TORONTO POLICE SERVICE 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

THE TORONTO POLICE SERVICE

AND PUBLIC COMPLAINANTS
B.A.
M.M.
Y.B.

AND CONSTABLE ADAM LOURENCO (99971)

Charges:
1) Unlawful or Unnecessary Arrest
2) Discreditable Conduct (Not Guilty)
3) Discreditable Conduct

AND CONSTABLE SCHARNIL PAIS (9706)

Charges:
1) Unlawful or Unnecessary Arrest

PENALTY DECISION

Hearing Officer: Inspector Richard Hegedus (Ret'd)

	Toronto Police Service
Prosecutor:	Superintendent Domenic Sinopoli
	Toronto Police Service
Defence Counsel:	Mr. Lawrence Gridin (for Constable Lourenco)
	Ms. Joanne Mulcahy (for Constable Pais)
Counsel for Public Complainants:	Mr. Jeff Carolin (for B.A., M.M., Y.B.)
Case Numbers:	27/2014 & 28/2014
Hearing Date:	2021.03.15
Decision Date:	2021.04.30

Penalty Decision

Constable Adam Lourenco (99971) and Constable Scharnil Pais (9706)

DATE: 2021.04.30

REFERENCE: 27/2014 & 28/2014

Inspector Richard Hegedus (Ret'd): Before commencing my decision in this matter, I wish to thank Mr. Lawrence Gridin and Ms. Joanne Mulcahy defence counsel, B.A., public complainant, Mr. Jeff Carolin, counsel for the public complainants, and Superintendent Domenic Sinopoli, the Service prosecutor, for their arguments and exhibits tendered, all of which have assisted me in reaching my decision.

This matter was the subject of an OIPRD ordered hearing. Constable Adam Lourenco (99971) pleaded not guilty to one count of Unlawful or Unnecessary Arrest and two counts of Discreditable Conduct. Constable Sharnil Pais (9706) pleaded not guilty to one count of Unlawful or Unnecessary Arrest. After the hearing, I found Constable Lourenco guilty of one count of Unlawful or Unnecessary Arrest and one count of Discreditable Conduct (Count 3). I found Constable Pais guilty of one count of Unlawful or Unnecessary Arrest. The matter was adjourned to March 15, 2021, to allow for submissions to penalty.

Penalty Decision

Case 27/2014 – Constable Lourenco. The penalty in this matter imposed under Section 85 (1) (f) of the Police Services Act will be:

For Unlawful or Unnecessary Exercise of Authority, in that he did without good and sufficient cause make an unlawful or unnecessary arrest, and

For Discreditable Conduct, in that he did act in a disorderly manner, or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the police service,

a global penalty consisting of a forfeiture of 12 days or 96 hours.

Case 28/2014 - Constable Pais. The penalty in this matter, imposed under Section 85 (1) (e) will be:

For Unlawful or Unnecessary Exercise of Authority, in that he did without good and sufficient cause make an unlawful or unnecessary arrest, a forfeiture of three days or 24 hours.

Submissions

Submissions to penalty took place on March 15, 2021 by video conference call. Making submissions in the video conference were the prosecutor, Mr. Gridin, Ms. Mulcahy, B.A., and Mr. Carolin. Exhibits had been tendered in advance.

B.A. Statement

B.A. took the opportunity to address the tribunal and read his prepared Victim Impact Statement into the record (Exhibit 72). Summarized, he indicated that within seconds after the officers arrived, he was being punched to the ground and after the incident he had no trust of police. He contrasted his own social rank at the time to that of a grown armed police officer. He noted that the incident had made him feel like a criminal but he hadn't done anything wrong. He has not let that incident define him or keep him down. B.A. indicated that the incident had taught him not to rely on his rights when interacting with police. It did not feel dignified but it was not worth being assaulted. He said that the event had impacted the relationship and tensions between the police and his community. B.A. suggested that there needed to be a faster hearing process and that investigations into police misconduct needed to be conducted by independent persons who were not current or former police officers.

Prosecution Submissions

The prosecutor had entered a Book of Records (Exhibit 69) and a Book of Authorities (Exhibit 70) and began his submissions by discussing the objectives of discipline. They are to correct unacceptable behaviour, to deter others from similar behaviour, and to assure the public that the police are under control.

The prosecutor drew my attention to the considerations in the *Legal Aspects of Policing* that are applicable when determining an appropriate penalty for misconduct (Exhibit 69, Tab 1).

The matter of Grbich and Aylmer Police Service 2002, OCCPS (Exhibit 68, Tab A) acknowledged the case of *Williams and OPP (December 4, 1995, OCCPS)* when it noted three elements to be considered in determining a penalty. Those were the nature and seriousness of the misconduct, the ability to reform or rehabilitate the officer, and the damage to reputation of the police service. Other important considerations included employment history, recognition of the seriousness of the misconduct, and handicap or other personal circumstances.

The prosecutor asked that I should consider them as a whole as he would be making submissions that were applicable generally as well as those which were specific to each officer. The prosecutor submitted that this matter had a high connection to the public interest and public trust. In the matter of Bright v. Konkle 1995, Board of Enquiry (Exhibit 68, Tab B), the Board spoke to this when it noted:

> *'Good character in a police officer is essential to both the public's trust in the officer, and to a police service's ability to utilize that officer. The public has the right to trust that its police officers are honest and truthful, and that, absent extenuating circumstances, they will not be officers any longer if they breach this trust.'*

The prosecutor submitted that the public had those expectations of our officers. That was supported in the Foreword to the Toronto Police Service (TPS) Standards of Conduct when previous Chief Blair wrote (Exhibit 69, Tab 2):

> *'I want to impress upon you the necessity of maintaining the public's trust and the grave implications for all of us if it is lost. Actions by members that break the law and violate the public trust diminish the public's perception of the professionalism of the police and tarnish the reputation of the Service.'*

In the Introduction to the Standards of Conduct, previous Chief Blair further wrote (Exhibit 69, Tab 3);

> *'Toronto Police Service members are held to a higher standard of conduct than other citizens. Not only an expectation from the community, this standard is an expectation we place upon ourselves. This higher standard of behaviour is necessary to preserve the integrity of the Service.'*

The prosecutor noted that the integrity of the Service was always under scrutiny and referred me to communication to the TPS membership entitled *From the Chief – Professionalism and Integrity Cannot be Compromised* (Exhibit 69, Tab 4). In it, the Chief's office stressed the public interest and the need for public trust and the prosecutor indicated that Constable Lourenco's actions did not meet the reasonable expectations of the community.

The prosecutor noted that the public granted the police the authority and approval to perform their duties and that was initially communicated by Sir Robert Peel. When police abused their authority, they eroded that power. The public expected that police use their authority appropriately. The findings in the hearing decision in this matter contributed to the narrative that the officers abused their authorities. Constable Lourenco demonstrated a lack of reasonableness and sought to exert control over the youths who were arrested. Constable Pais did not take steps to intervene. Those actions contributed to the

perception that police were abusing their authority and the prosecutor submitted that was an aggravating factor.

Prosecution Submissions continued

In regards to the seriousness of the misconduct, police officers have taken an oath to uphold the law. The prosecutor drew my attention to the Police Services Act (*PSA*) which listed the duties of a police officer at s 42 (1) and the criteria for hiring at s 43(1) (Exhibit 69, Tabs 5, 6). The prosecutor submitted that the character of police officers was always on trial and the seriousness of this event was an aggravating factor as it received much media attention and damaged the relationship between the community and the police. The prosecutor echoed comments from previous court proceedings: in order to retain the respect of the public, the police must uphold the law.

The prosecutor indicated that recognizing the seriousness of the misconduct was vital to the ability to reform or rehabilitate the officers. He further indicated that the officers were entitled to defend themselves and that was not an aggravating or mitigating factor in this case. The prosecutor submitted that Constable Pais had recognized the seriousness of the misconduct which is a mitigating factor.

The prosecutor drew my attention to the case of Lourenco and Toronto Police Service 2018 (Exhibit 69, Tab 9). In that case Constable Lourenco was off-duty and operating a TPS vehicle with permission. He was stopped by South Simcoe police for speeding and the officer detected an odour of alcohol on Constable Lourenco's breath. He registered a fail on a roadside screening device and there was an open container of alcohol in the vehicle. Constable Lourenco entered quick guilty pleas in court and the tribunal. He immediately sought help as well. Though that occurred during this hearing, the prosecutor submitted it was a neutral consideration because of Constable Lourenco's actions afterwards.

The prosecutor reviewed Constable Lourenco's employment history and noted that he had been an officer for 20 years and had been assigned to 23 Division since 2016. Constable Lourenco's TPS 950 - Information from Personnel File, noted that he had accumulated 45 positive entries and two misconduct issues during his career (Exhibit 69, Tab 7). The prosecutor drew my attention to the source documents and noted that the last 10 positive documentations post-dated this event (Exhibit 69, Tab 8).

The prosecutor also brought my attention to the matter of Lourenco and Toronto Police Service 2011 (Exhibit 69, Tab 10). In that case Constable Lourenco had been found asleep behind the wheel of a vehicle in an intersection. He was arrested for care and control of a motor vehicle while his ability was impaired. A successful delay application

was made in court and no criminal conviction was registered. He was assessed a penalty of a forfeiture of 15 days in the tribunal. The prosecutor submitted that was aggravating to penalty.

The prosecutor drew my attention to Constable Lourenco's performance appraisals and noted that despite the disciplinary processes he faced, his performance afterwards was considered stellar. The prosecutor submitted he should be given credit for his high performance but in light of this hearing it was a neutral consideration.

In regards to Constable Pais, his TPS 950 - Information from Personnel File, noted that he had been hired in 2006 and had accumulated 20 complimentary entries. There were no conduct issues (Exhibit 69, Tab 12).The supporting documentations detailed the circumstances of those entries (Exhibit 69, Tab 13). The prosecutor noted that 14 of them were received after this incident.

Constable Pais' performance appraisals variously indicated that he displayed a willingness to assume the role of an informal leader and that he excelled in his performance and demonstrated a superior work ethic. The prosecutor submitted that they were mitigating considerations.

In regards to the potential to reform or rehabilitate, the prosecutor drew my attention to the Commission's comments in the case of *Grbich*. The prosecutor submitted that both officers had taken positive actions since this occurred and he believed those were steps towards rehabilitation.

The prosecutor discussed procedural fairness considerations and reviewed some of the delays during this process. The initial complaint was received by the Office of the Independent Police Review Director after the six-month limitation period. That necessitated a delay application. The Notices of Hearing (NOH) were not served until 2014. A number of motions were filed in this matter, including by the defence. He submitted that delay was a neutral factor.

The prosecutor drew my attention to the matter of Schofield and Metropolitan Toronto Police 1984, OPC (Exhibit 68, Tab D) where the Commission noted;

> *'Consistency in the discipline process is often the earmark of fairness. The penalty must be consistent with the facts, and consistent with similar cases that have been dealt with on earlier occasions.'*

In Carson and Pembroke Police Service 2001, OCCPS (Exhibit 68, Tab E), the Commission noted;

> *'Appeals of this nature confront this Commission with the fact that there is no absolute standard to measure the appropriate penalty. There are reasons why*

province-wide uniformity is not always an appropriate objective. The forces of the province are entitled to emphasize corrective measures for problems which may be of particular concern to them. Concerns may change from year to year, community demands and standards may be different from one to another. In many respects what may appear just and fair to one hearing officer may not appear likewise to another. Fairness can be a matter of opinion.'

and further

'At the same time, the penalty must be sufficient to demonstrate that any reoccurrence will not be tolerated. It is of the utmost importance that a proper balance be achieved. Above all the penalty must be consistent with similar decisions in order to maintain consistency in sentencing. While fact situations may vary, a spectrum of misconduct and resulting penalties can provide a good comparative analysis to assist the Commission in determining an appropriate and fair penalty.'

