

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

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

AND IN THE MATTER OF

ONTARIO PROVINCIAL POLICE

AND

PROVINCIAL CONSTABLE Kevin W. BROWN, #12559

CHARGE:

**UNLAWFUL OR UNNECESSARY EXERCISE OF AUTHORITY
DISCREDITABLE CONDUCT**

DISPOSITION WITH REASONS

Before: Superintendent Melissa Barron

For the Prosecution: Mr. Jason Tam
Ontario Provincial Police

Counsel for the Defence: Mr. James Girvin
Ontario Provincial Police Association

Public Complainant: Ms. Zareena Husain

Hearing Date: March 28, 2024

This decision is parsed into the following parts:

PART I: OVERVIEW;

PART II: SUBMISSIONS, ANALYSIS and FINDINGS; and,

PART III: DISPOSITION

PART I: OVERVIEW

On the evening of July 4, 2020, while on-duty, P/C Brown attended a vacant lot where Ms. Zareena Husain and her husband were camping, and commenced a *Trespass to Property Act (TPA)* investigation. As a result of that interaction, Ms. Husain made a public complaint regarding P/C Brown, and he was subsequently charged with misconduct.

At his *Police Services Act (PSA)* hearing between November 21 - 23, 2023, P/C Brown pled guilty to one count of discreditable conduct; not guilty to a second count of discreditable conduct, and not guilty to unlawful or unnecessary exercise of authority.

The written decision was released on January 5, 2024, finding P/C Brown guilty of one count of discreditable conduct, and unlawful or unnecessary exercise of authority. On March 28, 2024, a hearing was held to determine his *PSA* disposition.

Representation

The hearing was held at OPP General Headquarters. P/C Brown was represented by Mr. Girvin; Mr. Tam represented the OPP; Ms. Husain, the public complainant, had been advised of the disposition hearing date and time, and provided a video link for attendance. She was not present, but sent an email regarding disposition later that day.

Penalty Position

Mr. Tam submitted that a disposition of 40 hours forfeiture was suitable. Mr. Girvin submitted that 12 hours forfeiture plus training was appropriate. These proposals were supported with submissions which are referenced in Part II below. In her email to the tribunal following the disposition hearing, Ms. Husain stated that P/C Brown “should face the maximum punishment possible”.

Decision

After reviewing all the evidence and considering the submissions, I order that P/C Brown forfeit 24 hours, to be worked. This decision is pursuant to section 85(1)(f) of the *Police Services Act, R.S.O. 1990 (PSA)*.

Part II: SUBMISSIONS, ANALYSIS AND FINDINGS

At the beginning of his submissions, defence counsel referenced an excerpt from Paul Ceyskens' *Legal Aspects of Policing*, specifically section 5.10 Disposition (a) Principles Governing the Determination of a Disposition¹. He submitted that too often in *PSA* matters, the focus is on the issue of punishment, but in this matter, and in accordance with Ceyskens' principles, it would be appropriate to consider remedial training. In reviewing the five principles, he submitted that corrective dispositions should prevail, that not all problems can be corrected through discipline, and that clearly P/C Brown had been under a misapprehension. Officers should have the presumption of the least onerous disposition, the disposition must be proportionate to the misconduct, and officers are held to a higher standard. Additionally, the disposition must accord with the purposes of police discipline - the public interest, the employer's interest in maintaining discipline and security, the officer's rights, and the interests of any affected member of the public.

I am familiar with Ceyskens' principles and the consideration and weighing of individual factors used to craft a proportionate disposition. The following analysis is based on submissions of the prosecution and defence counsel, which form part of the record and will be referenced where appropriate below.

Public Interest

Mr. Tam submitted that this is of great concern - the primary function of police officers is to serve, and the interests of the public must always be considered. The public trust and confidence are fundamental requirements of effective policing, and they are compromised when an officer unlawfully exercises their authority. He quoted from P/C Brown's *PSA* decision which stated "*it is incumbent upon officers to know and respect the limits of their authority, particularly when it has a direct impact on members of the public*"², submitting that there cannot be confidence in the police, if even they do not know what the laws are, and how to enforce them.

Mr. Girvin acknowledged that the public interest is a significant consideration, particularly when this issue arose through an interaction with a member of the public. He submitted that one of the underlying purposes of the complaint and discipline process is to ensure public confidence in police, and stated that the public would be aware that following a complaint, there was a hearing and penalty imposed on P/C Brown. He submitted that this would give the public confidence that the OPP takes the conduct of its officers seriously and that P/C Brown's conduct has been properly sanctioned.

