (Mike) Bickerton
Superintendent
OPP Adjudicator

Date electronically delivered: 18 June 2021

Appendix A

- Exhibit 1: Delegation – Adjudicator Superintendent Taylor
- Exhibit 2: Delegation – Adjudicator Superintendent Bickerton
- Exhibit 3: Designation – Prosecution – Inspector Doonan
- Exhibit 4: Designation – Prosecution – Inspector Young
- Exhibit 5: Designation – Prosecution – A/Inspector Fournier
- Exhibit 6: Delegation – All Officers
- Exhibit 7: Designation – Prosecution – Ms. Hodge
- Exhibit 8: Defence Book of Authorities
    - Tab 1 – *Gottschalk v Toronto Police Service,* [2003] CanLII 85796
    - Tab 2 – *Neild v OPP*, penalty decision [9Dec2016]
    - Tab 3 – *R. Dickinson v OPP*, penalty disposition [14May2018]
- Exhibit 9: Prosecution Book of Authorities
    - Tab 1 – *Bierworth v OPP*, [31Jan2018]
    - Tab 2 – *Cheung and McGrath v Toronto Police,* [2010] ONCPC 3
    - Tab 3 – *Hartnett, MacLean, Robinson v Peterborough Lakefield Police Service*, [2009] ONCPC 13
    - Tab 4 - *MacGuire v OPP*, [5Mar2012]
    - Tab 5 – *Martin v Windsor Police Service*, [2009] ONCPC 10
    - Tab 6 – Professionalism in the OPP – Police Orders
    - Tab 7 – *Elliott v Durham Regional Police*, [2007] ONCPC 1