In Suleiman and Lord and Ottawa Police Service 2011, OCPC (Exhibit 68, Tab C), the Commission indicated that it encouraged joint submissions, noting;

'Such a submission by counsel is instructive, but not binding upon a panel. We must make a decision after a full consideration of the law and facts. This said, 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.'

The prosecutor indicated that he was joining Mr. Gridin in proposing a penalty of 12 days for Constable Lourenco and also joining Ms. Mulcahy in proposing a penalty of three days for Constable Pais.

The prosecutor reviewed a number of cases to support his position including Vogelzang and Francis and Ontario Provincial Police 2013, OCPC (Exhibit 68, Tab 6), Johnson and Durham Regional Police Service 2020, OCPC (Exhibit 68, Tab G), Mulville and Azaryev and York Regional Police Service 2017, OCPC (Exhibit 68, Tab H), Parker and Koscinski and Penner and Niagara Regional Police April 2005, OCCPS (Exhibit 68, Tabs I, J), Hu and Toronto Police Service 2015 (Exhibit 68, Tabs L, M), Jacobs and Krupa and Ottawa Police Service 2014, OCPC (Exhibit 68, Tab N), Jacobs and Krupa and Ottawa Police Service 2017, OCPC (Exhibit 68, Tab O), and Venables and York Regional Police Service 2008, OCCPS (Exhibit 68, Tab P).

The prosecutor indicated that he had provided cases with a range of penalties. There was a need to impose a penalty on the officers which did not offend the public and also would allow the officers to move on. In Andrews and Midland Police Service OCCPS, 2003

(Exhibit 68, Tab Q) the Commission discussed what should be involved in a penalty and noted;

> *'It must be properly balanced i.e. sufficient to punish and deter while not causing undo or excessive hardship demonstrating reoccurrence will not be tolerated.'*

Prosecution Submissions continued

The prosecutor discussed specific and general deterrence noting that the TPS had put all members on notice regarding misconduct and the results of penalty decisions are published on Routine Orders. In *Andrews*, the Commission referenced the hearing officer when it discussed the correlation between a penalty and deterrence noting;

> *'He was also correct that the penalties imposed for misconduct must be strong enough to send a clear message to other officers that such conduct or any other conduct of this nature will not be tolerated. He was also correct that the penalty must ensure public confidence in their police force.'*

The prosecutor submitted that Constable Pais had little need of specific deterrence. He reminded the tribunal that B.A. had no issues with him and that Y.B. had said that Constable Pais was calm and polite. M.M. spoke to Constable Pais during the hearing and recognized that Constable Lourenco was the aggressor. The prosecutor submitted that Constable Pais had moved on and learned, and he should be treated differently than Constable Lourenco who was the senior of the two officers.

The prosecutor noted that Constable Lourenco had findings of misconduct in 2011 and 2018 which involved alcohol and reminded the tribunal of Constable Lourenco's actions during this event. The prosecutor also noted that Constable Lourenco had since made positive contributions. The prosecutor noted that deterrence specific to Constable Lourenco would be achieved when this decision was placed on the TPS Intranet and posted on the OIPRD website. The message would not be lost.

The prosecutor discussed the effect this has had on the officers and their families. The scrutiny they have endured for the past 10 years has had an impact and taken its toll on them. This has been a cloud over their heads. The lengthy delays were no one's fault, simply process. The prosecutor submitted that this should be a neutral consideration.

In regards to the damage to the reputation of the Service, this event has placed the Service and other officers in a bad light, especially with the Black community at large. This case was not about the officers' intent, but of the impact of their actions.

This case was the subject of considerable media coverage (Exhibit 69, Tab 15). The prosecutor submitted that the TPS had sustained a black eye because of the conduct of the officers. The harm to the reputation of the TPS must be a consideration and the Service reputation suffered every time an officer committed misconduct. The prosecutor submitted that the damage to the reputation of the Service was an aggravating factor.

The prosecutor discussed potential public expectations in this matter and acknowledged that some persons would be critical of a penalty if the officers were not dismissed. The prosecutor noted that it would not display consistency if the penalty was outside the range and submitted that the prosecution had provided cases with suitable comparisons. Though the media attention had been racially focused, there was no finding that the officer's conduct involved anything racial. As well, the OIPRD made no findings of racial elements in its investigation and we were bound by the OIPRD findings. The prosecutor referred me to the first motion in this matter heard by Superintendent Lennox (Ret'd) who denied the motion of the Ontario Human Rights Commission to intervene in the hearing because it had the potential, in part, to add new elements to the hearing. The prosecutor referenced the case of R. v. Le, 2019, SCC 34 (Exhibit 70) that Mr. Carolin had provided in his materials and submitted that it had been presented for the purpose of continuing to attach a racial component to this matter.

In conclusion, the prosecution was seeking a penalty for Constable Lourenco of a forfeiture of 12 days and a penalty of a forfeiture of three days for Constable Pais. The prosecutor submitted that those penalties would reassure the public.

Mr. Carolin Submissions

Mr. Carolin began his submissions by indicating that he was seeking the penalty of dismissal for Constable Lourenco. He was presenting one case in support of this, namely Gould and Toronto Police Service, 2016 OCPC 0078 (CanLII 64893) (Exhibit 71). He indicated that he had reviewed all of the cases that had been provided and the penalties for an assault ranged from a reprimand to dismissal. The cases involving dismissal included *Bright v. Konkle* and *Venables* which had been provided by the prosecutor. Mr. Carolin submitted that a penalty at the upper end of the range was necessary when considering the public interest, the seriousness of the misconduct, the impact on his clients, the damage to the TPS, and general deterrence. He indicated that B.A.'s earlier Victim Impact Statement was made with the knowledge that race was not a finding in this matter.

Mr. Carolin submitted that it did not mean that this occurrence had not involved racialized violence. There was a difference between the intention of the officers and their impact. The impact and social context mattered. There was a different social standing between

B.A. and Constable Lourenco and it was not a socially neutral situation. Mr. Carolin did not adopt the prosecutor's position and he submitted that punching a youth was more serious than punching an adult. In this case there was a social rank difference.

Mr. Carolin submitted that at the penalty phase, the impact still stood. He compared the punch to B.A. in contrast to a punch to him, submitting that it would be different if he had been punched. The damage and social interest would not be the same.

He submitted that in this case the characteristics of the victim and the officer were relevant. Section 718.201 of the Criminal Code (*CC*) noted that a court that imposes a sentence shall consider the increased vulnerability of female aboriginal victims where the offender was socially dominant. He indicated that a punch in a drunken bar fight was different than punching an indigenous woman. He submitted that fit in with the *PSA* and that increased vulnerability, required increased care. He submitted that the social position between Constable Lourenco and B.A. didn't disappear because of a finding that race was not relevant in this matter.

Mr. Carolin drew my attention to the case of *Le* where the SCC discussed social context. That decision also discussed concerns in the report of the OHRC such as a lack of reason for a stop, an arrest, and a lack of trust from the Black community which B.A. expressed. This was about the impact this has had on the Black community despite the finding of no specific intent.

Le also referenced *The Tulloch Report* which noted that youth in low income housing were marginalized by street checks. Mr. Carolin acknowledged this occurrence never reached that stage. The case discussed the impact of over-policing which took a toll on physical or mental health and contributed to a loss of trust. Mr. Carolin submitted the matter of *Le* was another example of a skinny teenager in social housing as opposed to Constable Lourenco as an adult police officer.

Mr. Carolin reminded me that his clients weren't doing anything wrong at the time of the occurrence. Constable Lourenco was cavalier in his actions and swung at B.A. in seconds. That highlighted the seriousness of the misconduct and the public interest in this matter related to groups of marginalized persons. This case needed the highest level of penalty.

Mr. Carolin referred me to the matter of Toronto Police Service v. PC William Walker (TPS Tribunal, 2007) (Exhibit 73, Tab 11) which had been provided by Mr. Gridin. He submitted I should not follow that case. It was distinguishable from other cases involving lower penalties where officers had pleaded guilty and had been going through personal challenges.

Mr. Carolin Submissions continued

The matter of R. v. Schertzer, 2013 ONSC 22 (Exhibit 73, Tab 5) is a criminal case, where delay was seen as mitigation because it had been catastrophic. The motions in this matter took a share of time. In this case, delay is neutral when it was contributed to by the defence. He submitted that in this case there had been no evidence of the impact a delay had on Constable Lourenco and he has moved on with his career.

Mr. Carolin noted that in some other cases that were provided there had been some provocation but he submitted that there had been none here. B.A. was attempting to enforce his rights as he learned in OJEN and at most he was uncooperative. The overall finding was that Constable Lourenco was the aggressor.

The case of Gentles v. Intelligarde International Incorporated, 2010 ONCA 797 (Exhibit 73, Tab 1) discussed powers under the Trespass to Property Act (*TPA*). The trial judge found that the people refusing to answer used vulgar language but that is not analogous to this matter. B.A. was only uncooperative. Constable Lourenco arrested B.A. for a non-offence.

Mr. Carolin noted that Constable Lourenco did have commendations but had just been disciplined for drinking and driving prior to this occurrence and his most recent case involved a demotion. If we moved up that ladder, the next step up would be a dismissal. He submitted that the TPS had reached that point. Constable Lourenco had already received more significant penalties than what was proposed here. He agreed that alcoholism is a disease, and Constable Lourenco probably still wrestled with it.

Mr. Carolin submitted that there was nothing mitigating here when Constable Lourenco conducted himself as he did and punched B.A. He submitted that B.A.s body had not been entitled to the protection of the state. Dismissing Constable Lourenco would be a sign to the broader community that the tribunal was taking this matter seriously.

He further submitted that Constable Pais had set a strong example of what a partner officer should not do. He had an opportunity to acknowledge that Constable Lourenco did not do what he should and adopted Constable Lourenco's perspective. He had in his notes that B.A. was uncooperative but then adopted Constable Lourenco's position. The way he acted on the stand when quarreling with Mr. Carolin should be seen as aggravating.

Mr. Carolin took no position on a penalty for Constable Pais.

Mr. Gridin Submissions

Mr. Gridin began his submissions by indicating that a joint submission should be entitled to great deference and in this case the prosecution and defence worked hard to fashion a joint penalty. The OCPC noted that the tribunal should give a joint penalty position deference. The materials he tendered had been marked as Exhibit 73.

In *Suleiman and Lord* the Commission discussed joint submissions. Mr. Gridin indicated that the same principles applied even if the complainant was not in agreement. In that decision the Hearing Officer referred to a previous case where the penalty was a forfeiture of 12 days and indicated that there was nothing trifling about a disposition of that magnitude.

Mr. Gridin indicated that some people were not informed about this process. He reminded the tribunal that any finding of guilt after a hearing constituted serious misconduct. Penalties could be in the range of a reprimand to dismissal. The proposed penalty of 12 days was a high penalty that came with significant financial costs.

Mr. Gridin discussed the recognition of the seriousness of the misconduct. In this case Constable Lourenco had instructed him to agree to the proposed penalty. He submitted that Constable Lourenco's agreement was recognition of the seriousness of the misconduct.

Mr. Gridin submitted that given that the occurrence was a continuous act, it would be more proper to impose a single global penalty. He submitted that one of the issues in stacking the penalties would mean that it would double the penalties.

Mr. Gridin indicated that I should consider B.A.'s Victim Impact Statement in regards to the seriousness of the misconduct but submitted that I should give it little weight. In it, B.A. made a political statement that an independent body should be required to conduct this type of investigation but he submitted that was ironic because it had been investigated by an independent body. He submitted that B.A. could speak to his own experiences but not the impact on the wider community. He submitted that the impact on B.A. was inconsistent with the facts in that racism had not been found.