¹ Exhibit 23(c)

² *Ontario Provincial Police and P/C Kevin Brown*, page 34

In the decision regarding P/C Brown's finding of guilt, I wrote – *"I am satisfied that a reasonable person would find P/C Brown's initial interaction to be unprofessional, and P/C Brown acknowledged this. In addition to his first interaction with the Husains, I also find that P/C Brown took a personal interest in the matter, in the absence of a complaint or grounds that the Husains were trespassing. Police officers are expected to act professionally, with an impartial and courteous manner, placing public interest over their personal interest"*³. Additionally, with regards to the unlawful exercise of authority, it was found – *"P/C Brown detained the Husains for the purpose of investigating the TPA, and by telling them if they didn't provide proof they would have to leave, he was effectively enforcing the Act without the ability to do so. While I appreciate P/C Brown was acting in good faith, this was not a technical breach of policy. It was an investigative detention without the required means or grounds to enforce it"*⁴.

P/C Brown's actions had a direct impact on members of the public, and were influenced by the personal interest he took in who was camping on a vacant lot across from his residence. The public ought to be able to expect that officers will not only behave in a neutral, professional manner, but that they will also know and understand the laws they are sworn to uphold. P/C Brown's conduct would inevitably undermine the public confidence in officers enforcing the law fairly and equitably. Police are granted extraordinary power over citizens' rights, and it is crucial that such authority be exercised judiciously, responsibly, and lawfully. This is considered an aggravating factor.

Seriousness of the Misconduct

The prosecution submitted that this factor was extremely aggravating – P/C Brown did not act professionally, and he placed his personal interest above the public interest. Further, he did not have authority to investigate under the *TPA*, and as a result engaged the Husains in an unlawful psychological detention. Mr. Tam referred to *R. v. Le, 2019 SCC 34* in which the court stated at para 149 – *"And, as this Court has previously cautioned, "[w]hile police are not expected to engage in judicial reflection on conflicting precedents, they are rightly expected to know what the law is" (Grant, at para. 133)"*. He submitted that members of the public have a *Charter* right to liberty, and again referenced *Le* at para 155 – *"Even trivial or fleeting detentions "must be weighed against the absence of any reasonable basis for justification" (Mann, at para. 56 (emphasis in original))"*. Mr. Tam also referred to Ms. Husain's testimony and the impact this incident had, stating that they were a non-threatening, unarmed, elderly couple, who had been sleeping in tent when they were awoken late at night.

At 11:13pm on July 4, 2020, P/C Brown arrived home at the end of his shift, in a fully marked cruiser and wearing a police uniform. He observed a vehicle parked on the shoulder of the road

³ Ibid, pages 38 - 39

⁴ Ibid. page 34

at a vacant lot across the road from his residence. After checking the vehicle through the dispatcher, P/C Brown addressed the people in the tent with – “*Hey, whoever is in that tent, it's the police, come out. You're on private property. Yeah. No, it's not. I've lived on this road seven years and nobody has ever come to it. No, you do not. Yeah, prove it to me*”. Upon being told that the occupants owned the property, he replied “*Yeah. I've lived on this road for seven years and there has never been a single person on this property and there's no civic address for it. So, show me paperwork that this is yours. Yeah, that's my justification, that's enough. This is -- so show me this is your property. I don't need a picture. I need actual land deed, paperwork*”.

There followed an interaction with P/C Brown and the Husains (principally Ms. Husain) regarding whether she could prove that the property belonged to her or her son. She provided a tax bill, but it had a different ward number. A third party, Mr. R. Hussain, spoke to P/C Brown via telephone confirming it was his property but was unable to prove it. A photograph of a second tax bill was provided. P/C Brown explained the *TPA* to Ms. Husain, including “*that if she could not prove something that she is given permission by the landowner to be at this location, then she would have to leave as she is trespassing*”⁵. At one point, as Ms. Husain was heading back to her tent, P/C Brown told her to stop, telling her that he needed to figure out whether she had any authority to be there, and that there were arrest provisions under the *TPA*. P/C Peacock attended the scene shortly before midnight and advised that nothing was going to be done about the issue that night. The Husains were then left to spend the night on the property.

At his hearing, it was found that P/C Brown was curt and abrupt during his initial confrontation with the Husains, and that his interaction was unprofessional. It was also found that he took a personal interest in the matter absent any complaint of trespassers. Additionally, while P/C Brown was within his authority to query the licence plate of the vehicle, and ask the identity of those in the tent, his continued actions and requirement that they prove their authority to be there resulted in an unlawful detention. P/C Brown later stated that he was unaware that he was acting without lawful authority, and that he didn't realise that direction of the owner would be required to enforce the *Act*.

While P/C Brown believed he was acting in good faith, and was not properly aware of the *Act's* requirements, it must be stressed that an officer must fully understand the limits of their authority and remain within the boundaries of the law. The Husains were detained for less than an hour, but his actions caused Ms. Husain to feel harassed and fearful⁶. As Mr. Tam observed, the Husains were two people in their sixties who were unarmed, were not threatening, and who had registered no alerts when checked through the dispatcher. P/C Brown woke them from sleep, demanded paperwork, refuted their claims of ownership, and told them they would have to leave if they could not prove their authority to be there. His initial interaction was unprofessional, and

⁵ P/C Brown's duty report

⁶ Ms. Husain's testimony-in-chief

P/C Brown's actions directly impacted members of the public, causing them concern and inconvenience. An appropriate disposition must recognise that he overstepped the boundaries of his authority and failed to treat the Husains with courtesy and respect. The seriousness of the misconduct is considered aggravating.

