

HEARING

PURSUANT TO THE *POLICE SERVICES ACT, RSO 1990, C.P. 15* AND AMENDMENTS THERETO;

BETWEEN

THE WATERLOO REGIONAL POLICE SERVICE

AND

CONSTABLE BLAYNE ARSENAULT #1348

CONSTABLE MARK HAMMER #904

DISPOSITION WITH REASONS

Before: Superintendent Christopher Goss
Waterloo Regional Police Service

Counsel for the Prosecution: Gary V. Melanson
Virginia A. Torrance

Counsel for Constable Arsenault: Damon J. Hardy

Counsel for Constable Hammer: Glen S. Donald

Complainant A.E.: Self Represented

Hearing Date: November 14, 2017

Allegations

Constable Arsenault

Constable Arsenault was served a Notice of Hearing on June 15, 2016 alleging one count of Insubordination pursuant to section 2(1)(b)(ii) of the Code of Conduct, Regulation 268/10, as amended and one count of Neglect of Duty pursuant to section 2(1)(c)(i)(A) of the Code of Conduct, Regulation 268/10, as amended.

Mr. Melanson advised the Tribunal the Office of the Independent Police Review Director (OIPRD) had been consulted and agreed the prosecution of Constable Arsenault would proceed only on the count of Neglect of Duty. Mr. Melanson further advised a notice of increased penalty did not form part of the Notice of Hearing served on Constable Arsenault and the OIPRD had agreed it not be included.

Neglect of Duty – You are alleged to have committed Neglect of Duty in that on September 4, 2015, you without lawful excuse, neglect (sic) or omitted promptly and diligently to perform a duty as a member of the Waterloo Regional Police Service of which you are a member, as prescribed in section 2(1)(c)(i)(A) of the Code of Conduct, Regulation 268/10, as amended.

Constable Hammer

Constable Hammer was served a Notice of Hearing on June 15, 2016 alleging one count of Insubordination pursuant to section 2(1)(b)(ii) of the Code of Conduct, Regulation 268/10, as amended, one count of Neglect of Duty pursuant to section 2(1)(c)(i)(A) of the Code of Conduct, Regulation 268/10, as amended and one count of Discreditable Conduct pursuant to section 2(1)(a)(xi) of the Code of Conduct, Regulation 268/10, as amended.

Mr. Melanson advised the Tribunal that the OIPRD had been consulted and agreed the prosecution of Constable Hammer would proceed only on the count of Discreditable Conduct. Mr. Melanson further advised a notice of increased penalty did not form part of the Notice of Hearing served on Constable Hammer and the OIPRD had agreed it not be included.

Discreditable Conduct – You are alleged to have committed Discreditable Conduct in that on September 4, 2015, you without lawful excuse, acted in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the Waterloo Regional Police Service thereby constituting an offence against discipline, as prescribed in section 2(1)(a)(xi) of the Code of Conduct, Regulation 268/10, as amended.

Representation

In this matter, Mr. Damon J. Hardy represented Constable Arsenault, Mr. Glen S. Donald represented Constable Hammer, Mr. Gary V. Melanson and Ms. Virginia A. Torrance represented the Waterloo Regional Police Service and Mr. A. E. was self-represented.

Acknowledgement

I thank the parties in this matter: Mr. Melanson and Ms. Torrance, prosecutors for the Waterloo Regional Police Service, Mr. Hardy counsel for Constable Arsenault, Mr. Donald counsel for Constable Hammer and the complainant Mr. A.E for their submissions and assistance to the Tribunal.

Timeline

With reference to the timeline that forms part of Exhibit 4:

The events giving rise to this matter occurred in September of 2015 in the city of Cambridge and resulted in criminal charges of assault causing bodily harm and theft being laid against a Mr. Boyce on January 28, 2016. Mr. A.E. made a public complaint relating to the events on October 7, 2015 which was investigated by the Waterloo Regional Police Service Professional Standards Branch and found to be substantiated and not of a serious nature in December of 2015. Mr. A.E. requested the OIPRD review his complaint on February 4, 2016 and the OIPRD made a finding of substantiated misconduct of a serious nature involving both Constable Arsenault and Constable Hammer on May 13, 2016 and directed that a hearing be held. The trial involving Mr. Boyce was completed on January 9, 2017 with a conviction for assault and sentence was passed on March 13, 2017. The facts of the criminal case against Mr. Boyce in which Mr. A.E. was the victim necessarily and intimately intertwined with the facts of this matter. As such, it was not proper to provide Mr.A.E. with disclosure in this matter until the conclusion of the criminal case on January 9, 2017. In addition, Mr. A.E. had personal business that delayed his opportunity to properly consider the disclosure materials. For these reasons primarily, the Hearing in this matter quite properly could not proceed until November of 2017 despite the efforts and intentions of all parties.

Decision

Constable B. Arsenault #1348

In this matter, Constable Blayne Aresenault #1348 faced one count of Neglect of Duty pursuant to section 2(1)(c)(i)(A) of the Code of Conduct, Regulation 268/10, as amended.

An Agreed Statement of Facts with regard to Constable Arsenault was read and filed as part of exhibit #4 in this matter by the Prosecutor, Mr. Melanson, and accepted as substantially correct by Defence Counsel, Mr. Hardy, on behalf of Constable Arsenault. It was noted by the Tribunal and acknowledged by the parties where the Agreed Statement of Facts at paragraph 2 indicates that Constable Arsenault did

not record the name and contact information of Mr. A.E., the Agreed Statement of Facts is inaccurate. Constable Arsenault's duty notes on page 57 found within Tab "A" included as part of Exhibit 4 contain the name and contact information of Mr. A.E.

The particulars of the misconduct detailed in the Agreed Statement of Facts are included verbatim as follows:

Constable Arsenault has committed Neglect of Duty in that on September 4, 2015, in that, he without lawful excuse, neglect or omitted promptly and diligently to perform a duty as, a member of the Waterloo Regional Police Service of which he is a member, as prescribed in section 2(1)(c)(i)(A) of the Code of Conduct, Regulation 268/10, as amended based on the following facts and information agreed to by all the parties:

- 1. Constable Blayne Arsenault has been employed with the Waterloo Regional Police Service since December 2011. At the time of the incident and to date Constable Arsenault is currently assigned to Neighbourhood Policing – South Division.*
- 2. On September 4, 2015 Constable Blayne Arsenault was working in South Division Patrol and was being assisted by Acting Sergeant Mark Hammer in investigating the assault of A.E. by a passenger in his vehicle. Constable Arsenault breached the Service's Notebooks and Notes Procedure as his notes were incomplete. This included that he did not record in his notebook the names or contact information of A.E. and/or other witnesses, nor the pertinent information relating to the details/particulars of the incident. As well, Constable Arsenault failed to record the time when he left the scene or the time when he arrived at the passenger's residence and failed to note other pertinent times or detailed information in his notebook. One, some or all of which is a breach of the Service's procedure.*
- 3. The Service procedures are considered to be orders of the Chief. Constable Arsenault disobeyed, omitted or neglected, without lawful excuse, to carry out a lawful order by not adhering to Service procedures as they relate the Notebooks and Notes Procedure including but not limited to Sections D(4), D(5), E(6)(a), E(6)(b), E(6)(d).*
- 4. In addition, Constable Arsenault failed to follow up with relevant witness interviews and/or failed to investigate the assault allegation and stolen vehicle (while intoxicated) allegation to its fullest and gather all information relevant to that allegation as is mandated in the Police Services Act and/or Service procedure, training and/or generally accepted and expected police practices. As a result, he failed to do a thorough and complete investigation.*
- 5. Following a re-investigation by another officer assigned by the Service, the individual (Michael Boyce) that assaulted A.E. was charged under the Criminal Code with Assault*

Causing Bodily Harm (section 267(b)) and with Stealing a Motor Vehicle (section 333.1(1)).