His statement also didn't take into account that B.A. may have spat on Constable Lourenco. B.A. was found to be lying numerous times and perjured himself regarding his injuries. His credibility has been ruined. Mr. Gridin submitted that I should consider it and approach B.A.'s statement with caution. It should be given weight at the lower end of the range.

Mr. Gridin indicated that criminal assault was different than this occurrence and criminal convictions were aggravating. Mr. Carolin had earlier said that punching a youth was more serious and Mr. Gridin agreed that youth was a factor to consider. Mr. Carolin had also said that I should consider that punching a Black person was a more serious assault

and minority status should be an aggravating factor. Mr. Gridin indicated that the *CC* didn't include Black as an aggravating factor in sentencing considerations. The case of *Le* talked about the social context but didn't indicate that it should be aggravating that the complainant is Black. Mr. Gridin submitted that Mr. Carolin was proposing a significant change to the disciplinary regime by saying that there should be a higher penalty because the complainants are Black.

Mr. Gridin indicated that Constable Lourenco hadn't known that the complainants lived in subsidized housing and that could not be taken into account as a factor. Mr. Gridin indicated that there is nothing wrong with proactive policing and speaking to people at random. In this case, it was the progression from that point that was not ok. Constable Lourenco never hid the basis for his arrest. He submitted that it indicated that Constable Lourenco believed he had the authority for the arrest which amounted to a misapprehension, not malice.

In *Young*, a case provided during the hearing itself, the Justice expressed irritation about the lack of training officers had received in regards to their powers of arrest under the *TPA*. In *Gentles*, the Court of Appeal concluded that a person refusing to identify themselves did not constitute grounds to believe they were trespassing which was contrary to comments of the original trial judge who said that if matters transpired that way then there was cause to believe they were trespassing and there were reasonable grounds to arrest. That was law until it was overturned in 2010. It posed challenges for officers and the Justice was in same position. Mr. Gridin submitted that Constable Lourenco's mistake was not unreasonable when viewed through the lens that he had the grounds to stop and arrest. Mr. Gridin submitted that I could not penalize or impose a higher penalty on Constable Lourenco for his error under the *TPA*, only for the use of force and arrests of Y.B. and M.M.

Mr. Gridin drew my attention to the Legal Aspects of Policing, page 5-156, point 5, which noted that a higher penalty could not be imposed because a hearing officer believed that the officer was guilty of other misconduct which had not been formally alleged (Exhibit 69, Tab 1).

He further discussed the issue of credibility and drew my attention to the matter of *Rose and Ferry* presented in the hearing. That case noted that it constituted an error of law if credibility was taken into account in relation to penalty.

Mr. Gridin noted that the seriousness of the misconduct was a factor but this was a single isolated occurrence, with no planning or deliberation. The first count of misconduct involved two punches, and the punch above the neck was not a 'haymaker' and was not mentioned to the OIPRD by B.A.. During the occurrence, B.A. was not complying and Mr.

Gridin submitted that there was a big difference between this occurrence and a handcuffed offender being punched.

Mr. Gridin Submissions continued

The arrests of M.M. and Y.B. commenced when Constable Lourenco pointed his firearm. Constable Lourenco and Constable Pais were authorized under the *CC* to stop the commission of a perceived offence. Constable Pais then took the further step of arresting them. Mr. Gridin submitted that Constable Lourenco was only along for the ride at that point. It was significant that officers were initially acting under *CC* s 495. He noted that in my decision I found there was validity to their initial actions which was then mitigating because their initial actions were justified. It was not a trumped-up circumstance.

The subsequent decision to lay charges was made by Detective Constable Beveridge who based her grounds on what Constable Lourenco said. Mr. Gridin submitted that even if the public complainants had been released at the scene, Detective Constable Beveridge would still have grounds to lay a charge. Constable Lourenco can't be penalized for Constable Beveridge's actions. Even after viewing the video, the Crown didn't withdraw the charges and continued the prosecution against Y.B. Constable Lourenco couldn't be held responsible for the charges continuing.

Mr. Gridin acknowledged that Constable Lourenco had pleaded not guilty but there was recognition of the seriousness by agreeing to the 12 day penalty sought. He reminded the tribunal that the absence of a guilty plea could not be an aggravating factor and Constable Lourenco couldn't be penalized for mounting a defence. That was supported in *Carson*, Nobody v. Andalib-Goortani and the Toronto Police Service and Office of the Independent Police Review Director, 2018 ONCPC 6 (Exhibit 73, Tab 3), and Batista v. Smith and Ottawa Police Service, 2007 ONCPC 6 (Exhibit 73, Tab 4). He submitted that the recognition should be treated as mitigating because of the acceptance of the proposed penalty.

Constable Lourenco has two prior findings of misconduct. Mr. Gridin indicated that should be weighed against a positive employment history. He submitted that the 2008 finding would have been eligible for expungement but it stuck on his record due to this occurrence. He indicated that Constable Lourenco was not diagnosed with a disease in 2008. In 2015 however, he got a major wakeup call and got help. There was a lot more awareness at that time. He was formally diagnosed, got into a treatment program, and pleaded guilty at the first appearance in court and in the tribunal. TPS Medical Advisory Services (MAS) is monitoring the treatment order.

Mr. Gridin submitted that Mr. Carolin was wrong regarding progressive discipline in this matter. Though both previous findings against Constable involved substance abuse

issues, the 2015 finding can't be used for progressive discipline because it happened after this event. This cannot go from demotion to dismissal.

Constable Lourenco hasn't had a drink since then. His employment history has been stellar and there are good prospects for rehabilitation. He is open to and desirous of rehabilitation and that is a powerful mitigating factor. There is no indication that Constable Lourenco has a history of violence and though he does not have a clean disciplinary record, his employment history has been positive.

Mr. Gridin reviewed Constable Lourenco's employment history and indicated he received seven positive entries in the last two years, the last in March 2019. In one occurrence, he and others were successful in de-escalating a person in crisis. He demonstrated teamwork and was considerate of everyone, including the armed suspect. In another, Constable Lourenco responded to a robbery and the officers were commended for capturing the suspect.

In June 2018 he was involved in a major drug investigation. A confidential source led to a substantial seizure of drugs. That was not the only source he has cultivated. Constable Lourenco's ability to build trust is indicative of his having learned from this occurrence. In July 2018 he was involved in a foot pursuit which led to the recovery of cocaine and cash. In 2017, he attended a call where a female had been assaulted. She was afraid and he knew there was something serious occurring and he was able to communicate with her. She was a sex trade worker and out on bail. She disclosed a robbery and a pistol-whipping to Constable Lourenco which led to the arrest of the suspect. That event demonstrated the rapport-building skills Constable Lourenco has developed and the victim trusted him. If not, the unnamed suspect would still be out to victimize others. The author of that documentation wrote that Constable Lourenco was a poster child for the Core Values. In January 2019 he received thanks from the public for a search involving a missing woman. In another, during an arrest involving a shooting incident, Constable Lourenco was calm and methodical when tending to the victim. These documentations were just from the last couple of years.

Mr. Gridin read from Constable Lourenco's Performance Appraisals of 2015 to 2020 (Exhibit 69, Tab 11) noting that even while restricted to administrative duties he performed his duties with teamwork and gusto. He dealt with the public in an unbiased and courteous manner. In 2018 it was noted he was highly motivated and displayed a strong work ethic. In 2019 he was exceeding expectations. His supervisor noted his performance was nothing but stellar. He put in extra time, had superior results, and his Inspector referred to his exemplary leadership. In his 2020 appraisal, he received ratings of superior and exceptional. It was noted he was an inspiration and a benefit to all members. Mr. Gridin also referred me to the letters of reference provided on Constable Lourenco's behalf (Exhibit 73, Tabs A-C)

He indicated that all of that was received while Constable Lourenco was going through this process and the latest driving events. He submitted it was proof that he could bounce back from this. Constable Lourenco didn't give up but has done the opposite. Mr. Gridin submitted that was a powerful mitigating factor and his value as an employee needed to be considered.

Mr. Gridin Submissions continued

He acknowledged that this incident had received a great deal of publicity but much of the public complainants' narrative and lawsuit was found to be false. He submitted that the publicity was not aggravating but was happenstance. The media decided what cases to cover. He submitted that the officers should not get a higher penalty because of what the media decided to report. He submitted that if publicity was an aggravating factor it would encourage complainants to litigate in the media and encourage hyperbole which was not fair. The OIPRD never found a racial element but Mr. Carolin still argued race. Constable Lourenco endured media attention and the stigma fueled by a narrative that the tribunal has rejected even though nobody knows his story. Regardless of my findings, that stain was not going away. Constable Lourenco was found not guilty of certain offences but for years he had that stain. Reporting the findings now will not change people's perception. He submitted that the public complainants had engaged in a targeted media strategy and that should be mitigating. In the matter of *Nobody v. Andalib-Goortani* the tribunal noted that the effect of publicity was mitigating because it was unfair. He submitted that this matter will continue to follow Constable Lourenco.

In the matter of *Schertzer* the Justice discussed the lengthy delay and commented on the media publicity indicating that delay was more significant when accompanied by humiliation. Mr. Gridin submitted that logic applied here. The officers were legally entitled to file defence motions. In this case there was a delay in filing the complaint, a delay by the OIPRD, and an OHRC motion delay. The officers didn't have their first appearance until 2014. The hearing itself commenced on August 8, 2017.

In regards to consistency of disposition, there is a history of precedence in cases of use of force and impaired driving. He noted that penalties for impaired driving had increased from forfeiture of days earlier to demotions presently.

Mr. Gridin indicated that he would focus on cases involving the use of excessive force. He indicated that consistency was the earmark of fairness and the range of penalty in similar cases he was providing was a loss of pay for five days. Regarding the matter of *Gould* submitted by Mr. Carolin, which involved a dismissal for excessive force, that case could be distinguished because the prisoner was handcuffed and defenceless.

He submitted that *Gould* was outside of the normal range. Constable Gould attacked a handcuffed prisoner. The tribunal found that he provoked the prisoner into spitting at him

and then used it as an excuse to use force against him. In regards to his history, Constable Gould had been repeatedly suspended for excessive use of force, including a domestic situation and a criminal conviction.

The matter of R. v. Richard Shaw and PC Gary Gould, 2010 ONSC 563 (Exhibit 73, Tab 6) involved a third party O'Connor records application. At the time of the application, Constable Gould had already had three suspensions for assaultive behaviour. He had been subject to progressive discipline, had received previous warnings and that was distinguishing from this matter.

In *Gould*, the tribunal referred to the matter of *Sylvester*. The OCPC explained that Constable Sylvester had not been terminated on that occasion because he had been involved in policing for five years and had been commended for excellence. In this case, Constable Lourenco had shown an excellent work history for the past 10 years and he could be distinguished from Constable Gould in the same manner as the OCPC used to distinguish Constable Sylvester from Constable Gould.

Mr. Gridin submitted that the matter of *Venables* was an outlier and distinguishable from this matter. Constable Venables arrived at a scene where a person was in custody in another police vehicle. Constable Venables had no business with that prisoner and used gratuitous force based on the prisoner's ethnic origin. Constable Venables made no mention of that in his notes as opposed to this matter. It was found to be a hate crime with a finding of guilt for discrimination. The force used in that matter was more substantial as it caused bodily harm and resulted in a chipped tooth. The injury in this case involved a cut in B.A.'s mouth.