Recognition of the Seriousness of Misconduct

As noted by counsel, P/C Brown did plead guilty to discreditable conduct, and prior to the full hearing, there were attempts made to resolve the issue with all parties. P/C Brown also apologised to Ms. Husain during the hearing, stating *"I've taken responsibility for how I spoke to you, with relation to that and I take full responsibility for that, I have from the very beginning with my interview with PSU⁷... but if you have felt any sort of ill will - we've never had this opportunity – out of any of this encounter, I do apologise for that. It was not my intentions that night. My intentions that night were to see who was there, ascertain that information and go back to my residence"*. P/C Brown also gave an apology to Ms. Husain and her husband via his counsel at his disposition hearing, saying he was remorseful and regretful for his conduct and that he accepted responsibility.

It is not aggravating that P/C Brown chose to proceed to a hearing on the count of unlawful or unnecessary exercise of authority – that is his right. During his interview with PSU, and throughout his testimony, he acknowledged that he had learnt, through the discipline process, that he did not have authority to enforce the TPA without the owner's consent; but at the time he believed he was acting with authority. I am satisfied that P/C Brown now recognises the seriousness of his misconduct, and this factor is considered mitigating.

Employment History

P/C Brown is a 16-year member with two letters of commendation, and two letters of appreciation on file. Defence counsel submitted four Performance, Learning and Development Plans (PLDPs) for P/C Brown. In these plans, there are twenty specific performance requirements contained within four broader categories of Personal Qualities, Technical Skills, Core Competencies, and Ontario's Mobilization and Engagement Model of Community Policing. An officer is rated as having exceeded, met, or not met the expected performance level. These plans are completed by an officer's supervisor and signed off by the next level manager.

April 2021 – 2023

This evaluation spanned two years. During this period, P/C Brown was a member of a specialist team conducting traffic enforcement. He exceeded the expected standard in *Commitment to*

⁷ Professional Standards Unit

Service's Values; Commitment to Detachment/Unit Goals; Commitment to Learning/Personal Development; Legal/Policy Knowledge; Teamwork; and Community Engagement and Liaison, and met the remaining standards. His supervisor and next level manager's comments included:

PC Brown consistently performs his duties supporting and demonstrating the core values of the OPP. He serves with Pride, Professionalism and Honour with the public and both uniform and civilian members. He interacts with Respect, Compassion and Fairness supporting the community and our members in his decision making process. When acting as the writer's 2IC (second-in-command) he leads with Integrity, Honesty and Courage when dealing with challenging situations, decisions and support for the public and our membership.

P/C Brown has a strong work ethic and never has to be asked to pitch in to assist during investigations. He regularly assists whatever detachment he happens to be in throughout the region with calls for service and regularly participates in community events in his former home detachment... He always looks to take the lead investigator role for benchmark collisions when appropriate for his current designation. At collision scenes he takes steps to lighten the workload of others at every opportunity.

P/C Brown is very committed to personal development and thus has a superior knowledge of technical standards and policies as well as federal and municipal statutes. He holds a multitude of designations and qualifications including: Drug Recognition Evaluator, Technical Collision Investigator/Probationary Reconstructionist, Intoxilyzer 8000C Technician, Approved Drug Screening Equipment Lead Instructor, Standard Field Sobriety Test Instructor, RADAR/LIDAR Instructor, Coach Officer, and snowmobile/ATV operator. Most of these require yearly re-certification and hours of study outside of working hours as well as being apprised of the ever changing specifications of these positions and case law. His teaching roles directly support the day to day operations of the OPP's front-line members by enhancing their abilities to conduct thorough and professional roadside investigations. PC Brown is also developing his leadership skills for future promotion by acting as the writer's 2IC. His dedication to personal development does not just stop with himself, but extends to the personal development of others.

He is widely known as a hardworking and team oriented officer within his own unit as well as with the region's detachments. He works extremely well with his fellow unit officers, sharing information, sharing workload, and collaborating with others. He regularly puts others ahead of himself. His sense of humor and genuine concern for his co-workers makes him a popular member of the team.

Kevin is always willing to step up and provide coverage for his own team and at times providing coverage for other Traffic Sergeants. Kevin is engaged in all levels of his responsibilities, from traffic enforcement to his involvement in benchmark collisions. I appreciate his dedication and

hard work. I look forward to continuing to work with Kevin and support him as he continues to work towards his career goals.

April 2020 - 2021

P/C Brown exceeded the expected standard in *Commitment to Service's Values; Commitment to Learning/Personal Development; Supports a Diverse and Inclusive Workplace; and Teamwork*; and met the remaining standards. His supervisor's comments included:

P/C Brown has proven himself to be one of the most team-oriented and success-driven officers that I have had the pleasure of working with... P/C Brown has a strong work ethic and is always vying to take the lead investigator role when a benchmark collision is dispatched to the team; further to this, he takes steps to try and lighten the workload of others at every opportunity.