6. *After a trial in which A.E. testified and in which his victim impact statement was filed, Michael Boyce was convicted of Assault contrary to section 266 of the Criminal Code and sentenced to 12 months of probation on terms and given a \$500.00 fine plus victim fine surcharge of \$150.00.*
7. *Attached is an overview/timeline of the events relating to the initial incident, investigation and criminal trial [TAB A].*
8. *In support of the foregoing, the parties, on consent, file the following:*
 - (a) *The notes of Constable Arsenault relating to this incident and any follow investigative steps [TAB A];*
 - (b) *The videotaped interview of A.E. by Cst. Arsenault [TAB C];*
 - (c) *R. v. Boyce - "Reasons for Judgement" of Mr. Justice M. Epstein of Ontario Court of Justice dated January 9, 2017 [TAB D];*
 - (d) *A.E.'s Victim Impact Statement filed in the R. v. Boyce criminal matter [TAB E];*
 - (e) *R. v. Boyce - "Reasons for Sentence" of Mr. Justice M. Epstein of Ontario Court of Justice dated March 13, 2017 [TAB F]; and*
 - (f) *Notebook and Notes Procedure – Excerpts [TAB G].*
9. *As a result and in its totality, Constable Arsenault's actions, without lawful excuse, were neglectful in that he neglected or omitted promptly and diligently to perform a duty and, therefore, constitute Neglect of Duty in accordance with section 2(1)(c)(i)(A) of the prescribed Code of Conduct.*

On November 14, 2017, Constable Arsenault pled guilty and was found guilty by the Tribunal of Neglect of Duty as alleged proven upon the clear and convincing evidence provided within the Agreed Statement of Facts and attachments which in their entirety constitute Exhibit 4.

With regard to disposition, having reviewed the evidence placed before me and having considered the submissions of counsel and Mr. A.E., I have determined the sanction to be:

That Constable Arsenault forfeit thirty (30) hours of pay that may include vacation pay or statutory holiday pay or, in the alternative, forfeit thirty (30) hours of time off or any combination thereof totaling thirty (30) hours as approved by and at the discretion of the Chief of the Waterloo Regional Police Service or his designate, pursuant to section 85 (1) (f) of the *Police Services Act, R.S.O. 1990.*

In addition, Constable Arsenault is ordered to undergo training as identified and directed by the Chief of the Waterloo Regional Police Service or his delegate with regard to conducting a comprehensive and effective criminal investigation including but not limited to the analysis and articulation of reasonable grounds to believe and arrest authorities, pursuant to section 85 (7) (b) of the *Police Services Act, R.S.O. 1990*.

Constable M. Hammer #904

In this matter, Constable Mark Hammer #904 faced one count of Discreditable Conduct pursuant to section 2(1)(a)(xi) of the Code of Conduct, Regulation 268/10, as amended.

An Agreed Statement of Facts with regard to Constable Hammer was read and filed as part of exhibit #4 in this matter by the Prosecutor, Mr. Melanson, and accepted as substantially correct by Defence Counsel, Mr. Donald, on behalf of Constable Hammer. The particulars of the misconduct detailed in the Agreed Statement of Facts are included verbatim as follows:

Constable Hammer has committed Discreditable Conduct in that on September 4, 2015, in that, he without lawful excuse, acted in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit to the reputation of the Waterloo Regional Police Service thereby constituting an offence against discipline, as prescribed in section 2(1)(a)(xi) of the Code of Conduct, regulation 268/10, as amended based on the following facts and information agreed to by all the parties:

- 1. Constable Mark Hammer has been employed with the Waterloo Regional Police Service since December 2000. Constable Hammer is currently assigned to General Investigations – Traffic Branch. At the time of this investigation he was assigned to Neighbourhood Policing – South Division.*
- 2. On September 4, 2015 Constable Mark Hammer was the Acting Sergeant on South Division Patrol and was assisting Constable Blayne Arsenault in investigating the assault of A.E. by his passenger. Constable Hammer breached the Service's Notebooks and Notes Procedure as his notes were incomplete. This included that he did not record in his notebook the names or contact information of A.E. and/or other witnesses, nor the pertinent information relating to the details/particulars of the incident. As well, Constable Hammer failed to record the time when he left the scene and failed to note other pertinent times or detailed information in his notebook. One, some or all of which is a breach of the Service's procedure.*
- 3. The Service procedures are considered to be orders of the Chief. Constable Hammer disobeyed, omitted or neglected, without lawful excuse, to carry out a lawful order by not adhering to Service procedures as they relate the Notebooks and Notes Procedure including but not limited to Sections D(4), D(5), E(6)(a), E(6)(b), E(6)(d).*

4. *Furthermore, Constable Mark Hammer failed to investigate the assault allegation and stolen vehicle (while intoxicated) allegation to its fullest and gather all information relevant to that allegation as is mandated in the Police Services Act and/or Service procedure, training and/or generally accepted and expected police practices. As well or in the alternative, Constable Hammer did not understand his authorities under the Criminal Code in relation to the definition of reasonable and probable grounds and therefore did not fully and properly investigate and/or ensure as an acting supervisor that the investigation was full and proper based on the assault allegation and information provided by A.E..*
5. *Following a re-investigation by another officer assigned by the Service, the individual (Michael Boyce) that assaulted A.E.. was charged under the Criminal Code with Assault Causing Bodily Harm (section 267(b)) and with Stealing a Motor Vehicle (section 333.1(1)).*
6. *After a trial in which A.E.. testified and in which his victim impact statement was filed, Michael Boyce was convicted of Assault contrary to section 266 of the Criminal Code and sentenced to 12 months of probation on terms and given a \$500.00 fine plus victim fine surcharge of \$150.00.*
7. *Attached is an overview/timeline of the events relating to the initial incident, investigation and criminal trial [TAB A].*
8. *In support of the foregoing, the parties, on consent, file the following:*
 - (a) *The notes of Constable Hammer relating to this incident and any follow investigative steps [TAB B];*
 - (b) *The videotaped interview of A.E. by Cst. Arsenault [TAB C];*
 - (c) *R. v. Boyce - "Reasons for Judgement" of Mr. Justice M. Epstein of Ontario Court of Justice dated January 9, 2017 [TAB D];*
 - (d) *A.E..'s Victim Impact Statement filed in the R. v. Boyce criminal matter [TAB E];*
 - (e) *R. v. Boyce - "Reasons for Sentence" of Mr. Justice M. Epstein of Ontario Court of Justice dated March 13, 2017 [TAB F]; and*
 - (f) *Notebook and Notes Procedure – Excerpts [TAB G].*
9. *As a result and in its totality, Constable Hammer's actions are disorderly, prejudicial to discipline or are likely to discredit the reputation of the Service and, therefore, constitute Discreditable Conduct in accordance with section 2(1)(a)(xi) of the prescribed Code of Conduct*

On November 14, 2017, Constable Hammer pled guilty and was found guilty by the Tribunal of Discreditable Conduct as alleged proven upon the clear and convincing evidence provided within the Agreed Statement of Facts and attachments which in their entirety constitute Exhibit 4.