Mr. Gridin brought a number of cases to my attention and summarized them to discuss an appropriate disposition. Those included Nobody v. Andalib-Goortani and the Toronto Police Service and Office of the Independent Police Review Director, 2018 ONCPC 6 (Exhibit 73, Tab 3), Batista v. Smith and Ottawa Police Service, 2007 ONCPC 6 (Exhibit 73, Tab 4), Ottawa Police Service v. PC Jaseth Maseruka (OPS Tribunal, 2016) (Exhibit 73, Tab 7), Ottawa Police Service v. PC Nikolas Boldirev (OPS Tribunal, 2018) (Exhibit 73, Tab 8), Toronto Police Service v. PC Dawn Wilson (TPS Tribunal, 2013) (Exhibit 73, Tab 9), Toronto Police Service v. PC Brian Roy (TPS Tribunal, 1994) (Exhibit 73, Tab 10), Toronto Police Service v. PC William Walker (TPS Tribunal, 2007) (Exhibit 73, Tab 11), Elliott v. King and Durham Police Service, 2006 ONCPC 13 (Appeal) (Exhibit 73, Tab12) and Elliott v. Durham Regional Police, 2007 ONCPC 1 (Penalty) (Exhibit 73, Tab 13).

Mr. Gridin submitted that the typical range of penalty in similar situations was a reprimand to a forfeiture of five days. Mr. Gridin indicated that he had been instructed by Constable Lourenco to accept the proposed penalty of 12 days. That included the finding of an

unlawful arrest. Mr. Gridin submitted that there was no justification to impose a higher penalty and it was akin to a joint submission. He urged me to consider the work that went into it. It was higher than the normal range and far from trifling. He concurred with the prosecutor that a penalty was not to be created to appeal to people who did not understand the body of law that developed over decades and submitted that a global penalty of a forfeiture of 12 days should be imposed, not separate penalties.

Ms. Mulcahy Submissions

Ms. Mulcahy concurred that this was being presented as a joint submission and adopted it. She indicated that it was reasonable, took into account all penalty principles, and would not bring discredit to the TPS. Constable Pais relied on cases (Exhibit 67) and other materials (Exhibit 74) previously filed to support his position. Ms. Mulcahy submitted that I was obliged to accept a joint submission unless it was unreasonable.

Ms. Mulcahy indicated that Constable Pais was being disciplined for the arrests of M.M. and Y.B. for assaulting a police officer. She noted that Constable Pais had been a credible witness, did not appear to embellish or exaggerate, and had conceded other things that were not to his benefit.

She reminded me that B.A. had testified that Constable Pais had not been rude. Y.B. had said that Constable Pais was calm and polite and that was reflective of when Constable Pais had been before me and of the letters he received. She indicated that in 2011, Constable Pais had only been with TAVIS for two months and had only been a police officer for four years. More time had been spent in this proceeding.

Ms. Mulcahy reminded me of my decision that Constable Pais had a duty to protect his partner from the unexpected action of the public complainants. The mistake he made was in not releasing them at the time. The misconduct and proposed penalty was with respect to the continuation of the arrest. She submitted that a forfeiture of three days was appropriate, taking into account all circumstances.

She read a letter written by Constable Pais in regards to this event and the effect which this has had on him (Exhibit 74, Tab 23). She submitted that there were no concerns with rehabilitation in this matter and she noted this event had a lasting effect on him and his family.

Ms. Mulcahy drew my attention to a number of letters of support Constable Pais had received (Exhibit 74, Tabs 1-13). They had been written by members of the community and police officers. She submitted that they all highlighted that the event had been out of character and that Constable Pais had learned from it and given back to the community.

Ms. Mulcahy reviewed a number of the letters that had been submitted on behalf of Constable Pais. The letter from Rev. Msgr. Patrick O'Dea, St. Edward the Confessor Parish set out how Constable Pais had been of assistance and volunteered his off-duty time. Ms. Mulcahy submitted he had given back and brought credit to the Service (Exhibit 74, Tab 2). The letter from Superintendent Michael Barsky, Constable Pais' superior, noted that Constable Pais took on each and every task with vigor (Exhibit 74, Tab 3). She reviewed further positive comments from many of them and submitted that Constable Pais was often representing the face of the Service in his role in the Community Response Unit (CRU).

She reviewed Constable Pais' Unit Commander Assessment score sheet which was utilized as a tool to determine eligibility for promotion (Exhibit 74, Tab 17). His Unit Commander gave him a ranking of 20/20. She drew my attention to his annual performance appraisals from 2011 until the present where it was noted that he exceeded the standards (Exhibit 74, Tabs 18 - 21). She submitted that they demonstrated that Constable Pais had the support of his supervisors while this process was going on.

She brought my attention to a positive media article which noted that because of the terror attacks on mosques in New Zealand, Constable Pais and his partner paid personal attention to mosques on behalf of the TPS (Exhibit 74, Tab 22).

During his career, Constable Pais had received 22 awards and commendations, six of which related to firearms (Exhibit 69, Tabs 12, 13). His performance appraisals dating to May 2020 have been positive and commented on his professionalism with the public, his enthusiasm, and deportment. On his last appraisal his supervisor noted he was an asset to his Major Crime Unit (MCU) team and that his work ethic was much appreciated (Exhibit 69, Tab 14). She noted that his evaluations spoke to his work with youth, the Business Improvement Association (BIA), and the Young Men's Christian Association (YMCA). She submitted that was related to the disposition factors.

Ms. Mulcahy acknowledged that this occurrence was deemed to be serious misconduct. She submitted that there was an absence of many aggravating factors. There was no premeditation, it was not malicious, and he had had a lapse in judgement. Constable Pais was inexperienced and junior at the time.

Ms. Mulcahy submitted that the letter that Constable Pais had written to me was recognition and it was evident from all the letters that he has taken this event to heart. That was a mitigating factor.

In regards to relevant personal circumstances, Constable Pais was junior at the time of this event. The letters that were provided showed that he gave back to the community and assisted youth while off-duty.

Ms. Mulcahy spoke to procedural fairness and noted that the delays in this matter had been difficult for everyone. She noted that some delay could be assigned to the various parties and agencies involved in this matter and was part of the record but that was irrelevant. It was part of the process and procedurally fair though it was unusual that the OHRC sought standing because they had no right to standing. Through it all, Constable Pais had been professional and has sought to give back to the community. She submitted that in this case, employment history was significantly mitigating. Constable Pais has worked hard since then. This was his first finding of misconduct and he had no prior disciplinary history. She submitted that the potential to reform or rehabilitate had been addressed since then and was evident through his evaluations, commendations, and the support he had received.

Ms. Mulcahy Submissions continued

This event has had an effect on the officer and his family. The proposed penalty will require him to work three days without pay away from his family. This matter has been very public, here and where his family is from in the Middle East and India.

Ms. Mulcahy submitted that a three-day penalty was consistent with previous cases from the TPS, OPP, Ottawa, Thunder Bay, and the OCPC and she provided a number of historical cases for my review (Exhibit 67).

Those cases included Morris and Toronto Police Service, 2020 (Exhibit 67, Tab 1), *Mulville and Azaryev*, Walker and Toronto Police Service, 1997 (Exhibit 67, Tab 3), Gibbs and Toronto Police Service, 1998, Board of Enquiry (Exhibit 67, Tab 4), Wiles and Durham Regional Police Service, 1995, Board of Enquiry (Exhibit 67, Tab 5), *King and Elliot*, Pigeau and Ontario Provincial Police, 2009, OCCPS (Exhibit 67, Tab 7), Ardiles and Toronto Police Service, 2014 (Exhibit 67, Tab 8), Batson and Lafreniere and Ottawa Police Service, 2016 (Exhibit 67, Tab 9), Wowchuk and Bernst and Thunder Bay Police Service, 2012 (Exhibit 67, Tab 10), Wong and Toronto Police Service, 2014 (Exhibit 67, Tab 11), Mackinnon and Ontario Provincial Police, 2017 (Exhibit 67, Tab 12), and *Vogelzang and Francis*.

She submitted there was no need for specific deterrence. Constable Pais has been interviewed, served as a subject officer, and took part in the tribunal process. She submitted that there was no further need for further general deterrence. Many 52 Division officers had already read my decision and seen this in the news. This decision will be also be posted and with the TPS and the OIPRD website.

In regards to the damage to reputation of the police force, during these proceedings B.A. approached Constable Pais and said he had nothing against him. M.M. approached him

outside of the hearing room and shook his hand and said he was a good guy. Ms. Mulcahy indicated that the media got access to all cases but that officers were not entitled to defend themselves in the media without the permission of the Chief. She submitted that what was important was the evidence on the record and that the media attention was a neutral factor. She urged me to accept a penalty of three days.

Prosecution Reply

The prosecutor discussed *Le* as presented by Mr. Carolin and referred me to *Golumb* as presented in the hearing and my findings related to that case.

The prosecutor indicated that in limited circumstances there was an allowance for increased penalties when offender actions were motivated by bias. He submitted that it was important to distinguish between the *CC* and the *PSA*. Neither officer was charged with any misconduct involving racial bias. The prosecutor further submitted that the only previous penalty I could draw on in relation to this penalty was Constable Lourenco's previous 15 day forfeiture.

Analysis and Decision

To assist me in determining an appropriate penalty in this matter, I have considered the submissions of the prosecutor, all counsel, and B.A. I examined the exhibits and reviewed the factors noted in the Legal Aspects of Policing (Exhibit 69, Tab 1). I have considered and discussed those factors which are relevant to these proceedings, and when appropriate, considered them separately in relation to both Constable Lourenco and Constable Pais to arrive at appropriate penalties.

Public Interest

The public grants the police consent to perform their duties. It has a right to expect that police officers will conduct themselves in keeping with their legislated authority and that they will treat the public with dignity and respect. Police officers have significant authority. They have the power to deprive members of the public of their liberty when warranted and that is a power not to be taken lightly. Misconduct by a police officer must attract an appropriate sanction.

As was noted by the Board in *Bright v Konkle,* public trust in police officers is dependent on their good character. As noted in the *PSA* s 43 (1), it is a basic requirement in the

hiring criteria for police officers (Exhibit 69, Tab 6). In this case the actions of Constable Lourenco and Constable Pais were not in keeping with their duties under the *PSA* s 42(1) (Exhibit 69, Tab 5).

In the Foreword to the Service Standards of Conduct, former Chief Blair impressed upon our members the importance of public trust and the diminished perception the public had of the police when that trust was violated (Exhibit 69, Tab 2). As is noted in the Introduction to the TPS Standards of Conduct (Exhibit 69, Tab 3):

> *'The community expects Toronto Police Service members to conduct themselves and discharge their duties with diligence, professionalism and integrity; practice fairness and equality in their official dealings with the public'*

The communication *Professionalism and Integrity Cannot be Compromised* reminded officers that there is high public scrutiny of the police, and cameras allowed unprofessional conduct by TPS members to be viewed around the world (Exhibit 69, Tab 4). That was evident in this matter. The communication noted:

> *'Unprofessional and unethical behaviour damage the reputation of the Service, reduce public confidence, and undermine our ability to do our job.'*

Though there is no provision in the *PSA* for a Victim Impact Statement, I appreciated that all parties were agreeable to allow B.A. to read his into the record. In it he noted that after this incident he had no trust in police and the incident had made him feel like a criminal when he hadn't done anything wrong (Exhibit 72).

As was submitted by Mr. Carolin, increased vulnerability required increased care. As in many encounters with the police, there is often a power differential between them and members of the public, especially when they exercise their authority in relation to young persons. Police officers are granted extraordinary authority by the state but must exercise that judiciously, carefully, and in keeping with applicable legislation.

The vast majority of police actions have the support of the public but in this case that support was eroded. Because of the aforementioned considerations and the circumstances of these events, the public interest is of heightened concern in this matter. Constable Lourenco and Constable Pais breached the public trust, and in particular, that of the public complainants, and that is an aggravating factor.

<u>Seriousness of the Misconduct</u>

The misconduct in this case was serious. It is serious whenever police officers act in contravention of their duties under the *PSA* (Exhibit 69, Tab 5). Any time a police officer

is found guilty in the tribunal it constitutes serious misconduct. The complainants in this matter were young persons, members of the public, and the misconduct was directed against them.