P/C Brown is a kind-spirited young man who loves to meet people and make new connections. His drive to connect with others... is an attempt to find commonality among those with whom he interacts. He pursues commonality in interests, experiences and circumstance, that can foster companionship and meaningful relationships, and he puts his entire heart into each undertaking. P/C Brown is at all times, inclusive of the people around him, without fail, even when previous experience with those individuals may have been challenging or met with opposition... P/C Brown is respectful to all that he speak (sic), both in person and in his written correspondence, and, without fail, stands against harassing behaviour in the workplace. P/C Brown should be commended for his fair treatment of others and the personal stake that he puts into that endeavour.

April 2019 – 2020

P/C Brown was on frontline duties at detachment during this evaluation. He received an exceeds for *Enforcement and Crime Suppression*, and met the remaining standards. His supervisor noted that he is a *well rounded frontline officer* with an affinity for traffic enforcement, and commended him for his involvement teaching the Standard Field Sobriety Program throughout southern Ontario.

April 2018 - 2019

P/C Brown exceeded the expected standard in *Commitment to Detachment/Unit Goals; Commitment to Learning/Personal Development; Communications Skills; Communicating Effectively; Initiative; and Enforcement and Crime Suppression*; and met the remaining standards. Both his supervisor and staff sergeant spoke highly of P/C Brown's traffic enforcement efforts, his willingness to take on extra work, and his leadership skills.

These evaluations consistently describe P/C Brown as a hard-working and skilled officer who demonstrates teamwork and commitment to public safety, particularly in traffic. It is very

encouraging to see a mid-career officer leading his detachment in proactive enforcement, and then making a notable, positive difference within a specialty team. P/C Brown has also been given leadership opportunities and has been commended for his significant training and qualifications. I place strong reliance upon an officer's employment history and the assessment of their supervisors. P/C Brown is evidently a valued, dedicated officer who works hard to ensure public and community safety. His performance evaluations over the past five years are consistently positive and this is considered a very mitigating factor.

Ability to Reform and Rehabilitate

Mr. Tam submitted that while P/C Brown has the potential to reform, it was concerning for a 16-year member to not know how the *TPA* operates. In contrast, Mr. Girvin submitted that P/C Brown has no previous discipline on file, he acknowledged he was less than professional towards the Husains, and that he was mistaken regarding his authority under the *TPA*.

P/C Brown's recognition of his misconduct is an important step towards preventing a reoccurrence. As already noted, he acknowledged in his PSU interview that he has since learned the limits of his authority under the *TPA*, and he has also apologised for his demeanour, both during his substantive hearing and again through his counsel at his disposition hearing.

In his 2020-21 evaluation, P/C Brown was commended for his communication skills, specifically that he is *inclusive, respectful* and demonstrates *fair treatment of others*. In his most recent performance review, his supervisor stated that P/C Brown *consistently performs his duties supporting and demonstrating the core values of the OPP*. Additionally, his sergeant also wrote - *Kevin has been going through some challenges over this evaluation period, but he has come to work every day with a positive attitude and one of the strongest work ethics in the unit. This is a testament to Kevin's character and the writer appreciates his support and hard work.*

I am again guided by the assessment of those who regularly work with P/C Brown and know his usual personality and character; and I agree that his good work ethic and attitude while going through a protracted disciplinary process speaks very well of his integrity. P/C Brown's misconduct occurred in 2020 and he has performed very well since that time. Based on his performance evaluations, and the statements he has made throughout this discipline process (including taking responsibility for his demeanour and admitting he did not fully know the *TPA*), I am confident that this misconduct will not be repeated. Ability to rehabilitate and reform is considered mitigating.

Specific and General Deterrence

Mr. Tam submitted that both specific and general deterrence were required. P/C Brown must be

given a reminder to conduct himself differently in the future, particularly since his behaviour was motivated by personal interest. Further, this matter involved an unlawful or unnecessary exercise of authority, which is a serious finding and undermines the public trust. He stated it requires a substantial penalty to lessen the damage to the public confidence, and to send a message to all members that this type of misconduct will not be tolerated.

Mr. Girvin submitted that the defence penalty position will address issues of deterrence, stating there was a lack of evidence showing that P/C Brown had been sufficiently trained regarding the *TPA* authorities; and noting that the OPP has a responsibility to ensure its officers are properly trained and informed. He further submitted that these proceedings will send a message to other members that this behaviour is not appropriate and will be sanctioned.