With regard to disposition, having reviewed the evidence placed before me and having considered the submissions of counsel and Mr. A.E., I have determined the sanction to be:

That Constable Hammer be reprimanded for his discreditable conduct on September 4, 2017 with regard to the deficient investigation and documentation of a complaint of vehicle theft and assault by Mr. A.E., and further, that he be reprimanded for his failure to provide full and proper supervisory support to Constable Arsenault on that date, pursuant to section 85 (7) (a) of the *Police Services Act, R.S.O. 1990*.

In addition, Constable Hammer is ordered to undergo training as identified and directed by the Chief of the Waterloo Regional Police Service or his delegate with regard to conducting a comprehensive and effective criminal investigation including but not limited to the analysis and articulation of reasonable grounds to believe and arrest authorities, pursuant to section 85 (7) (b) of the *Police Services Act, R.S.O. 1990*.

Hearing of November 14, 2017

Exhibits

Exhibit #1 – The designation of (then) Inspector C. GOSS as Adjudicator submitted at the First Appearance July 12, 2016 by Mr. Melanson.

Exhibit #2 – The designations Mr. Gary Melanson and Ms. Virginia Torrance as Prosecutors submitted at the First Appearance July 12, 2016 by Mr. Melanson.

Exhibit #3 – Notices of Hearing both dated June 15, 2016 issued individually to Constables Arsenault and Hammer submitted at the First Appearance July 12, 2016 by Mr. Melanson.

Exhibit #4 – Agreed Statement of Facts for Constable Arsenault pertaining to one count of Neglect of Duty, Agreed Statement of Facts for Constable Hammer pertaining to one count of Discreditable Conduct, Timeline with attached Tab A being the duty notes of Constable Arsenault, Tab B being the duty notes of Constable Hammer, Tab C being a DVD of the recorded interview between Constable Arsenault and Mr. A.E. from September 16, 2015, Tab D being the reasons for judgment in Regina v. Michael Boyce delivered by The Honourable Mr. Justice Epstein on January 9, 2017, Tab E being the victim impact statement from Mr. A.E. in Regina v. Michael Boyce, Tab F being the reasons for sentenced delivered by The Honourable Mr. Justice Epstein on March 13, 2017 and Tab G being part sections D and E of the Waterloo Regional Police Service procedure on Notebooks and Notes; all submitted by Mr. Melanson on November 14, 2017.

Exhibit #5 – The Defence Materials on Penalty for Constable Arsenault submitted by Mr. Hardy and the Supporting Documentation Brief of Constable Mark Hammer submitted by Mr. Donald on November 14, 2017.

Submitted on consent of all parties but not marked as exhibits were:

1. Two volumes of Penalty Submissions of the Prosecution containing submissions, case law and citations submitted by Mr. Melanson.
2. One volume of Range of Penalty Submissions of the Prosecution containing submissions and case law submitted by Mr. Melanson.
3. The Ontario Civilian Police Commission (OCPC) case of Constable Blowes-Aybar and the Toronto Police submitted by Mr. Donald.

Plea and Finding of Guilt

Constable Arsenault

Constable Arsenault pled guilty to Neglect of Duty contrary to Section 2(1)(c)(i)(A) of the Code of Conduct under the *Police Services Act* on November 14, 2017. This was effectively Constable Arsenault's first opportunity to plead.

The facts were put before the Tribunal by way of an Agreed Statement of Facts (Exhibit #4) accepted as substantially correct by Defence Counsel, Mr. Hardy, on behalf of Constable Arsenault. The Agreed Statement of Facts supported a finding of guilt based upon clear and convincing evidence that Constable Arsenault did commit Neglect of Duty on September 4, 2015, when as a sworn member of the Waterloo Regional Police Service, who was called to investigate a criminal complaint of assault and theft made by Mr. A.E.; he failed to record pertinent information as required by the Service's procedure on Notebooks and Notes and failed to investigate the complaint in a manner:

- consistent with that mandated by the *Police Services Act*,
- in accordance with his training and,
- consistent with generally accepted and expected police practices.

A re-investigation of the matter by another officer resulted in charges of assault causing bodily harm pursuant to 267 (b) and Stealing a Motor Vehicle pursuant to 333.1 (1) of the Criminal Code being laid against Michael Boyce. Following a trial at which Mr. A.E. testified, Mr. Boyce was convicted of assault pursuant to section 266 of the Criminal Code and sentenced to 12 months of probation and a fine of \$500 plus the victim fine surcharge. The outcome of the subsequent investigation reflects clearly and significantly on the substandard and neglectful quality of the inquiry conducted by Constable Arsenault.

I have reviewed the Service procedure on Notebooks and Notes submitted as part of Exhibit 4 and find the duty notes prepared by Constable Arsenault (also submitted as part of Exhibit #4) are deficient in their content with respect to sections D (4), D (5) and portions of section E (6) and, are therefore, neglectful with respect to procedure which carries the effect of an order from the Chief of Police.

The allegation of Neglect of Duty, contrary to Section 2(1)(c)(i)(A) of the Code of Conduct contained in the Schedule to Ontario Regulation 268/10, as amended is made out when the member without lawful excuse neglects or omits promptly and diligently to perform a duty as is required by a member of the police service of which he is a member. In this matter, Constable Arsenault's conduct offends this section as he neglected to promptly and diligently perform required investigative functions and neglected to complete proper duty notes.

I find Constable Arsenault guilty of Neglect of Duty proven upon clear and convincing evidence of guilt.

Constable Hammer

Constable Hammer pled guilty to Discreditable Conduct contrary to Section 2(1)(a)(xi) of the Code of Conduct under the *Police Services Act* on November 14, 2017. This was effectively Constable Hammer's first opportunity to plead.

The facts were put before the Tribunal by way of an Agreed Statement of Facts (Exhibit #4) accepted as substantially correct by Defence Counsel, Mr. Donald, on behalf of Constable Hammer. The Agreed Statement of Facts support a finding of guilt based upon clear and convincing evidence that Constable Hammer did commit Discreditable Conduct on September 4, 2015, when as a sworn member of the Waterloo Regional Police Service, who was called to assist as the Acting Sergeant in the investigation a criminal complaint of assault and theft made by Mr. A.E.; he failed to record pertinent information as required by the Service's procedure on Notebooks and Notes and failed to investigate the complaint in a manner:

- consistent with that mandated by the *Police Services Act*,
- in accordance with his training,
- consistent with generally accepted and expected police practices and,
- as an acting supervisor he failed to ensure the investigation into the assault and theft complaint made by Mr. A.E. was conducted in a proper manner.