In this case the misconduct involved the officers exercising their authority inappropriately and using unnecessary force against a group of young persons who had not committed an offence. The fact that they were young persons increased the seriousness of this matter. That seriousness was compounded when they were deprived of their liberty.

Constable Lourenco was the lead officer in this occurrence and committed serious misconduct when he arrested B.A. without justification and applied force that was not warranted. It continued with the arrests of the remaining public complainants. Constable Pais, though his role was less involved, also committed serious misconduct and was also responsible for what was experienced by the public complainants. The seriousness of the misconduct is an aggravating factor.

Recognition of the Seriousness of the Misconduct

Both officers had the right to make full answer and defence in this matter. They exercised that right and a full hearing was held. It is a neutral consideration.

Constable Lourenco has taken steps to provide good service to the community since these events and comments from his supervisors indicate that he treats members of the public with fairness and compassion. In addition, Constable Lourenco authorized his counsel to accept the proposed joint penalty on his behalf. I find that those are worthy of some mitigation.

I reviewed the letter provided by Constable Pais (Exhibit 74, Tab 23). In it he wrote;

> *'I am disheartened by the effect this event has had on everyone involved.'*
>
> and further
>
> *'I want you, Sir, to know that I took these proceedings seriously and have used this experience as an opportunity to learn and improve upon the way in which I engage members of the community.'*

His letter speaks to me both of recognition of the seriousness of the misconduct and also to the potential for rehabilitation. Coupled with his acceptance and authorization to his counsel for the imposition of a proposed penalty, I find that to be mitigating on his behalf.

Handicap and Other Relevant Personal Circumstances

I have not been provided with any information that there was any handicap or other relevant personal circumstances that affected the officers at the time of this occurrence in 2011. As well, I have not been provided with any evidence that there was any provocation on the part of the public complainants in this event.

Procedural Fairness Considerations

All procedural fairness considerations have been afforded to Constable Lourenco and to Constable Pais. The allegations of the public complainants were investigated by an independent civilian agency, the OIPRD, which is not associated to any police service and whose investigators are not police officers. Permission was sought from the Police Services Board to grant an extension before serving notice on the officers. Both officers were served with notice that they were the subject of a *PSA* investigation and both had the opportunity to respond in interviews with the OIPRD. Both officers were granted appropriate adjournments as required and motions were filed and argued on their behalf by their counsel. Both officers were represented by able counsel throughout these proceedings and have had the opportunity to make full answer and defence. All of those steps led to delays which prolonged the entire process.

The matter of *Schertzer* noted that delay can be a mitigating factor and in that case, the officers each dealt with catastrophic consequences related to the entirety of the occurrence. One factor was a lengthy delay, having to wait years before charges were even laid, despite knowing that they were pending. However in this case, none of the delays was procedurally unfair or as the result of any systemic failure.

Employment History

I reviewed Constable Lourenco's TPS 950 - Information from Personnel File, which noted that he had accumulated 45 positive entries and 2 misconduct issues during his career (Exhibit 69, Tab 7).

Constable Lourenco has two unrelated findings of misconduct, one in 2011 before these events, and one in 2018 that took place while this matter was underway. In *Lourenco 2011* he had been found asleep behind the wheel of a vehicle in an intersection. He was arrested for Care and Control of a Motor Vehicle While his Ability was Impaired. A successful delay application was made in court and no criminal conviction was registered. He was assessed a penalty of a forfeiture of 15 days in the tribunal (Exhibit 69, Tab 10).

In *Lourenco 2018,* he was off-duty and operating a TPS vehicle with permission. He was stopped by South Simcoe police for speeding and the officer detected an odour of alcohol on Constable Lourenco's breath. He registered a 'fail' on a roadside screening device and an open container of alcohol was located in the vehicle. Constable Lourenco entered quick guilty pleas in court and the tribunal. He immediately sought help as well (Exhibit 69, Tab 9). Though Constable Lourenco's took positive steps immediately afterwards, those two findings of guilt are aggravating factors.

I noted that Constable Lourenco had amassed approximately 43 positive entries in his employment history (Exhibit 69, Tab 8). Without describing them individually, I note that he had been recognized for his teamwork in safely apprehending a person who had threatened people while armed with knives, another who was in possession of a firearm after committing armed robberies, and for apprehending a male who had been involved in a shooting as both a victim and an accused person, to whom he administered first aid. He was also recognized for his teamwork in other occurrences involving the seizures of other firearms, multiple kilograms of cocaine, and other drugs.

He and a large number of other TPS members received a Teamwork Award for their efforts in a project which resulted in multiple arrests and the seizure of numerous firearms and a large quantity of drugs. He received other unrelated awards and also recognition for his involvement in other significant arrests, his ability to cultivate confidential sources, his recognition of suspects wanted in a number of serious offences, and as a team leader on a number of projects.

He further received thanks from a member of the public for his part in locating a missing vulnerable person, his compassion in a sudden death occurrence, and for assistance he provided to the community.

I reviewed Constable Lourenco's performance appraisals from 2016 to 2020 (Exhibit 69, Tab 11). In 2016 he was restricted to administrative front desk duties. His immediate supervisor noted that he was reliable and treated the public in a courteous manner. His staff sergeant noted that he had learned from his past mistakes. In 2017 he was returned to Primary Response duties. His sergeant noted that Constable Lourenco brought a wealth of experience and knowledge with him and despite the professional misconduct matters he was dealing with, he continued to perform strongly. His staff sergeant concurred with that and added that Constable Lourenco was professional and he ensured that public enquiries received appropriate care.

In his 2018 appraisal, his supervisors noted that Constable Lourenco was a strong team player who could be counted on to take charge of any situation in a professional manner and was highly regarded by his peers and supervisors. In his 2019 appraisal, his sergeant noted that Constable Lourenco's performance had been stellar, while helping to coach

younger officers and help his peers. His staff sergeant noted that he put in extra unpaid time to get the job done as well as providing superior results while acting as a coach officer to two new recruits. In his 2020 appraisal his supervisors also described his excellent performance.

Employment History continued

While Constable Lourenco's positive work performance, awards, and performance appraisals provide much mitigation, the effect of that mitigation is lessened by his previous findings of misconduct.

I examined Constable Pais' employment history. He had accumulated 20 complimentary entries since 2006. Except for this occurrence he has no findings of misconduct in his employment history (Exhibit 69, Tabs 12, 13). The majority of the positive recognition he has received occurred after this incident.

Constable Pais had been recognized for his role in a kidnapping investigation which led to the rescue of the victim and arrests of suspects. He was recognized for his teamwork and initiative on a number of occasions which led to arrests for possession of firearms and drugs, for the arrest of a person wanted for robbery, and an arrest for drug possession which led to a search warrant and the further recovery of a firearm.

He was recognized for his professional conduct while on a sensitive security detail, his contributions during G20 events, for his role in locating a missing vulnerable person, his teamwork while investigating an attempted suicide, and for his participation in providing training. He was further recognized as part of a team that provided support for an official visit of the Governor General, the assistance he provided to the victim in a motor vehicle collision and he received positive media attention for helping to ensure safety at a Toronto mosque (Exhibit 74, Tab 22).

In Constable Pais' 2016 performance appraisal, his sergeant noted that he worked well in a team environment and had taken on roles as a coach officer and scenes of crime officer. His staff sergeant noted he had the respect of his supervisors. In 2017 Constable Pais was assigned to the Community Response Unit. His appraising sergeant noted that he approached community events and demonstrations with enthusiasm and took great pride in his work. His Unit Commander noted Constable Pais made sound decisions at major events to keep the community safe.

In his 2018 performance appraisal, his supervisor noted that Constable Pais understood the importance of meeting the needs of community stakeholders and was always willing to assist when there were meetings or events taking place. In his 2019/2020 performance appraisal, it was noted that he had been selected to take a position in the MCU based on the work he did in his previous position in the CRU. It was noted that he was always

professional in his dealings with the public and colleagues. In his 2020 appraisal his supervisors noted that he had a superior work ethic, was self-motivated, and respected.

Upon reviewing all of the appraisals I also noted that almost all of the individual ratings, year after year, were categorized as ‘superior’ or ‘exceeds’. I find that Constable Pais’ employment history is a mitigating factor.

Ability to Reform or Rehabilitate the Police Officer

In the case of *Grbich* the Commission noted;

> *‘On the question of rehabilitation, every attempt should be made to consider whether or not rehabilitation is possible. A police service and the community in which it is situated makes a significant investment in each police officer. Unless the offence is egregious and unmitigated, the opportunity to reform must be a key consideration.’*

When these events took place in November of 2011, Constable Lourenco already had one finding of misconduct from a few months earlier in that same year. Constable Lourenco has made some inappropriate choices during his career which have led to findings of misconduct and are aggravating factors. Those were contrasted by many examples of excellent performance and contributions to community safety for which he was recognized and those have a mitigating effect. It is not his ability to deliver high quality policing services that is at issue: it is his ability to continue to rehabilitate himself and avoid future instances of misconduct which must be considered.

I reviewed the matter of *Lourenco 2018* which was heard by TPS Superintendent Corrigan. That case involved the arrest of Constable Lourenco for Operate a Motor Vehicle with Over 80 mgs of Alcohol per 100 mls of Blood. I note that he sought immediate treatment for a substance abuse disorder. Within a month he pleaded guilty to the criminal offence and also completed a 35 day residential intensive treatment program. As noted in that decision, he pleaded guilty in the tribunal to Discreditable Conduct and regularly attended a 12 Step Program and a support group related to his substance abuse issue. All of those are positive steps towards rehabilitation which he undertook after this event had occurred in 2011. In his submissions, Mr. Gridin indicated that Constable Lourenco is still being monitored by MAS and I am also mindful that he has authorized his counsel to accept the imposition of 12 day forfeiture penalty.

I reviewed letters of support provided on behalf of Constable Lourenco. Staff Sergeant Jacob indicated in part that he has been supervising Constable Lourenco for the past number of years. He noted that Constable Lourenco has continued to work hard and keep

a positive attitude through this period, and had been a role model for others. His further comments echoed those he had included on Constable Lourenco's 2019 performance appraisal (Exhibit 73, Tab A).

Sergeant Parsram indicated that even though the previous penalties imposed on Constable Lourenco had impacted his financial situation and his personal life, he continued to work hard and maintain a positive attitude. He further commented on Constable Lourenco's policing skills (Exhibit 73, Tab B). Sergeant Asselin indicated that Constable Lourenco had remained engaged, enthusiastic, and professional throughout the previous years. He had coached new recruits and provided a wide variety of training which had yielded positive results. Sergeant Asselin also indicated that Constable Lourenco treated everyone with respect and fairness (Exhibit 73, Tab C).

Because this matter has been active for a lengthy period of time, it has allowed Constable Lourenco time to demonstrate that he has the ability to reform or rehabilitate himself and the observations of his supervisors have documented that shift in his approach to others. That time was not without misstep but he took positive steps directly afterwards to deal with the issues. I am mindful of the Commission's comments in *Grbich*, that the opportunity to reform must be a key consideration and in this case, I agree that Constable Lourenco should be given the chance to do so. Constable Lourenco has the support of his peers and supervisors and he continues to demonstrate positive progress.

I reviewed the letters of support provided on behalf of Constable Pais. Aamer Zuberi, an elementary school administrator, noted that Constable Pais had provided ongoing guidance and support to his son, helping him to excel in school and strengthen his family bond. Mr. Zuberi indicated that Constable Pais had the ability to connect with youth and could provide them with sincere advice (Exhibit 74, Tab 1). The Reverend Monsignor Patrick O'Dea noted that Constable Pais had been a parishioner at his church from 2009 to 2014. Constable Pais volunteered as a youth counsellor and mentor in that time. He noted that Constable Pais treated people with care and attention and he was trusted by the various youth who knew he was there for them. He further indicated that he respected Constable Pais and sensed he was an honest and decent man (Exhibit 74, Tab 2).