I agree that there must be a deterrence regarding the unprofessional manner in which P/C Brown addressed the Husains on the night of July 4, 2020, and it must be clear to P/C Brown, and all members, that such conduct will attract a commensurate penalty. Furthermore, it is incumbent upon our officers to be aware of the laws they are seeking to enforce. I find it difficult to believe that there would have been no training on the *TPA* at some point in P/C Brown's career, even if only as a recruit. I realise that P/C Brown is an expert in traffic related enforcement, and I accept that he misunderstood the requirements of the *TPA*, but this does not excuse the demands placed upon the Husains late at night, for tangible proof of property ownership and warnings that they would have to leave if they couldn't produce it. Even if P/C Brown did not *wilfully* commit the misconduct of unlawful or unnecessary exercise of authority, there must be a forestalling of other officers overstepping the limits of their authority, and a caution to P/C Brown and others to be sure of the law before they impact members of the public. The disposition in this matter must serve as both a specific and general deterrent.

Impact to the Officers and his Family

Mr. Girvin submitted an excerpt from the OPP Staffing policy regarding competitive processes for permanent positions, which states – *Candidates with a record of formal discipline on file within the past two (2) years from date of penalty completion will not be recommended for shortlist*⁸. He submitted that the tribunal cannot disabuse itself of the factual and practical impact of police discipline and the totality of these circumstances on P/C Brown. He observed that the OPP has an embedded system that does not allow officers to move on, and submitted a 2023 email⁹ that P/C Brown had received, advising he was not eligible to move forward in a promotional competition. He submitted that because of this policy, P/C Brown has already suffered a loss because of the *PSA* complaint, even before there was a finding of guilt, and he reiterated that the tribunal must consider the adverse impact that the *PSA* complaint has had on

⁸ Exhibit 23(b)

⁹ Exhibit 23(a)

P/C Brown and the factual sanction he has already experienced.

Mr. Tam acknowledged that this disciplinary matter has been a long process and has taken time to conclude, which weighs in favour of some mitigation. However, he noted that the selection process is something that has previously been discussed and determined in this tribunal, and referred to a number of cases which found the effect on career prospects were neutral. In *Ontario Provincial Police and P/C Fitzpatrick, 2024* the hearing officer wrote – “*the affects are created through the behaviour and ultimate misconduct of the officer and the need for police officers to be held accountable*”. In *Ontario Provincial Police and P/C John Witzing, 2024*, the decision stated, “*PSA dispositions are determined by the appropriate penalty factors, not the existence of a separate policy addressing permanent position changes*”, and in *Ontario Provincial Police and P/C John Siriska, 2021* the hearing officer found “*This is an unfortunate outcome of P/C Siriska’s behaviour resulting in a finding of misconduct. I do not consider this to be a mitigating factor per se, as promotion in the OPP, as with most other organizations, is an earned opportunity rather than a right or a given. The limited eligibility of P/C Siriska for promotion is a regrettable but temporary outcome of his misconduct*”. Mr. Tam submitted that any potential harm arising from the staffing policy is temporary and should not be mitigating.

I understand that because of his formal discipline, P/C Brown will not be recommended for shortlist for competitive permanent position changes for two years. In effect, this means he will not be eligible to apply for promotion, or seek a permanent position with a specialty team, for the next two years. This policy applies to all members who are found guilty of formal discipline, whether they receive a forfeiture of hours, a demotion, or a reprimand. It was submitted that this, in itself, is effectively a punishment already embedded into the process, beyond that which is ordered by the tribunal.

The staffing policy document submitted by Mr. Girvin came into effect in November 2020, although it is unknown whether this particular provision existed in earlier versions dating back to 2011. All officers should be aware of this policy. It is not unique to P/C Brown, it exists for all members, and should serve as a deterrent for those who seek advancement.

The submission that this policy ought to mitigate disposition might carry more weight if the sanction were to result in significant hardship and there were extenuating circumstances that differentiated P/C Brown’s matter from every other officer who comes before the tribunal. In this case, however, the penalty sought is one of 40 hours or less. This is not a situation where P/C Brown is facing years of sanction before the two-year phase begins. P/C Brown has been found guilty of misconduct, and whether he is ordered to forfeit 12 hours or 40 hours, he will still face the same two-year ineligibility period as everyone else. This, of itself, is considered a neutral factor.

However, I am mindful of Mr. Tam's comments that this process has taken a long time. I am aware that there were ongoing resolution attempts made from an early date; an additional charge ordered by the OIPRD¹⁰; an adjournment requested by prosecution; an adjournment requested by the public complainant; the reassignment of the prosecutor; a request for virtual attendance by the public complainant; a second request for adjournment by the public complainant; and two motions, one by the prosecution and one by defence. The misconduct in question occurred almost four years ago, and except for his motion that was heard in one day, none of the delays in this matter can be attributable to P/C Brown.

While individually, the passage of time, and the OPP staffing policy, do not themselves warrant mitigation, I find that there is merit in Mr. Girvin's submission regarding the totality of the circumstances in this matter. Unfortunately, resolution was not attainable, and for over three and a half years, P/C Brown has continued to perform well at work while his misconduct matter was repeatedly delayed by circumstances outside of his control. For this reason, the impact to P/C Brown is considered mildly mitigating.