A re-investigation of the matter by another officer resulted in charges of assault causing bodily harm pursuant to 267 (b) and Stealing a Motor Vehicle pursuant to 333.1 (1) of the Criminal Code being laid against Michael Boyce. Following a trial at which Mr. A.E. testified, Mr. Boyce was convicted of assault pursuant to section 266 of the Criminal Code and sentenced to 12 months of probation and a fine of \$500 plus the victim fine surcharge. The outcome of the subsequent investigation reflects clearly and significantly on the substandard and discreditable nature of the initial inquiry conducted by Constable Hammer in conjunction with Constable Arsenault. Further, it reflects upon Constable Hammer's failure to ensure the proper conduct of Constable Arsenault while under his supervision. I find the investigative and supervisory conduct of Constable Hammer likely to bring discredit to the reputation of the Waterloo Regional Police Service.

I have reviewed the Service procedure on Notebooks and Notes submitted as part of Exhibit 4 which carries the effect of an order from the Chief of Police. I find the duty notes prepared by Constable

Hammer (also submitted as part of Exhibit #4) are deficient in their content with respect to sections D(4), D(5) and portions of section E (6) and, therefore; likely to bring discredit to reputation of the Waterloo Regional Police Service.

The allegation of Discreditable Conduct, contrary to Section 2(1)(a)(xi) of the Code of Conduct contained in the Schedule to Ontario Regulation 268/10, as amended is made out when the member without lawful excuse acts in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit to the reputation of the Waterloo Regional Police Service. Constable Hammer's conduct offends the section as the nature and quality of his investigative conduct, his supervisory actions and his notetaking failed to meet expected standards to such an extent as to be likely to bring discredit to the reputation of the Waterloo Regional Police Service.

I find Constable Hammer guilty of Discreditable Conduct proven upon clear and convincing evidence of guilt.

Submissions on Disposition

Submissions by the Prosecution

The Prosecution tendered two volumes of materials on penalty containing at Tab A of Volume One general submissions pertaining to both Constable Arsenault and Constable Hammer with the remaining content being case law. The Prosecution further submitted one volume of materials on range of penalty containing at Tab A submissions particular to Constable Arsenault and at Tab B submissions particular to Constable Hammer with the remaining content being case law.

The general submissions on penalty are summarized as follows. The prosecution notes that a "Notice of Increased Penalty" pursuant to section 85(4) *Police Services Act* is not included on either of the Notices of Hearing in this matter and; therefore, the range of penalties is limited to those available to the Tribunal under sections 85 (1) (d), (e), (f), (g) and 85 (7) *Police Services Act*.

The Prosecution identified three key factors when determining the appropriate penalty in the context of police misconduct: (1) the nature and seriousness of the misconduct; (2) the ability to reform or rehabilitate the officer; and, (3) the damage to the reputation of the police force that would occur, should the officer remain on the force referencing *Williams and the Ontario Provincial Police (OCCPS, 1995)* and the cases of *Reilly and Brockville Police Service (OCCPS, 1997)* and *Armstrong and Peel Regional Police Service (OCCPS, 2002)* which confirm the three key factors in *Williams* and expand the consideration of factors more broadly.

A galaxy of factors are accepted as being relevant to adjudications under the *Police Services Act* as noted in *Ceyssens' Legal Aspects of Policing (1994)* and accepted by the former Ontario Civilian Commission on Police Services (OCCPS) in *King and Ottawa Police Service (OCCPS, 2003)*. While considering all factors, I will focus here on those raised by the Prosecution or by Mr. A.E. or by Defence Counsel. In my view, the dispositional factors relevant to this matter have been duly presented and argued by the parties.

The Prosecution raises public interest as a factor presenting references from Ceyskens (1994) and the decisions in *OCCPS v. Browne* (2001), *Rendell v. Canada* (2001) and *Morden and Peel Regional Police* (OCCPS, 1997) to argue that:

- the public must have faith in its police,
- where the public has no faith the police service loses its ability to function effectively,
- public expectations of its police are relevant considerations on disposition,
- the public has an interest in ensuring that police discharge their duties impartially and according to law and,
- the legislative purpose of the *Police Services Act* is to increase public confidence in policing and that the processing of complaints results in appropriate sanctions.

The Prosecution submits the seriousness of the misconduct as a factor and notes with reference to *Ceyssens* (1994) that the effect of the misconduct on the victim is highly relevant and supports this proposition with *Brayshaw and Ontario Provincial Police* (OCCPS, 1992). The Prosecution submits several cases including *Delano and Niagara Regional Police Service* (OCCPS, 1998) to demonstrate that conduct consisting of a series of events over time is often found to be more serious than an isolated event. This analysis would also include whether the conduct was spontaneous, deliberate, compulsive, pre-mediated, typical, atypical and so forth.

The Prosecution submits that remorse is a factor referencing *Ceyssens* (1994).

The Prosecution submits employment history is a relevant factor noting the established principle that an employment record can be either mitigating or aggravating depending upon its content.

The Prosecution submits the potential to reform or rehabilitate the officer as a relevant factor referencing *Andrews and Midland* (OCPC, 2002) and *Ceyssens* (1994). *Ceyssens* reflects that conduct out of character indicates a higher potential to rehabilitate while conduct that stems from a fundamental character flaw or similar concern indicates a reduced potential to rehabilitate. The nature and impact of character evidence including evidence from supervisors and colleagues is an important measure of the ability to rehabilitate.

The Prosecution submits that consistency of disposition is a relevant factor referencing *Ceyssens* (1994) and *Schofield and Metropolitan Toronto Police Force* (OCCPS, 1984). The principle that similar conduct should be treated in a similar fashion with regard to disposition is well established and is accepted by the Tribunal. The Prosecution notes that Constable Hammer was in the role of Acting Sergeant during the interaction with Mr. A.E..

The Prosecution submits that specific and general deterrence are relevant factors. The Tribunal accepts that deterrence of the individual respondent officer and the deterrent effect on other police officers generally are well-recognized principles and legitimate objectives of the disposition. The Prosecution notes matters of this type should attract a disposition that sends a clear message of general deterrence.

The Prosecution submits damage to the reputation of the police service and the effect of publicity are relevant factors. Ceysens (1994) identifies damage to the reputation of the police agency as a standard dispositional consideration and that the damage is incurred by both the conduct in question and the offending officer's continuing membership with the Police Service. The Prosecution cited additional cases around reputational impact including *Carson and Pembroke Police Service* (OCCPS, 2006). The Prosecution argues with reference to Constable Hammer that Discreditable Conduct on its face will likely bring discredit to the Service both objectively and subjectively. The Prosecution argues that while the public did not know the facts of this case until the Hearing of November 14, 2017 it should not lead to the conclusion the reputation is not damaged. The Prosecution states the considerations related to media coverage are public confidence, the actions of the officer and the impact on the Service and policing in general.

Prosecution Submissions on Range of Penalty

The Prosecution made submissions on range of penalty separately for each officer.

With regard to Constable Arsenault, the Prosecution noted the difficulty in finding cases with similar fact scenarios and that failure to investigate and document cases of Neglect of Duty have attracted disposition ranging from reprimand to demotion. The Prosecution tendered a number of *Police Service Act* matters to assist the Tribunal. I have reviewed each of those cases and summarize the analysis as follows.