His former unit commander, Superintendent Michael Barsky, wrote that Constable Pais was an informal leader and a valued asset to the CRU and MCU. He further noted that Constable Pais had learned and grown from this process and has used it to ensure appropriate use of his authority as a police officer (Exhibit 74, Tab 3). Sergeant Richard Bobbis noted that Constable Pais was exceedingly polite and would perform all tasks assigned to him without requiring a further request, displaying teamwork in community policing (Exhibit 74, Tab 4). Sergeant Pat Alberga described that Constable Pais was a quiet, respectful, understanding, and dependable officer. He was unaware of any other instances where a member of the public had a complaint about him. Despite this matter,

Constable Pais continued to maintain a positive attitude and exemplify the TPS Core Values (Exhibit 74, Tab 5). Detective Constable Antonio Correa indicated that Constable Pais displayed a high level of compassion and empathy towards all members of the community and built bridges with community members in priority neighborhoods. He worked to build community trust and ensure vulnerable members had a voice (Exhibit 74, Tab 6). Acting Staff Sergeant Danny Lee noted that Constable Pais volunteered his own time to serve food to the homeless or act as a support counsellor to victimized and vulnerable people (Exhibit 74, Tab 10).

Ability to Reform or Rehabilitate the Police Officer continued

I further reviewed the letters provided by Detective Tom Hartford (Ret'd) (Exhibit 74, Tab 7), Detective Michael Kerr (Exhibit 74, Tab 8), Constable Le (Exhibit 74, Tab 9), Detective Romi Manota (Exhibit 74, Tab 11), Staff Sergeant Daniel Martin #7473 (Exhibit 74, Tab 12), and Detective Constable Steve Torrance (Exhibit 74, Tab 13) which all echoed those positive comments and observations of Constable Pais. Almost all writers indicated they had read the hearing decision or were aware of the circumstances. Together the letters demonstrated that Constable Pais has learned from his experience and has made many positive contributions with a wide cross-section of the community. He has the support of supervisors, colleagues, and members of the community.

In regards to Constable Pais, one indicator of character is how a person deals with adversity. I have not been made aware of any performance issues since this event took place. On the contrary, he has clearly demonstrated the potential to be rehabilitated and has made all effort to continue to improve his work. Despite this misconduct being the subject of a lengthy hearing, he has not allowed the circumstances to affect his performance and has in fact excelled in every capacity he acted in. He has made many contributions to improve community safety and trust and has demonstrated that he has continuously strived to avoid a repetition of the misconduct by his ongoing positive work efforts.

I find that Constable Pais has learned from these events and will continue to move forward in the positive manner. His ability to reform or be rehabilitated is not a concern in this matter.

Effect on Police Officer and Police Officer's Family

The Commission described the negative effects that a conviction had on an officer in *Nobody v. Andalib-Goortani* which had been ongoing for a lengthy period. Those included personal, family, and professional negative impacts, noting that the officer would have to

deal with those for a long time afterwards and his reputation in the community had been tarnished.

All those things have occurred in this matter and will continue to have an effect on Constable Lourenco and Constable Pais. They have had to endure the challenges of an investigation, intense media scrutiny, a loss of professional reputation, loss of professional opportunities, and a lengthy hearing process. The letters and performance appraisals of Constable Lourenco do not go into detail about the effects this matter has had on him but it is fair to say that he has experienced a number of negative ones.

In reviewing the letters provided on Constable Pais' behalf and his performance appraisals it is evident this event has taken a significant toll on Constable Pais and weighed heavily on his mind, especially considering the lengthy time period involved. It was noted that he had struggled with the stigma and stress that came with it, and it had an emotional impact on him (Exhibit 74, Tabs 2, 5, 8, 9, 10, 11, 12, 13)

Constable Pais now has a finding of guilt contrary to the *PSA*. In addition, Constable Lourenco now has a third finding of guilt contrary to the *PSA.* Both will have to work without pay for the number of days they have forfeited and the effect of these proceedings will remain with them for years. The results will be published and available to the public on the OIPRD website. The results will also be published on TPS Routine Orders and Intranet. They will have to continue to work hard to restore their professional reputations. However, responsibility for their actions falls on their shoulders.

Employer Approach to Misconduct in Question

The Service has had a consistent approach in addressing the expectations of its officers. Both officers have had the benefit of much communication, evaluations of their performance, and training in relation to police interactions with the public. Some examples include the regular communication by senior leaders discussing public and conduct expectations (Exhibit 69, Tabs 2-4) and the results of all hearing decisions being published on Routine Orders and the Intranet for the benefit of all members. Further, every performance appraisal dating to the earliest days of an officer's career considers their commitment to the TPS Core Values, professionalism, community service orientation, self control, and human rights issues (Exhibit 69, Tab 11), (Exhibit 69, Tab 14), (Exhibit 74, Tabs 18-21).

Damage to the Reputation of the Police Service

There has been damage to the reputation of the Service in this occurrence. That damage has occurred directly in the eyes of the public complainants and of those in their circles. There was wider damage caused when these events were reported on by a number of media outlets and the general public became aware of them.

Effect of Publicity

Mr. Gridin had submitted that the public complainants had engaged in a targeted media strategy and that should be considered as a mitigating factor. I do not find that argument persuasive. This case was the subject of considerable media coverage (Exhibit 69, Tab 15) and though the officers cannot control what is published or broadcast by the media, suffice it to say, the media was not reporting on a positive interaction between the police and the public complainants. The damage to the reputation of the Service both through the eyes of the complainants and for those aware of the circumstances, coupled with the negative publicity, is an aggravating factor in this occurrence.

Specific and General Deterrence

In *Andrews*, the Commission referenced the hearing officer when it discussed the correlation between a penalty and deterrence noting;

> *'He was also correct that the penalties imposed for misconduct must be strong enough to send a clear message to other officers that such conduct or any other conduct of this nature will not be tolerated. He was also correct that the penalty must ensure public confidence in their police force.'*

Andrews and *Carson* further noted that a penalty must be properly balanced, sufficient to punish and deter, and demonstrate that reoccurrence would not be tolerated. Deterrence specific to Constable Lourenco will be achieved by the imposition of a penalty higher in the range for similar occurrences than if this had been his first involvement in misconduct. He will have to continue to work diligently to restore his professional reputation and will further have to work a number of days without pay to satisfy this penalty. In keeping with the steps he took after his previous finding of misconduct, I find the proposed penalty will be a sufficient deterrent.

Constable Pais will have to continue to work diligently to restore his professional reputation and will further have to work a number of days without pay to satisfy this penalty. Coupled with the positive work performance he has demonstrated since these events, I find that deterrence specific to him has been addressed.

A summary of this hearing decision will be posted on the Service Routine Orders and Intranet. These will be available to all Service members. As well, since this was an OIPRD ordered hearing, the decision will be posted on its website and be available to the public. General deterrence will be addressed in that manner.

Consistency of Disposition

In order for a penalty to be fair, it must be consistent with other penalties in similar circumstances. All parties brought cases to my attention in their submissions to support their penalty positions and I will discuss those that have some comparisons to this matter.

In *Schofield* the Commission discussed that a penalty must consistent with penalties in previous cases. The Commission added in *Carson* that while fact situations may vary, previous cases needed to be considered to allow for a comparative analysis and the determination of a balanced appropriate penalty.

A number of cases were submitted in support of the penalty sought for Constable Lourenco. Penalties in those matters ranged from a reprimand to dismissal. In *Elliott v. King* and *Elliott v. Durham Regional Police,* the officer responded to a complaint about a motorist who had asked young girls to get into his vehicle. He went to the motorist's home and spoke to him at the door. The motorist withdrew authorization for the officer to be on his property. A physical confrontation ensued and the officer arrested him for Assaulting a Police Officer and Assault with Intent to Resist Arrest. He was acquitted in court. The motorist complained and the Commission ordered a hearing. The officer was found not guilty. The complainant appealed that finding and the Commission found the officer guilty of making an Unlawful or Unnecessary Arrest and that he had become a trespasser after having been told to leave. In that case the officer had only one year's service and was in error in regards to his authorities. The penalty in that case was a reprimand.

In *Batista v. Smith* the complainant was recognized at a protest and two officers arrested him, mistakenly believing he was violating a bail condition. The complainant was handcuffed and would not walk to the police vehicle. He let his body go limp and was yelling at the officer but was not aggressive. Constable Batista tasered the handcuffed prisoner twice. The complainant was released unconditionally at the scene and the Commission ordered a hearing. The officer was found guilty of Unnecessary Exercise of Authority. The officer lost his probationary sergeant rank as a result but had a positive employment history. In that matter, a weapon was used twice on a handcuffed prisoner. The hearing officer in that matter imposed a reprimand.

In *Mulville and Azaryev*, the officers responded to calls on two separate occasions about a noisy party at a house. On their first attendance, they were told that the party was

ending. They had to attend again later that date and the officers entered the open door of the residence. No adult was present and underage persons had been consuming alcohol. One of the persons in the house told the officers they had no permission to be in the home and told them to leave, while video-recording the interaction. The officers did not leave and ultimately arrested that person without informing her of the reason and placed her in the rear of the police vehicle. She was charged with Obstruct Police and Causing a Disturbance then released at the scene on an appearance notice. The officers were each found guilty in the tribunal for one count of Unlawful or Unnecessary Arrest. Constable Mulville was also found guilty of one count of Discreditable Conduct. After an appeal, the findings of guilt for Unlawful or Unnecessary Arrest were upheld. Constable Mulville was assessed a penalty of a reprimand and training on arrest powers. Constable Azaryev was assessed a penalty of training on arrest powers. Similar to this event, charges were laid against the public complainants and there was negative media attention, however, neither officer in that case had a prior finding of misconduct.

In *Hu* the officer was charged with one count of Discreditable Conduct for making an unlawful arrest. The officer had confronted a limousine driver who he had previously cautioned for parking unlawfully. The officer pulled the driver out of the car and arrested him during a struggle, striking him three times to gain compliance. The complainant sustained some injuries. The officer attempted to continue the arrest and book the driver into the police station but he was released on a Provincial Offences Act charge. The officer was charged under the *PSA* and found guilty after a hearing. He was ordered to take remedial training on arrest powers and was assessed a penalty of a forfeiture of eight hours. Distinguishable in that case is that the officer had five prior informal resolution penalties for other misconduct and had lost hours at the unit level.

In Parker and Koscinski and Penner and Niagara Regional Police April 2005, OCCPS (Exhibit 68, Tabs I, J), during the trial for an HTA offence, the husband of the defendant was disturbing the proceedings by making comments while the officer testified. During a recess, Constable Parker and a second officer arrested the male for causing a disturbance and some force was used during the arrest including forcing the complainant to the ground and applying knee strikes. The complainant was transported to the station, strip searched, and lodged in a cell. He was charged with Causing a Disturbance, Breach of Probation, and Resisting Arrest. The complainant sustained injuries consisting of bruising, scrapes, and soreness. A hearing was directed and the hearing officer dismissed the charges. At appeal, the Commission found the arrest was not lawful or necessary and found both officers guilty. The Commission imposed a penalty of four days suspension without pay on Constable Parker and a forfeiture of two days on the junior officer. Similar to this matter it involved an unlawful arrest, the application of force, and criminal charges against the complainant that were withdrawn by the Crown.