Damage to the Reputation of the Police Service

It was submitted by the prosecution that this was an aggravating factor – a police officer who breaches their duty and oath inevitably causes damage to the reputation of the police service. Officers are expected to enforce the law, not break it. This type of misconduct undermines the public's trust in police, and reduces their willingness to cooperate. Mr. Tam noted that the tribunal had heard from Ms. Husain on her views of her interaction with P/C Brown and of police generally, and stated that this type of behaviour reduces police effectiveness, which is contrary to the public interest. It can also be further aggravated by the perception in the community, if an officer is not appropriately disciplined, that the police service regards misconduct less than the public interest. Mr. Tam noted that the media often request disciplinary decisions, and counsel receive McNeil reports, so it is likely that this matter could become public.

Mr. Girvin submitted that this factor is addressed through the public knowledge that there was a complaint, a finding of guilt, and a penalty imposed. He submitted that the public would be aware that the OPP takes the conduct of its officers seriously, and has taken steps to make sure the conduct is properly sanctioned and does not reoccur.

This disciplinary matter arose out of a public complaint, and the results will be posted on the Law Enforcement Complaints Agency website. Ms. Husain, her husband, and Mr. R. Hussain were directly affected, and it is reasonable to assume that this matter is already in the public realm. I find that the public would be most concerned about an officer being unaware of the boundaries

¹⁰ Office of the Independent Review Director, now Law Enforcement Complaints Agency (LECA)

of his authority, and for detaining the Husains far longer than was required to ascertain their identity. Regardless of whether it was a wilful detention or not, it is damaging to the OPP's reputation that one of our officers exceeded his jurisdiction and caused Ms. Husain to feel harassed and fearful. This is contrary to the OPP values, and resulted in a highly unfavourable interaction with members of the public. Furthermore, it would be equally damaging if the OPP was not seen to appropriately address the misconduct. This is considered an aggravating factor.

Consistency in Disposition

Counsel submitted a number of cases for consideration, and I understand that given the nuances of each individual incident, it will rarely be possible to have exact consistency in disposition. I note that none of the cases involved an unlawful detention. The cases that related to unlawful or unnecessary arrest include -

Ontario Provincial Police and P/C Jon Fitzpatrick, 2024

P/C Fitzpatrick was found guilty of discreditable conduct for an incident that occurred during the COVID-19 pandemic, at detachment with a female witness who had been requested to attend to provide a statement. When she asked if she could use the washroom, P/C Fitzpatrick told her she would have to use the cell lavatory. The situation escalated to the point where they began yelling at each other and then P/C Fitzpatrick arrested the female, grounding her and causing an injury. It was found that P/C Fitzpatrick did not have legal grounds to arrest her, he *did not follow proper arrest procedures*, and his *use of force was unjustified and unnecessary*. P/C Fitzpatrick was ordered to forfeit 40 hours. I find this matter, which involved P/C Fitzpatrick losing his composure, grounding someone who was at detachment as a witness, and then causing an injury during her arrest, to be far more serious than that of P/C Brown.

Mulville and Azaryev and York Regional Police Service, ONCPC 2017

Constables Mulville and Azaryev were dispatched to a youth house party in the early hours of the morning. On being called back to the residence a second time, the officers entered the residence through the open door and subsequently arrested one of the youths for obstruct police and causing a disturbance. While these officers were investigating a complaint, they were not justified in entering the residence. At their *PSA* hearing they were found guilty of unlawful or unnecessary arrest. On appeal, the Commission upheld this finding, and based on consistency with other similar cases, varied the penalty to a reprimand with training in arrest powers.

Harris v. Royal Newfoundland Constabulary Public Complaints Commission, 2017

In this incident, from Newfoundland, Cst. Harris observed an 18-year-old youth walking alone at night and believed him to be intoxicated. She was attempting to arrest him and place him in her vehicle when a second officer, Cst. Priddle, arrived. The officers refused to allow him to call his mother, used profane and discourteous language, and would not accept his explanations, having

arrested him for obstructing police. It was subsequently determined that he was on the autism spectrum. Cst. Harris was suspended without pay for three days for the unlawful arrest and detention, one day for discourtesy, two days for failing to comply with policy, one day for failing to perform her duty, and one day for contravening the Act. Cst. Priddle was suspended without pay for two days for the unlawful arrest and detention, one day for the discourtesy, and one day for failing to perform his duty. (Note – it was not clear whether these penalties were to be served concurrently or consecutively. This decision was made in accordance with the *Royal Newfoundland Constabulary Act, 1992, S.N.L. 1992, c. R-17, s. 25(3)*).