Constable Mowers and Hamilton-Wentworth Regional Police Service (OCCPS,1999) had a disposition of 6 months demotion from 1st class to 2nd class Constable and has similarity to the facts in this matter; however, Constable Mowers had previous discipline on his record and the subject matter was a domestic assault. In my experience, it is generally accepted in policing that domestic assaults present increased risk to the victim particularly with regard to repetition of violent behaviour by the perpetrator. In the matter at hand, while the risk to Mr. A.E. during the period of the incident is understood, the failure of Constable Arsenault to investigate properly did not place Mr. A.E. at risk of continued harm to the same extent as that of a victim of domestic violence.

Dinsdale and Ontario Provincial Police (OCCPS, 2004) involved improper investigation into a motor vehicle collision that caused 5 deaths and 2 serious injuries. The disposition was 48 hours forfeit. Constable Dinsdale's conduct of the investigation and subsequent communication with the Crown Attorney was of such poor quality that the charges were stayed. Constable Dinsdale was insufficiently trained, not supported during the investigation and not properly supervised. I accept there is congruence between this case and the matter at hand with regard to the lack of effective supervision and deficient investigation.

Gruzuk and Ontario Provincial Police (OCCPS, 1991) involved failure to make proper inquiries around the assault of a fellow officer by a third officer during an off-duty event. Additionally, Sergeant Gruzuk told the complainant to "forget it". The disposition was 16 hours. Although the fact scenarios differ, I find there is similarity with regard to the actions of Constable Arsenault. I note that Sergeant Gruzuk would

have been in a supervisory position with regard to complainant and the alleged perpetrator; a dynamic that does not exist with regard to Constable Arsenault in this matter.

Constable Moore and the Ontario Provincial Police (OCCPS, 2008) is a case of improper investigation into a stolen vehicle resulting in the release by Constable Moore of stolen goods to the occupants of the vehicle who did not own said goods. Constable Moore maintained he had done nothing wrong throughout. The disposition was a reprimand. I find similarities between this case and the matter at hand particularly with respect to the insufficiency of the investigation; however, it differs with regard to remorse.

The Prosecution presented *Andrews and Midland Police Service (OCCPS, 2003)* as the most similar in facts to this matter; however, Sergeant Andrews was a supervisor. The case involved an improperly conducted investigation and failure to document. Sergeant Andrews was convicted on 4 counts of Neglect of Duty and one count of Deceit resulting in a disposition of demotion to 2nd class constable for two years. In this case, the Commission put weight on the fact that Sergeant Andrews was acting as a supervisor and influenced a junior officer with a previously unblemished record. Neither supervision nor influence on another officer was present with regard to the actions of Constable Arsenault.

The Prosecution made no specific recommendation to the Tribunal on disposition for Constable Arsenault.

With regard to Constable Hammer, the Prosecution submitted a number of *Police Service Act* matters of Discreditable Conduct to assist the Tribunal with dispositions ranging from hours forfeit to dismissal. The Prosecution noted the applicable test for Discreditable Conduct is whether the officer's actions if known would likely bring discredit upon the Service's reputation. The Prosecution further argues that the aggravating factor that must be considered is that Constable Hammer was acting in a supervisory role.

The Prosecution submitted the case of *Karklins and the Toronto Police Service (OCPC, 2007)* to illustrate the depth of discreditable conduct required to support a dismissal. This matter involves grievous and deliberate misconduct that resulted in false imprisonment by an officer with a pre-existing history of discipline and performance issues. I find no useful similarity between this case and the matter at hand.

The Prosecution submitted the case of *Sowa and Durham Regional Police Service (OCCPS, 2006)* a matter that resulted in a disposition of 40 hours forfeit for the officer. This case also involved convictions for Insubordination and Deceit. In this case the facts pertain to conduct around members of the public seeking records checks and not an investigation. In my view, the conduct of Constable Hammer in this case resulted in a greater impact on Mr. A.E than did the conduct of Constable Sowa on those persons seeking records. Additionally, Constable Sowa was not in a supervisory position. A significant aggravating factor that differentiates this case from the matter at hand and results in my placing less weight on this case as a comparator is the deceitful conduct of Constable Sowa toward both a supervisor and members of the public.

Lastly, the Prosecution submits *Andrews and Midland Police Service* (OCCPS, 2003) which, despite being a Neglect of Duty case, they argue is the most similar in facts. In this matter a Constable and Sergeant Andrews attend a bar where several off-duty police officers have been in an altercation. Sergeant Andrews failed to conduct investigation, make notes or submit reports. Additionally, Sergeant Andrews was acting as a supervisor and influenced a junior officer with a previously unblemished record. The disposition in this matter was demotion to 2nd class constable for 2 years. In this matter, Sergeant Andrews faced 4 counts of Neglect of Duty and one count of Deceit. I find there is congruence between the conduct of Sergeant Andrews and the conduct of Constable Hammer, as an Acting Sergeant, in this matter but with important distinctions. Sergeant Andrews was convicted of Deceit for misleading a fellow officer who was investigating a criminal matter stemming from the events at the bar. This is a significant aggravating factor that is not present in the matter at hand. Sergeant Andrews was convicted of multiple counts alleged under the *Police Services Act* versus the single count alleged in this matter. This is a case of Discreditable Conduct in which reputational damage is both an applicable test for conviction and the degree of damage is a significant factor in determining the severity of the disposition. Although *Andrews and Midland Police Service* is not a Discreditable Conduct case, the facts relate to police officers who failed to take action and document a matter where other police officers from their Service may have been involved in what was, at the least, a public disturbance. In my view, the failure of a police officer to properly investigate a matter involving other police officers known to them has a different flavour. It results in a deeper level of likely reputational damage than a badly conducted and poorly documented investigation involving two individuals otherwise unknown to the attending officers.

The Prosecution made no specific recommendation to the Tribunal on disposition for Constable Hammer.

With regard to Constable Arsenault and Constable Hammer both, the Prosecution noted that none of the cases provided spoke to rehabilitation specifically and this ought to be a focus in this matter. The Prosecution indicated the acceptable range was reprimand to significant hours and the disposition should be tailored to each officer as an individual with remedial training included.

Submissions by Mr. A.E.

Mr. A.E. provided submissions to the Tribunal orally and those submissions are summarized as follows:

- The *Police Service Act* cases provided by the Prosecution are different and unequal to his case and the Tribunal should not consider those cases. Mr. A.E. believed this was a serious case that went beyond the *Police Services Act*.
- He feared for his safety and has ongoing stress.
- He has had his life impacted and that of his family. He has been going through this for years.
- Mr. A.E. got a letter from the Chief saying that it was minor and he had to fight to get justice. He got justice because of the OIPRD.
- The police should have helped him but failed to provide him service or protection and stood behind the other person.
- The police didn't listen to him and didn't believe him.

- The failure of Constable Arsenault and Constable Hammer to believe him made his criminal case weak. They didn't file any charges and he lost faith in the police.
- His friends and community feel the same and don't call the police.
- The officers may be racist and submitted that racism is hidden inside your heart.
- The officers should no longer be police officers if they are not going to protect people. He suggested this was the officer's instinct and not a training issue.
- This is very serious neglect and it matters if you hurt one person. It has caused a loss of faith in policing.