The matter of *Vogelzang and Francis* involved an unlawful arrest. In that case the officer stopped a motorist and an argument ensued about the reason for the stop. The officer demanded the motorist's documents and the motorist complied. The officer ultimately arrested the driver for Breach of the Peace, placed him in the rear of the police vehicle and later released him unconditionally. The motorist filed a complaint with the OIPRD and after a hearing the officer was found guilty of Unlawful or Unnecessary Exercise of Authority. The Hearing Officer found that there were insufficient grounds for the officer to have made the arrest. The officer was assessed a penalty of a forfeiture of three days or 24 hours and the finding was upheld after appeal to the Commission. The differences in that matter were that there was no violence involved, no media attention, and only one complainant.

Consistency of Disposition continued

In Johnson and Durham Regional Police Service 2020, OCPC (Exhibit 68, Tab G) the officer was found guilty of Unlawful or Unnecessary Exercise of Authority against a prisoner. The officer had responded to a call for two males fighting. Upon arrival he saw the complainant and called him over but the complainant walked away. The officer chased him, used pepper spray twice and then subdued and handcuffed him. The officer struck the complainant in the head and the event was captured on video. The Hearing Officer found that the slap on the head was not justified and imposed a penalty of a forfeiture of three days or 24 hours which was upheld by the Commission after an appeal. Distinguishing in that matter is that the officer had no prior history of misconduct, was acquitted in criminal court, and the case involved a single slap post-handcuffing.

In the matter of *Roy* the officer attended a shoplifting complaint and slapped a 17 year old shoplifter twice on the head after the youth was disrespectful to him. The officer was charged with and found guilty of Assault, and received an absolute discharge. He pleaded guilty to Discreditable Conduct and the penalty in that case was a forfeiture of four days or 32 hours. It was noted that the officer had an excellent lengthy service record and there were external stressors present in his personal life.

In *Walker* the officer was conducting an investigation and unlawfully detained the complainant but had determined that the complainant was not the person wanted on a warrant. The officer ultimately unlawfully arrested the complainant for Cause Disturbance and while wrestling the complainant to the ground, the complainant's cheekbone sustained a fracture when he struck the ground. The officer was found guilty at trial of Assault Causing Bodily Harm and received a sentence of a conditional discharge and probation. He pleaded guilty in the tribunal to Discreditable Conduct. The similarities involved an unlawful arrest and the person who was arrested had refused to comply. The injury caused to the complainant was unintentional but more severe. The officer came to

the tribunal with a positive employment history and the penalty in that matter was a forfeiture of four days.

Nobody v. Andalib-Goortani was a G20 case where the officer was part of a team assigned to provide security at a protest march to Queens Park. Other members of his team apprehended the complainant and took him to the ground while struggling with him. The officer was the last to arrive at the scene of the arrest and applied unnecessary baton blows to the complainant. There was substantial media attention and the officer was charged with Assault with a Weapon and pleaded guilty in court. He pleaded guilty in the tribunal to one count of Discreditable Conduct and was assessed a penalty of a forfeiture of five days. After an appeal, the Commission confirmed the penalty.

In *Parker*, the officer responded to a call for an armed robbery and located a group of young men. He told them to sit down and that they were under arrest for robbery. One male did not comply and the officer slapped his head and pepper-sprayed him. The male was handcuffed and transported to the station. The officer did not submit a use of force report regarding the pepper spray but noted that he struck the complainant. After a hearing, the officer was found guilty of Unnecessary Use of Force and Neglect of Duty. He appealed that finding but the appeal was dismissed. Similarities to that case involved the use of force and negative media attention. In that case the officer had no prior disciplinary history. There was no penalty noted in the decision provided to me but Mr. Gridin advised the tribunal that the penalty in that matter was a forfeiture of six days.

In *Maseruka* the officer was called to an assault occurrence at a men's shelter. The officer arrested the complainant, threw him down some stairs, and struck him. Once the complainant was in handcuffs, the officer threw him to the sidewalk. The officer pleaded guilty in the tribunal to Unlawful or Unnecessary Exercise of Authority and was assessed a penalty of a forfeiture of seven days. Aggravating in that case was that the force was more extreme and it was also used against a handcuffed prisoner.

In *Boldirev* the officer arrested a person for marihuana possession after a traffic stop and handcuffed him. The complainant attempted to get out of the police vehicle and the officer punched him twice on the head while he was handcuffed, punching him as hard as he could. The officer pleaded guilty to Unlawful or Unnecessary Exercise of Authority and had no prior history of misconduct. Aggravating was that the force used was more serious. The officer was assessed a penalty of a forfeiture of seven days and additional training in the use of force.

In *Jacobs and Krup*a *2014* and *Jacobs and Krupa 2017*, a motorist refused to stop for the plainclothes officer for a speeding offence. Another officer stopped the motorist and after a struggle, he was forced to the ground and handcuffed. Constable Jacobs intervened and applied unnecessary force in the form of knee strikes during the arrest and the

complainant sustained some bruises to his facial area. After a hearing there was a finding of guilt and a 12 day penalty for Unnecessary Exercise of Authority was imposed. At appeal, the Commission upheld the penalty but the complainant withdrew the complaint on a subsequent appeal and so the Commission ultimately didn't make a decision on penalty. Both matters involved a person who sustained injuries after the unnecessary application of force. Distinguishing was that the officer had no prior disciplinary history, there was no media attention and the matter at hand involved young persons.

Consistency of Disposition continued

Though it was not proposed as a comparator in regards to penalty, I found that the matter of *Schofield* was also instructive. In that matter, the officer attended a store where a shoplifter had been apprehended. While questioning the shoplifter, the officer jabbed him in the stomach with his baton, threatened to hit him, and pushed him against a wall. The assault was unprovoked and the officer was convicted in court of Assault. He was found guilty in the tribunal and a reduction in rank classification was imposed. The officer appealed the penalty and Commission substituted a penalty of a forfeiture of 12 days.

The cases of *Venables* and *Gould* resulted in the dismissal of the officers. The cases both involved force being used against defenceless complainants and there were elements in both cases that led to the dismissal of those officers. In *Venables*, the complainant had been arrested by other officers for an alcohol-related driving offence. He was handcuffed and seated in the back of their police car. Constable Venables had no involvement in that investigation but went to the location. He spoke to the complainant and asked if he was Russian. The officer made a disparaging comment based on the complainant's nationality and assaulted him by punching him on the side of the head without provocation, resulting in a chipped tooth and cut lip. The complainant did not have the ability to resist. The officer made no notation of his contact with the complainant. The attack was unprovoked and the officer pleaded guilty to Assault in court. The officer pleaded guilty to two counts of Discreditable Conduct for failing to protect a person without discrimination and for being found guilty of a criminal offence. There was also finding of guilt for Unnecessary Exercise of Authority for using unnecessary force against a prisoner. After a penalty hearing, the officer was ordered to resign. He appealed to the Commission but the dismissal was upheld. The Commission agreed that the officer had committed an unprovoked violent act which was motivated by ethnic intolerance and that his conduct was contrary to the policing principles noted in the *PSA.*

In the matter of *Gould*, the drunken complainant had assaulted a gas station clerk and urinated in the station. Constable Gould and other officers arrested the complainant, handcuffed him, and placed him in the back of a police vehicle. The complainant was belligerent and tried to spit at officers while kicking at the inside of the police vehicle. Constable Gould went to the complainant and dared him to spit at him. The complainant

spit on Constable Gould's face. The officer then struck the complainant a number of times and entered the back of the police car where he punched him several more times. The officer was charged and pleaded guilty to Assault. He received a conditional discharge. He further pleaded guilty in the tribunal and was ordered dismissed. The penalty was upheld on appeal. In regards to his disciplinary history, Constable Gould had received four informal unit level penalties. He also had previous findings of guilt for Insubordination and Discreditable Conduct. The matter of *R. v. Richard Shaw and PC Gary Gould* noted that Constable Gould had been repeatedly suspended for his assaultive behaviour, including a domestic situation and a criminal conviction.

I also examined the matter of *Bright v. Konkle* as noted by Mr. Carolin in his submissions. I found that it was not a suitable comparator to this matter. When examining the matters of *Venables* and *Gould*, I find the conduct of those two officers to be more serious than that of Constable Lourenco. Both cases involved assaults on handcuffed and defenceless prisoners and each had distinct and additional aggravating features which heightened the seriousness of the misconduct resulting in the penalty of dismissal. Those same aggravating factors are different than the ones in the matter before me.

A number of cases were submitted in support of the penalty proposed for Constable Pais. Penalties in those matters ranged from a reprimand to a forfeiture of three days or 24 hours. In *Gibbs*, the officer made an arrest of a person who he thought was wanted for a stabbing occurrence but officer was mistaken. The complainant was uncooperative, a struggle ensued, and the complainant was arrested for Obstruct Police. The officer released the complainant at the scene without charges. The arrest was found to have been unlawful. The officer was junior and the officer was found to have acted without malice. The penalty in that case was a reprimand. A difference in that case is that the complainant was released at the scene after the arrest.

In *Wowchuk*, the officer made an unlawful arrest of a person suspected of having been involved in a drug transaction but no transaction had been witnessed. The complainant was handcuffed and some force had been used in the arrest, resulting in minor injuries. The complainant in that matter was released unconditionally within 10 minutes. The penalty in that matter was a forfeiture of eight hours or one day and the requirement for remedial training. In that case the officer had no grounds to arrest the complainant and some force had been used against him.

In *Wong*, the officer was on duty during the G20 demonstrations in Toronto. The officer arrested the complainant for wearing a Disguise with Intent to Commit an Indictable Offence. The complainant was held in custody approximately 28 hours and was released without charge. After a complaint to the OIPRD, the arrest was found to be unlawful and a hearing was ordered. The officer was found guilty and the penalty after an appeal to the

Commission was a suspension without pay for not less than one day. In that case the officer had misunderstood his arrest authorities.

Consistency of Disposition continued

In *Pigeau*, the officer and his partner observed a lone male walking late at night along the side of a road. The officer called out to the male complainant who did not want to talk to them and tried to walk away. Though many details were in dispute, including the type of physical contact between them, the officer ultimately arrested the complainant for Assault Police Officer. The complainant was handcuffed and after the arrival of a supervisor at the scene, the complainant was released unconditionally. After a hearing, the officer was found guilty of Unlawful or Unnecessary Exercise of Authority and ordered to forfeit two days or sixteen hours and order to take training related to mental illness, schizophrenia, and arrest procedures. After an appeal, the penalty was varied to a reprimand. The arresting officer in that matter was junior and inexperienced.

The matter of *Mackinnon* involved the second officer in *Vogelzang* as discussed previously. He assisted Constable Vogelzang in making the unlawful arrest of a motorist. Constable MacKinnon was ordered to forfeit 16 hours.

In *Suleiman and Lord* the Commission indicated that it encouraged joint submissions, noting;

> *'Such a submission by counsel is instructive, but not binding upon a panel. We must make a decision after a full consideration of the law and facts. This said, 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.'*

In this case the prosecutor and Mr. Gridin indicated they were submitting a joint penalty position for Constable Lourenco. The prosecutor and Ms. Mulcahy indicated they were submitting a joint penalty position for Constable Pais. However, though they agreed on proposed penalties, the other parties to these proceedings are the public complainants and for a proposed penalty to be considered a joint position, it must be agreed to by all parties. That is not the case here. Taking into account the joint positions, and also considering the penalty proposed by Mr. Carolin, I must further consider what penalties would be appropriate in this matter.

The cases relied on by the prosecution and defence counsel had penalties which ranged from a reprimand to a forfeiture of 12 days. The case provided on behalf of the public complainants had a penalty of dismissal. As I previously noted, I found that the case of *Gould* to be more serious than the matter before me and it was not a suitable comparator. That was also applicable to the matters of *Venables* and *Bright v. Konkle.*

A reasonable person, appraised of all relevant evidence and considerations brought forth in the hearing and penalty proceedings would find that the penalty of dismissal would be unreasonable and inconsistent with other penalties in all the circumstances.