Pigeau v. Ontario Provincial Police and Taillon, 2009 ONCPC

While on patrol, P/C Pigeau and his partner observed a male believed to be intoxicated in public. Attempting to speak to him, P/C Pigeau placed his hand upon the male, who pushed P/C Pigeau away and was then forcibly arrested for assault police. A supervisor attended, determined the male was not intoxicated but rather in need of medication, and the male then attended the hospital for injuries sustained during the incident. Following a hearing, P/C Pigeau was found guilty of unlawful or unnecessary exercise of authority. Upon appeal, the Ontario Civilian Police Commission (Commission) found that both P/C Pigeau's touching of the male, and his subsequent arrest, were improper. The Commission cited "*Constable Pigeau's position as a very junior officer at the time of the incident, his good work history to date and positive letters of reference from three OPP middle managers. There were no previous disciplinary notations on his employment record. We accept that the officer incorrectly assessed the situation in which he found himself, with the result that he initiated an interaction which led to an improper arrest*". The Commission then varied his disposition to a reprimand.

Penner v. Parker, Koscinski and Niagara Regional Police Service, 2005 ONCPC

Cst. Parker was testifying in provincial court and the defendant's husband, Mr. Penner, was sitting in the courtroom, commenting under his breath. Upon conclusion of his testimony, Cst. Penner went to sit with Cst. Koscinski, and told Mr. Penner he could be arrested for his conduct. Matters quickly escalated, and Cst. Parker laid hands on Mr. Penner, who resisted, then both officers dragged him from the courtroom, wrestled him to the ground, administered empty hand and knee strikes and ultimately charged him with causing a disturbance, breach of probation and resisting arrest. It was found that *the arrest was both unlawful and unnecessary, and that the corresponding use of force was unjustified*. The Commission imposed a penalty of 32 hours forfeiture for Cst. Penner and 16 hours for Cst. Koscinski. Again, due to the physical arrest, grounding, and subsequent injuries, I find this matter more serious than that of P/C Brown.

Blowes-Aybar v. Toronto Police Service, 2003 ONCPC

Cst. Blowes Aybar had arrested a cyclist for public intoxication and held him overnight in a cell, for which he was later convicted of unlawful or unnecessary exercise of authority. On appeal, the Commission found the cyclist "*would not have been so deprived for any of the Highway*

Traffic Act offences with which he was charged” and that “on more than one occasion, Constable Blowes-Aybar could have diffused this issue or made it right. He did not. His conduct escalated and became retaliatory”. The Commission ordered a four-day suspension. This matter is also considered more serious than P/C Brown’s as it escalated and resulted in an unnecessary imprisonment in a holding cell overnight.

These matters all involved arrests which were found to be unlawful or unnecessary, and in some instances resulted in injury or incarceration. The *PSA* dispositions ranged from 40 hours at the highest end, to a reprimand. I find that several of these cases are more serious than that of P/C Brown, who did not make any arrest, did not cause any physical injury, and did not lay any charges.

The remaining cases varied between the issuance of an improper ticket, use of profane or uncivil language, unlawfully entering a private property, and discreditable conduct towards members of the public -

D’Souza v. Toronto Police Service and Berger, 2007 ONCPC

Cst. D’Souza was performing traffic control at the CNE when he denied entry to one of the CNE employees. At his *PSA* hearing (for two counts of discreditable conduct and insubordination), Cst. D’Souza was found to have uttered “everyone’s a moron,” before issuing a traffic ticket for disobeying an officer, and then subsequently failing to attend court regarding that ticket. He was issued a reprimand for being uncivil and failing to attend court, and 40 hours forfeiture for the issuance of a questionable ticket. On appeal, the Commission upheld the findings of guilt and reduced the penalty for the issuance of the ticket to 24 hours forfeiture. In this matter, the focus was on the issuance of a problematic ticket but also included an insult and a failure to attend court.

Ontario Provincial Police & P/C Stephen Quinn, 2018

P/C Quinn was found guilty of discreditable conduct following a plea and a joint penalty submission of 30-hours forfeiture. While off-duty, P/C Quinn had challenged a jet ski rental invoice in a *heated verbal exchange*. He identified himself as a police officer, used profane, abusive, or insulting language towards a member of the public, told the person he was going to be charged criminally, and then made disrespectful and unprofessional comments regarding his staff sergeant. Unlike P/C Brown, P/C Quinn used profane or abusive language, identified himself as an officer while off-duty, and was disrespectful towards another member.

Ontario Provincial Police and P/C John (Scott) Siriska, 2024

P/C Siriska was found guilty of using profane and uncivil language with members of the public in relation to a traffic stop. The hearing officer noted that one of the complainants additionally became confrontational, but found that it was incited by P/C Siriska, and not a provocation for

the misconduct. Following a hearing, he was ordered to forfeit 24 hours and undergo communications training. P/C Siriska's matter included the use of profanity, and the hearing officer described him as *quarrelsome, provocative, and insulting* throughout his entire encounter with members of the public.

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

Cst. Harnett and Cst. MacLean attended an apartment with an arrest warrant for Mr. O'Brien. Two persons inside the apartment denied access inside before Cst. Robinson also attended. Eventually, the two persons exited the apartment, and one of them allowed police inside to look for Mr. O'Brien. They did not locate him. After they all left, the police re-entered the apartment again, unaccompanied. At their *PSA* hearing, the officers were each found guilty of discreditable conduct and neglect of duty, and each were ordered to forfeit five days (40 hours). This case addressed the issue of the officers unlawfully entering the residence, which is distinct from P/C Brown's matter.