Mr. A.E. suggested the appropriate penalty for both officers was dismissal from the Service.

Submissions by the Defence

Mr. Hardy for Constable Arsenault

Mr. Hardy reiterated the suggestion of the Prosecution that training and counseling should form part of the disposition and specified that training in reasonable and probable grounds, investigative techniques and authorities to arrest would be relevant. Mr. Hardy submitted a penalty in the range of 20 hours forfeit and directed training was appropriate.

Constable Arsenault's family situation and educational background were described to the Tribunal. Constable Arsenault would have had 3.5 years' service at the time of these events and was hired at the age of 38. Mr. Hardy characterized his movement from self-employment to policing as a calling to serve the community.

Mr. Hardy addressed a number of factors as they relate to disposition.

Seriousness of the Offence – Mr. Hardy acknowledged the officer's work fell well short of the mark and he has pled guilty to Neglect. Constable Arsenault acknowledged this candidly in an interview with Sergeant Smale in November 2015 and has admitted responsibility throughout his involvement in this matter. Mr. Hardy submits that Constable Arsenault's demeanour with Sergeant Smale was neither dismissive nor disrespectful. In his video interview with Mr. A.E. (part of Exhibit 4) he is seen to be calm, building good rapport, there is no animosity and it is a good interview. Mr. Hardy submits this interview is relevant to the comments of Mr. A.E. with regard to racial undertones and states that Constable Arsenault accepts responsibility but there was no racial bias. He argues the actions of Constable Arsenault mitigate the seriousness of the offence despite his downfalls.

Recognition of Seriousness of the Offence or Remorse – Mr. Hardy submits that Constable Arsenault instructed him very early on to engage in discussions to resolve the matter to reflect his desire to take responsibility and be accountable. His November 18, 2015 interview with Sergeant Smale supports this and shows his contrition. He takes responsibility for a flawed and deficient investigation and did so by a pleading guilty at the first opportunity.

Mr. Hardy submitted Constable Arsenault Defence Materials on Penalty as part of Exhibit #5. This document evinces an unblemished record containing a positive entry for a community event and supervisory evaluations that positively characterize Constable Arsenault. Mr. Hardy argues the totality of documentation reveals an impressive work history that tends to mark the misconduct in this case as isolated and unlikely to be repeated. Mr. Hardy specifically references sections of the MidPoint Coach Officer Summary (Exhibit #5 Tab 2) where Constable Arsenault is identified as prone to recording detail and characterized as calm, methodical and thorough in his notes. Finally, Mr. Hardy links these comments to the writing of Ceysens (1994) at Volume 1, Tab A, Page 10 in the Prosecution's penalty submissions that out of character conduct indicates higher potential for an officer's rehabilitation. Mr. Hardy submits that Constable Arsenault can be rehabilitated and will return to his innate tendency to be detailed and methodical.

Mr. Hardy made submissions with regard to specific and general deterrence. He argues specific deterrence has been accomplished through the embarrassment of the process, the learnings Constable Arsenault has gleaned from the process, the embarrassment of acknowledging another officer had to clean up after his flawed investigation and that investigation resulted in a conviction at trial. These events highlighted publicly (referring here to his peers) his downfall and his misconduct. Lastly, Mr. Hardy pointed out the matter took considerable time to complete and despite understandable delays it was difficult to have hanging over his head.

Mr. Donald for Constable Hammer

Mr. Donald submitted the case of *Constable Juan Blowes-Aybar and Toronto Police Service (OCCPS, 2003)* to assist the Tribunal around factors relevant to the disposition of a remand. I have reviewed those factors found at paragraph 21.

Mr. Donald submitted the Supporting Documentation Brief of Constable Hammer as part of Exhibit #5.

Constable Hammer is presented as being 42 years of age and having had 15 years of police service at the time this matter transpired. His background and family situation were described to the Tribunal.

Mr. Donald submitted that Constable Hammer transferred into Traffic in 2005 and undertook numerous investigations requiring attention to detail including 30 Criminal Code search warrants. He sought promotion to Sergeant in 2011 and by 2015 had accumulated hundreds of hours of time as an acting sergeant. Constable Hammer has been assigned to retrain other officers. Constable Hammer remained assigned to Traffic while this matter was ongoing and his high productivity did not suffer. He continued to be a mentor and train other officers. Constable Hammer is a Level 3 accident reconstructionist having investigated 192 serious collisions and 2 fatal collisions.

With reference to the Supporting Documentation Brief (part of Exhibit #5), Mr. Donald submitted the 2011-2012 performance appraisal found at Tab A indicates Constable Hammer is characterized by his supervisors as having a drive to succeed, having pride, being a professional, being polite and personable, being a go getter, a good interviewer, pleasant and a consummate professional. Tab B of the document

sets out his training and Tab C contains letters and emails from his employment file supporting good work, community commitment and effectiveness as a presenter.

Mr. Donald submitted that Constable Hammer offered no excuses for his conduct and cooperated with the Professional Standards investigation. In his November 20, 2015 interview with Sergeant Smale he remarked that it was a good exhaustive interview with Sergeant Smale and he will take away things. He recognized and acknowledged his guilt at that time and pled guilty at the first opportunity. The delays in the plea were not attributable to Constable Hammer.

Mr. Donald submitted that in 17 years, this is the only blemish on Constable Hammer's record and this incident has replayed in his mind. The period of time required to bring this matter to completion has taken a toll on his psyche. His decision not to lay a charge was made in the heat of the moment and he regrets it.

Mr. Donald submitted the misconduct left a community member feeling there was racial motivation but there is no evidence of racial bias nor was there racial bias.

Mr. Donald referenced Mr. A.E.'s comment around the weakening of the criminal case noting at page 10 of Mr. Justice Epstein's Decision (Exhibit #4, Tab D) that Mr. Justice Epstein had taken all the factors into account and found jail was not appropriate and there was no evidence that other investigation would have changed that outcome.

Mr. Donald submitted that Constable Hammer's decision not to lay charges, his incomplete investigation and incomplete notes embarrassed him. The Human Resources file included Exhibit #5 does not identify him as avoiding work but rather the contrary.

Mr. Donald notes this matter was originally determined to be less serious by the Waterloo Regional Police Service and an informal resolution was attempted. He argues the disposition should be at the low end of the spectrum.

Mr. Donald submitted the timing of this matter was particularly detrimental for Constable Hammer as it came at the moment when he had been effectively promoted to Sergeant. Constable Hammer was advised of his promotion in January of 2016 but the promotion was withheld by the Service due to this matter. The result is an effective demotion of about 23 months. In addition, had Constable Hammer been promoted he would have received \$20,000 more in gross earnings based upon the Constable to Sergeant salary differential.

Mr. Donald submitted with regard to this unique situation, that a reprimand is appropriate as it is already joined with an effective two year demotion. In addition, directed training may be appropriate.

Mr. Melanson confirmed that Constable Hammer had been promoted to Sergeant in January 2016 and the Waterloo Regional Police Service withheld the promotion and the accompanying increase in compensation pending the resolution of this matter. Mr. Melanson did not dispute the difference in gross earnings would have been \$20,000.