Mr. Carolin had submitted that because Constable Lourenco had incurred a demotion in 2018, the next step in progressive discipline would be dismissal. I cannot consider the penalty imposed on Constable Lourenco in 2018 to invoke a higher penalty because it post-dated the matter before me. Constable Lourenco could not have had the benefit of the warnings in that decision before engaging in this misconduct in 2011. As such, I only rely on that decision in relation to employment history, not for the purpose of progressive discipline.

I take note of Mr. Carolin's submissions in regards to the matter of *Le* and accept that there was a difference in power and in social position between the adult police officers and the public complainants who were young persons at the time of this occurrence. He had submitted that the social position didn't disappear between Constable Lourenco and B.A. because no finding on race had been made. I agree. B.A. was a youth at the time of this occurrence and Constable Lourenco was an adult police officer. Mr. Carolin had submitted that the race of the public complainants should be considered as an aggravating factor to penalty in keeping with the principles contained in s. 718.201 *CC* and as in *Le*. However, I note that this matter will not result in the imposition of a criminal sentence. While there are some parallels, this matter involved specific allegations of misconduct that were described in the NOHs and the question of whether misconduct had been established on clear and convincing evidence. Based on the hearing, I found the police officers guilty of misconduct. The issues now to be determined here are what penalties are appropriate.

I am mindful that this occurred in 2011, almost a decade ago. With the intervening years and additional mitigating considerations that have developed over time, I find the jointly proposed penalties to be within the range of penalties available to me. When considering that and the length of time the officers have had this hanging over their heads, there is no compelling reason for me to depart from the penalty positions proposed by the prosecutor and both defence counsel. The penalty I impose will address the misconduct committed by Constable Lourenco and Constable Pais and the relevant disposition factors.

Mr. Gridin had submitted that the penalty for Constable Lourenco should be in the form of a global penalty consisting of a forfeiture of 12 days due to this event consisting of one ongoing series of events. I am aware that there is precedence for a global penalty, it is reasonable, and can satisfy the requirements of a penalty in these circumstances.

Finally, I encourage Constable Pais and Constable Lourenco to share their experiences with their peers, supervisors, and especially those new officers who they coach in order that all can learn and benefit from them.

Based on the foregoing, I arrive at the following penalties.

Penalty Decision

Case 27/2014 – Constable Lourenco. The penalty in this matter, imposed under Section 85(1) (f) of the Police Services Act will be:

For Unlawful or Unnecessary Exercise of Authority, in that he did without good and sufficient cause make an unlawful or unnecessary arrest, and

For Discreditable Conduct, in that he did act in a disorderly manner, or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the police service,

a global penalty consisting of a forfeiture of 12 days or 96 hours.

Case 28/2014 - Constable Pais. The penalty in this matter, imposed under Section 85(1) (e) will be:

For Unlawful or Unnecessary Exercise of Authority, in that he did without good and sufficient cause make an unlawful or unnecessary arrest, a forfeiture of three days or 24 hours.

Richard Hegedus

Inspector (Ret'd)

Hearing Officer

Dated and Released Electronically: April 30, 2021

Appendix ‘A’

Constable Lourenco (99971) and Constable Pais (9706)

Penalty Hearing - List of Exhibits 27/2014 and 28/2014

Cases Relied on by Constable Pais (Exhibit 67)

Morris and Toronto Police Service, 2020 (Exhibit 67, Tab 1)

Mulville and Azaryev and York Regional Police Service, 2017, OCPC, 16-Adj-001 (Exhibit 67, Tab 2)

Walker and Toronto Police Service, 1997 (Exhibit 67, Tab 3)

Gibbs and Toronto Police Service, 1998, Board of Enquiry (Exhibit 67, Tab 4)

Wiles and Durham Regional Police Service, 1995, Board of Enquiry (Exhibit 67, Tab 5)

King and Elliot and Durham Regional Police Service, 2007, OCPC (Exhibit 67, Tab 6)

Pigeau and Ontario Provincial Police, 2009, OCCPS (Exhibit 67, Tab 7)

Ardiles and Toronto Police Service, 2014 (Exhibit 67, Tab 8)

Batson and Lafreniere and Ottawa Police Service, 2016 (Exhibit 67, Tab 9)

Wowchuk and Bernst and Thunder Bay Police Service, 2012 (Exhibit 67, Tab 10)

Wong and Toronto Police Service, 2014 (Exhibit 67, Tab 11)

Mackinnon and Ontario Provincial Police, 2017 (Exhibit 67, Tab 12)

Vogelzang and Ontario Provincial Police, 2005 (Exhibit 67, Tab 13)

Prosecution Book of Authorities (Exhibit 68)

Grbich and Aylmer Police Service 2002, OCCPS (Exhibit 68, Tab 1)

Bright v. Konkle 1995, Board of Enquiry (Exhibit 68, Tab 2)

Suleiman and Lord and Ottawa Police Service 2011, OCPC (Exhibit 68, Tab 3)

Schofield and Metropolitan Toronto Police 1984, OPC (Exhibit 68, Tab 4)

Carson and Pembroke Police Service 2001, OCCPS (Exhibit 68, Tab 5)

Vogelzang and Francis and Ontario Provincial Police 2013, OCPC (Exhibit 68, Tab 6)

Johnson and Durham Regional Police Service 2020, OCPC (Exhibit 68, Tab 7)

Mulville and Azaryev and York Regional Police Service 2017, OCPC (Exhibit 68, Tab 8)

Parker and Koscinski and Niagara Regional Police 2005, OCCPS (Exhibit 68, Tab 9)

Parker and Niagara Regional Police 2007, OCCPS (Exhibit 68, Tab 10)

Hu and Toronto Police Service (Judgement) 2015 (Exhibit 68, Tab 11)

Hu and Toronto Police Service (Penalty) 2015 (Exhibit 68, Tab 12)

Jacobs and Krupa and Ottawa Police Service 2014, OCPC (Exhibit 68, Tab 13)

Jacobs and Krupa and Ottawa Police Service 2017, OCPC (Exhibit 68, Tab 14)

Venables and York Regional Police Service 2008, OCCPS (Exhibit 68, Tab 15)

Andrews and Midland Police Service OCCPS, 2003 (Exhibit 68, Tab 16)

Prosecution Book of Records (Exhibit 69)

Legal Aspects of Policing (Exhibit 69, Tab 1)

Standards of Conduct – Foreword (Exhibit 69, Tab 2)

Standards of Conduct – Introduction (Exhibit 69, Tab 3)

From the Chief – Professionalism and Public Trust (Exhibit 69, Tab 4)

PSA s 42(1) – Duties of a Police Officer (Exhibit 69, Tab 5)

PSA s 43(1) – Criteria for Hiring (Exhibit 69, Tab 6)

TPS 950 Information from Personnel File Constable Lourenco (Exhibit 69, Tab 7)

Documentations – Constable Lourenco (Exhibit 69, Tab 8)

Lourenco and Toronto Police Service 2018 (Exhibit 69, Tab 9)

Lourenco and Toronto Police Service 2011 (Exhibit 69, Tab 10)

Performance Appraisals 2015 – 2020 Constable Lourenco (Exhibit 69, Tab 11)

TPS 950 Information from Personnel File Constable Pais (Exhibit 69, Tab 12)

Documentations – Constable Pais (Exhibit 69, Tab 13)

Performance Appraisals 2015 – 2020 Constable Pais (Exhibit 69, Tab 14)

Media Reports (Exhibit 69, Tab 15)

Materials relied on by the Complainants

R. v. Le, 2019, SCC 34 (Exhibit 70)

Gould and Toronto Police Service, 2016 OCPC 0078 (CanLII 64893) (Exhibit 71)

Impact Statement B.A. (Exhibit 72)

Book of Records and Authorities Constable Lourenco (Exhibit 73)

Documents

Letter of Reference – S/Sgt. Jacob, Timothy (Exhibit 73, Tab A)

Letter of Reference – Sgt. Asselin, Glenn (Exhibit 73, Tab B)

Letter of Reference – Sgt. Parsram, Ramesh (Exhibit 73, Tab C)

Gentles v. Intelligarde International Incorporated, 2010 ONCA 797 (Exhibit 73, Tab 1)

Beyeler v. York Regional Police, 2021 ONCPC 1 (Exhibit 73, Tab 2)

Nobody v. Andalib-Goortani and the Toronto Police Service and Office

of the Independent Police Review Director, 2018 ONCPC 6 (Exhibit 73, Tab 3)

Batista v. Smith and Ottawa Police Service, 2007 ONCPC 6 (Exhibit 73, Tab 4)

R. v. Schertzer, 2013 ONSC 22 (Exhibit 73, Tab 5)

R. v. Richard Shaw and PC Gary Gould, 2010 ONSC 563 (Exhibit 73, Tab 6)

Ottawa Police Service v. PC Jaseth Maseruka (OPS Tribunal, 2016) (Exhibit 73, Tab 7)

Ottawa Police Service v. PC Nikolas Boldirev (OPS Tribunal, 2018) (Exhibit 73, Tab 8)

Toronto Police Service v. PC Dawn Wilson (TPS Tribunal, 2013) (Exhibit 73, Tab 9)

Toronto Police Service v. PC Brian Roy (TPS Tribunal, 1994) (Exhibit 73, Tab 10)

Toronto Police Service v. PC William Walker (TPS Tribunal, 2007) (Exhibit 73, Tab 11)

Elliott v. King and Durham Police Service, 2006 ONCPC 13 (Appeal) (Exhibit 73, Tab12)

Elliott v. Durham Regional Police, 2007 ONCPC 1 (Penalty) (Exhibit 73, Tab 13)

Materials Relied on by Constable Pais (Exhibit 74)

Letters of Support

Aamer Zuberi, Principal (Exhibit 74, Tab 1)
Rev. Msgr. Patrick O'Dea, St. Edward the Confessor Parish (Exhibit 74, Tab 2)
Superintendent Michael Barsky (Exhibit 74, Tab 3)
Sergeant Richard Bobbis (Exhibit 74, Tab 4)
Sergeant Pat Alberga (Exhibit 74, Tab 5)
Detective Constable Antonio Correa (Exhibit 74, Tab 6)
Retired Detective Tom Hartford (Exhibit 74, Tab 7)
Detective Michael Kerr (Exhibit 74, Tab 8)
Constable Le (Exhibit 74, Tab 9)
Acting Staff Sergeant Danny Lee (Exhibit 74, Tab 10)
Detective Romi Manota (Exhibit 74, Tab 11)
Staff Sergeant Daniel Martin #7473 (Exhibit 74, Tab 12)
Detective Constable Steve Torrance (Exhibit 74, Tab 13)

Additional Commendations

Internal Correspondence from Chief of Police William Blair dated 2010/12/01 regarding 2010 G20 Summit, Toronto (Exhibit 74, Tab 14)

Internal Correspondence from Detective Wulff regarding G20 Performance dated 2010/07/02 (Exhibit 74, Tab 15)

Internal Resume, Unit Commander Assessment Score Sheet and Additional Evaluations

Internal Resume (Exhibit 74, Tab 16)
Unit Commander Candidate Assessment Score Sheet (Exhibit 74, Tab 17)
Uniform Performance Appraisal and Development Plan 2015/06/22 (Exhibit 74, Tab 18)
Generalist Constable Development Program 2013/10/17 – 2014/03/24 (Exhibit 74, Tab 19)
Uniform Performance Appraisal and Development Plan 2012/05/11 – 2013/06/01 (Exhibit 74, Tab 20)
Uniform Performance Appraisal and Development Plan 2011/05/30 – 2012/05/10 (Exhibit 74, Tab 21)

Additional Materials

Toronto Police Monitor Mosques to Increase Safety following New Zealand Terror Attack- March 18, 2019 (Exhibit 74, Tab 22)
Letter from Scharnil Pais (Exhibit 74, Tab 23)