Boutin v. The Ontario Provincial Police, 2022 ONCPC

P/C Boutin was found guilty of discreditable conduct and neglect of duty for an incident that spanned a three-day period. While off-duty, P/C Boutin had failed to remove his personal belongings from his residence prior to the closing of the house sale. These belongings included police uniforms, notebooks, and Crown briefs. He attended the house at 12:30am the following morning, identified himself as an officer, and when confronted by the new homeowners, who had called police, replied "*I wonder which one of my buddies is on*". He failed to return until a day later and after packing up his items, left a considerable amount of garbage and property on the front law. The Commission upheld the findings of guilt and the 72-hour forfeiture. While both Boutin and P/C Brown's matter demonstrate inconvenience and disruption for members of the public, they are not otherwise analogous.

I find these cases less useful regarding consistency for P/C Brown's matter, beyond providing a range of dispositions for police misconduct that had a direct impact on members of the public. I note however, that *D'Souza, Quinn* and *Siriska* provide penalties between 24 to 30 hours for unprofessional, improper conduct which had a negative effect on others.

When I consider P/C Brown's discreditable conduct, it was curt and unprofessional, but not profane or aggressive. The unlawful detention arose from his pursuing the issue of property ownership, but he ultimately desisted and allowed the Husains to remain. Their detention lasted less than one hour. Unlike *Fitzpatrick*, there was no forcible arrest or resulting physical injuries, but unlike *Pigeau*, P/C Brown is a senior officer who cannot rely on inexperience. These two OPP decisions confirm that the range is somewhere between 40 hours and a reprimand, but that P/C Brown's matter does not fall at either end.

Conclusion

Both Mr. Tam and Mr. Girvin presented a proposed total penalty for both counts of misconduct, with defence counsel observing that the incident was a seamless, continuous event.

In July 2020, at approximately 11:13pm, P/C Brown observed a vehicle and tent on a vacant lot across from his residence. He queried the vehicle with the Provincial Communications Centre, then awoke the tent occupants and demanded proof of their authority to be there. For approximately 45 minutes, P/C Brown continued to request documentary evidence to support their claim of ownership, telling them that the *TPA* provided an arrest provision. The matter was resolved only after a second officer arrived and advised nothing further was going to be done that evening. This misconduct caused Ms. Husain to feel fearful and harassed, with both the public interest, and damage to the reputation of the OPP considered aggravating. P/C Brown overstepped the limits of his police authority and directly impacted and inconvenienced members of the public late at night.

Since the time of that incident, well over three and a half years ago, P/C Brown has apologised for his misconduct; he pled guilty to one count of misconduct and acknowledged he did not know his authority under the *TPA*; and he has been commended by his supervisor for his continued hard work and positive attitude.

I have considered the proposed need for training, but I do not find it necessary in this case. I am satisfied that P/C Brown now knows his authorities under the *TPA*, and I do not believe he will make the same mistake again. Similarly, his performance evaluations speak highly of his ability to communicate respectfully. I am not convinced he will gain anything further from additional training either in the *Act* or communication.

When I consider the cases provided regarding consistency in penalty, I am aware that dispositions can change over time, and a sanction that may have been appropriate twenty years ago, would no longer be acceptable to the public or the OPP now¹¹. I find that a reprimand would not be sufficient, given the public's current level of scrutiny and interest in police conduct, and the 40 hours proposed by the prosecution is too high, given *Fitzpatrick* was delivered just recently. Bearing in mind the public interest and seriousness of P/C Brown detaining the Husains without authority, this misconduct does require a meaningful penalty that acknowledges the inconvenience caused to the Husains and the damage to the public's trust. The disposition must also accord with the principles outlined in *Ceyssens' Legal Aspects of Policing* as mentioned above – to be corrective rather than punitive, and the least onerous disposition possible, while being proportionate to the misconduct, and recognising that officers are held to a higher

¹¹ *Orser v. Ontario Provincial Police, 2018 ONCPC*

standard. In this respect, having considered all the cases provided, including those that involved unprofessional and improper conduct towards the public, I find that a 24-hour forfeiture will appropriately address the misconduct and its effect, while acknowledging the mitigating factors of this case.

PART III: DISPOSITION

I order P/C Brown to forfeit 24 hours, to be worked. This order is being made pursuant to section 85(1)(f) of the *Police Services Act*.

Melissa Barron

Melissa Barron
Superintendent
OPP Adjudicator

Date electronically delivered: April 26, 2024

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Appendix A

The following exhibits were tendered during the hearing:

- Exhibit 23 – Defence Book of Documents
 - (a) email advising P/C Brown he was not shortlisted for a competitive process, May 2023
 - (b) OPP Staffing policy, November 2020
 - (c) excerpt from Paul Ceysens' Legal Aspects of Policing, §5.10
 - (d) P/C Brown Career Profile and four PLDPs