FINDINGS ON DISPOSITION

The public complainant in this matter, Mr. A.E., assisted the Tribunal in understanding the impact of the misconducts on his life and on his perception of the police. It is without doubt that both Constable Arsenault and Constable Hammer have been discredited in his view and, by extension, so have police officers generally. Mr. A.E. was not believed, his legitimate criminal complaint was not investigated and he was not able to have the criminal wrongs against him addressed without going through a complaint process and having other police officers assigned to investigate his criminal case. Mr. A.E. received policing services from Constable Arsenault and Constable Hammer on September 4, 2015 that fell considerably short of the standard expected by their community and their profession. I find this to be an aggravating factor with regard to both Constable Arsenault and Constable Hammer pertaining to the seriousness of the offence and the impact on the complainant.

The protection of Mr. A.E.'s interests in this matter is an important consideration in the disposition. He provided the Tribunal with a position that both Constable Arsenault and Constable Hammer ought to be dismissed. This disposition is not possible as the Notice of Increased Penalty did not form part of the Notice of Hearing served on either officer and the OIPRD had agreed it not be included. In any event, dismissal or demotion would not be within the range of penalties supported by the facts and submissions.

I expect Mr. A.E., as an unrepresented complainant without special knowledge of the *Police Services Act* and the Hearing process, found the experience daunting. Nonetheless, he effectively articulated his position. The Tribunal is grateful for the assistance of Mr. Melanson to Mr. A.E consistent with the principles found in Ontario Superior Court of Justice in *Challans v. Timms-Fryer* (ONSC, 2017).

At several points during the Hearing and within the Victim Impact Statement (Exhibit #4, Tab E), Mr. A.E. discusses the impact of this incident on his life and his feelings of well-being or lack thereof. It is important to separate the assault suffered by Mr. A.E from the conduct of the officers. The officers cannot be held accountable for the actions of Mr. Boyce and the direct repercussions of those actions.

Upon reviewing the Decision of Mr. Justice Epstein's in *Regina v. Boyce* (Exhibit #4, Tab D), I conclude that the actions of the officers did not alter the outcome of the criminal case and; therefore, did not disadvantage Mr. A.E. in that regard.

I note that the conduct of both officers is commented on by Mr. Justice Epstein in *Regina v. Boyce* (Exhibit #4, Tab D, at page 10 – 11). His Honour writes that, "*Part of the difficulty is that at the time that the officers were dealing with the accused who was in a rather agitated state according to the officers, it was night. While there was some ambient lighting, they were dealing with flashlights, the incident had just occurred and there was no significant apparent injury at the time. The evidence of the complainant corroborated by photographs taken subsequently is that his injuries manifested themselves much more fully afterwards.*" Mr. Justice Epstein then corrects himself that he was referencing the complainant who was Mr. A.E in this passage and not the accused. In my view, Mr. Justice Epstein fairly captures part of the difficulty faced by police officers working through active crime scenes as they attempt to arrive at

a contemporaneous decision around forming reasonable grounds to believe an offence has been committed and forming grounds to arrest. This does not excuse the conduct in this case. A careful analysis of the situation by trained police officers, as both these officers were, followed up with appropriate and balanced investigative steps would have moved the investigation toward a proper conclusion. The proof is in the subsequent conviction of Mr. Boyce. It does; however, mitigate the seriousness of the offence to a small degree and supports the misconduct being due to error and lack of competency as opposed to deliberate acts or conduct motivated by bias.

Mr. A.E. suggested that racism and racial bias were factors in the decision not to properly pursue the investigation against Mr. Boyce. Mr. A.E. notes that racism is hidden in your heart. I agree with Mr. A.E. that racism is hidden within the individual in many cases. Bias, racial or otherwise, is identified through behaviour. It is the expectation of a Police Service that its members behave in a manner that is bias neutral. There is no evidence before me of racially motivated behaviour on the part of either Constable Arsenault or Constable Hammer. The Prosecution did not suggest that racism was a factor in the misconduct alleged against either officer. In reviewing the recorded interview (Exhibit #4, Tab C) between Constable Arsenault and Mr. A.E. from September 16, 2015, I observed a cordial and appropriate conversation despite disagreement about the investigation.

While the investigation conducted by Constable Arsenault and Constable Hammer is clearly deficient; I find there is no evidence the deficiencies were racially motivated. The failure here is rooted in competence and substandard case management.

Constable Arsenault

Consideration of the public interest is integral to police discipline. The public rightfully expects the police will maintain a high standard with regard to law enforcement and service to victims of crime. This faith is critical to effectively policing the community. The public must be assured that police officers are held accountable and appropriately sanctioned when they fail to meet the standard. Constable Arsenault's conduct was inconsistent with the public interest and I find it as an aggravating factor.

With regard to seriousness of the misconduct, the impact on Mr. A.E. is established and I accept that seriousness of the misconduct is an aggravating factor. However, there is no evidence to suggest it was more than an isolated incident for Constable Arsenault and I find this somewhat mitigates the impact of this factor.

Constable Arsenault pled guilty at the first opportunity. He acknowledged responsibility and showed remorse during his November 2015 interview with Sergeant Smale. I find this to be a mitigating factor.

I find the potential to rehabilitate Constable Arsenault through a corrective disposition is well-established here. I take particular note of two aspects of *Andrews and Midland (OCPC, 2002)*. Firstly, failure to properly consider character evidence is an error in law, and secondly, the potential to reform logically connects to penalty with regard to training, counseling or other programs that may support reform and development. The Prosecution submits employment history is a relevant factor noting the

established principle that an employment record can be either mitigating or aggravating depending upon its content. The unblemished employment record of Constable Arsenault is mitigating and supports this finding.

With regard to consistency of the disposition, it is my view that while a number of the cases submitted are instructive in part, none is so similar as to the facts that it offers a definite comparator. This is apparent in the spectrum of penalties in the tendered cases ranging from reprimand to demotion. I have noted in my discussion of the cases those aspects I found helpful and those where there was significant divergence from the facts at hand.

In terms of general deterrence, members of the policing profession understand the importance of conducting thorough and detailed investigations that reflect a sound knowledge and understanding of reasonable grounds, the importance of documentation, investigative analysis, interviewing skills and the quality of evidence. The price of a lesser investigation is paid by the victim and, in some cases, the accused. These expected and basic principles were neglected here by Constable Arsenault to the detriment of Mr. A.E.. An appropriate sanction is necessary to reinforce that officers who fail investigate and document in accordance with expected standards are held accountable.

With regard to specific deterrence, the objective of the disposition is to correct unacceptable behavior. The misconduct in this case is serious; however, Constable Arsenault, an officer with no previous misconduct, sought to redress his wrong forthwith by cooperating with the investigation, pleading guilty at the first opportunity and expressing remorse very early in the investigative process. I find this reduces the level of specific deterrence called for in this matter.

I note the submission of Mr. Hardy that Constable Arsenault is left with the embarrassment of having the matter subsequently reinvestigated by another officer leading to charges and a criminal conviction. While I accept the embarrassment is real for the officer, I find this to be of little mitigating value as it follows directly from neglectful conduct the officer could have forestalled through proper investigation on September 4, 2015.

The submissions of Mr. Hardy and the Prosecution suggest the need for training and education relevant to criminal investigation, the formulation of reasonable grounds and arrest authorities may be appropriate. While Constable Arsenault's conduct in this matter may not reflect his competence generally as evinced by his uncontested clean employment record; I find that additional ordered training will be corrective and of benefit to the officer.

Constable Hammer

Consideration of the public interest is integral to police discipline. The public rightfully expects the police will maintain a high standard with regard to law enforcement and service to victims of crime. This faith is critical to effectively policing the community. The public must be assured that police officers are held accountable and appropriately sanctioned when they fail to meet the standard. Expectations with regard to supervisors are amplified by added the authority, responsibility and trust placed in them by

the Service. Constable Hammer's conduct was inconsistent with the public interest and I find it as an aggravating factor.

With regard to seriousness of the misconduct, the impact on Mr. A.E. is established. Constable Hammer was functioning as an Acting Sergeant and was expected to supervise effectively and provide guidance to the investigating officer; however, he failed to do so. I find that seriousness of the misconduct is an aggravating factor. However, there is no evidence to suggest it was more than an isolated incident for Constable Hammer and I find this somewhat mitigates the impact of this factor.

Constable Hammer pled guilty at the first opportunity. He acknowledged responsibility and showed remorse during his November 20, 2015 interview with Sergeant Smale and indicated he had learned from the interview. I find this to be a mitigating factor.

I find the potential to rehabilitate Constable Hammer through a corrective disposition is well-established here. I take particular note of two aspects of *Andrews and Midland (OCPC, 2002)*. Firstly, failure to properly consider character evidence is an error in law, and secondly, the potential to reform logically connects to penalty with regard to training, counseling or other programs that may support reform and development. The Prosecution submits employment history is a relevant factor noting the established principle that an employment record can be either mitigating or aggravating depending upon its content. The otherwise unblemished employment record of Constable Hammer is mitigating and supports this finding.

With regard to consistency of the disposition, it is my view that while a number of the cases submitted are instructive in part, none is as similar as to the facts that it offers a definite comparator. This is apparent in the spectrum of penalties in the tendered cases ranging from reprimand to dismissal. I have noted in my discussion of the cases those aspects I found helpful and those where there was significant divergence from the facts at hand. Although the Prosecution suggests that the demotion case of *Andrews and Midland (OCPC, 2002)*, albeit a Neglect matter, is the most similar in facts, I have found as previously stated there are significant differences.

I find damage to the reputation of the Service is an aggravating factor. I concur with the Prosecution position that lack of specific public reporting of the facts of this matter in advance of the November 14, 2017 need not occur to support a conclusion that reputation is damaged. The totality of the conduct ascribed to Constable Hammer as an investigator and supervisor in the Agreed Statement of Facts (part of Exhibit 4) brings discredit to the Waterloo Regional Police Service and policing generally.

In terms of general deterrence, members of the policing profession understand the importance of conducting thorough and detailed investigations that reflect a sound knowledge and understanding of reasonable grounds, the importance of documentation, investigative analysis, interviewing skills and the quality of evidence. The price of a lesser investigation is paid by the victim and, in some cases, the accused. Further, there is an expectation that acting sergeants, who act in the field with the equivalent authority to a confirmed rank sergeant, will provide proper supervision. Constable Hammer failed to perform these duties in a credible manner to the detriment of Mr. A.E. and Constable Arsenault. An

appropriate sanction is necessary to reinforce that officers who fail to supervise, investigate and document in accordance with expected standards are held accountable.

With regard to specific deterrence, the objective of the disposition is to correct unacceptable behavior. The misconduct in this case is serious; however, Constable Hammer, an officer with no previous misconduct, sought to redress his wrong forthwith by cooperating with the investigation, pleading guilty at the first opportunity and expressing remorse very early in the investigative process. I find this reduces the level of specific deterrence called for in this matter.

Additionally with regard to specific deterrence, Mr. Donald submitted that Constable Hammer had been actually promoted by the Waterloo Regional Police Service in January of 2016 to the rank of Sergeant but the promotion was and continues to be withheld due to this matter. The net effect is synonymous with a demotion from Sergeant to Constable for approximately 23 months and a loss in pay of \$20,000 in gross earning based upon the salary differential between Constable and Sergeant. This was specifically confirmed by the Prosecution. I am satisfied that none of the delay in bringing this matter to conclusion on November 14, 2017 is attributable to Constable Hammer. I find that the facts of this case would not have resulted in a disposition of demotion or in a forfeit of hours in a number remotely approaching those required to tally \$20,000. Therefore, I find the delayed promotion to be a mitigating factor.

I note the submission of Mr. Donald that Constable Hammer has maintained an employment record that speaks to dedication and a work ethic that is at odds with his conduct in this matter. This has exacerbated his embarrassment around having the case subsequently reinvestigated by another officer leading to charges and a criminal conviction. While I accept the embarrassment is real for Constable Hammer, I find this to be of little mitigating value as it follows directly from discreditable conduct the officer could have forestalled through proper investigation and supervision on September 4, 2015.

The submissions of Mr. Donald and the Prosecution suggest the need for training and education relevant to criminal investigation may be appropriate. While Constable Hammer's conduct in this matter may not reflect his competence generally as evinced by his uncontested clean employment record; I find that additional ordered training will be corrective and of benefit to the officer.

DISPOSITION

Constable Arsenault

I have listened closely to the submissions and reviewed in detail the facts in this case as presented to me by way of the Agreed Statement of Facts. I order the following sanction to be imposed:

That Constable Arsenault forfeit thirty (30) hours of pay that may include vacation pay or statutory holiday pay or, in the alternative, forfeit thirty (30) hours of time off or any combination thereof totaling thirty (30) hours as approved by and at the discretion of the Chief of the Waterloo Regional Police Service or his designate, pursuant to section 85 (1) (f) of the *Police Services Act, R.S.O. 1990*.

In addition, Constable Arsenault is ordered to undergo training as identified and directed by the Chief of the Waterloo Regional Police Service or his delegate with regard to conducting a comprehensive and effective criminal investigation including but not limited to the analysis and articulation of reasonable grounds to believe and the identification of arrest authorities, pursuant to section 85 (7) (b) of the *Police Services Act, R.S.O. 1990*.

Constable Hammer

I have listened closely to the submissions and reviewed in detail the facts in this case as presented to me by way of the Agreed Statement of Facts. I order the following sanction to be imposed:

That Constable Hammer be reprimanded for his discreditable conduct on September 4, 2017 with regard to the deficient investigation and documentation of a complaint of vehicle theft and assault by Mr. A.E., and further, that he be reprimanded for his failure to provide full and proper supervisory support to Constable Arsenault on that date, pursuant to section 85 (7) (a) of the *Police Services Act, R.S.O. 1990*.

In addition, that Constable Hammer is ordered to undergo training as identified and directed by the Chief of the Waterloo Regional Police Service or his delegate with regard to conducting a comprehensive and effective criminal investigation including but not limited to the analysis and articulation of reasonable grounds to believe and the identification of arrest authorities, pursuant to section 85 (7) (b) of the *Police Services Act, R.S.O. 1990*.



Christopher M. Goss

Superintendent

Waterloo Regional Police

December 19, 2017