

ONTARIO PROVINCIAL POLICE DISCIPLINE HEARING  
IN THE MATTER OF ONTARIO REGULATION 268/10  
MADE UNDER THE *POLICE SERVICES ACT*, RSO 1990,  
AND AMENDMENTS THERETO;

AND IN THE MATTER OF  
THE ONTARIO PROVINCIAL POLICE  
AND  
PROVINCIAL CONSTABLE R.T. (Rene) TAMMINGA, #11162

CHARGE:  
NEGLECT OF DUTY

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DISPOSITION

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Before:	Inspector Shawn Nash Ontario Provincial Police
Counsel for the Prosecution:	Ms. Erika Hodge Ontario Provincial Police
Counsel for the Defence:	Mr. William MacKenzie Ontario Provincial Police Association
Public Complainant:	Ms. Denise Lucier
Hearing Date:	October 17, 2019

*This decision is parsed into the following parts: PART I: OVERVIEW; PART II: THE HEARING; PART III: SUBMISSIONS, ANALYSIS and FINDINGS; and PART IV: DISPOSITION.*

## **PART I: OVERVIEW**

### **Parties to this Hearing**

Parties to this Hearing include:

- PC Rene Tamminga, represented by Mr. William MacKenzie;
- Ms. Erika Hodge, representing the Ontario Provincial Police (OPP); and
- The Public Complainant, Ms. Denise Lucier.
  - Ms. Lucier did not have legal representation however indicated she understood she had the right to do so. The hearing process and her role in it, was explained to her and she was provided with a copy of the tribunal rules. She actively participated in the hearing process.

### **Allegations of Misconduct**

Provincial Constable (PC) Rene Tamminga, stands charged with neglect of duty in that he without lawful excuse, neglected or omitted to promptly and diligently perform a duty as a member of the OPP, contrary to Section 2(1)(c)(i) of the Code of Conduct contained in the Schedule to Ontario Regulation 268/10, of the *Police Services Act* as amended.

The particulars of the allegations state:

On Sunday April 9, 2017 a motor vehicle collision occurred in Kingsville, Ontario and was investigated by PC Tamminga of the Essex OPP Traffic Management Unit. The driver of an automobile failed to stop at a stop sign and struck a motorcycle. The driver of the automobile sustained minor injuries. The occupants, a husband and wife, of the motorcycle sustained serious injuries. The husband died two weeks following the collision as a result of his injuries.

On or about July 17, 2018 the wife, Ms. Denise Lucier, submitted a complaint to the Office of the Independent Police Review Director (OIPRD) with a complaint that police failed to conduct a thorough investigation into the incident.

As the primary investigator it is alleged that PC Tamminga did commit neglect of duty in that:

- After the collision Ms. Lucier made numerous attempts to contact PC Tamminga to discuss the investigation. She called, emailed and left multiple messages for him. He did not return her calls until she threatened to file a complaint and contact local media.
- On or about August 17, 2017, Ms. Lucier spoke with PC Tamminga. During their conversation, PC Tamminga told her that he would deliver a blank victim impact statement to her the following week. PC Tamminga did not deliver a victim impact statement to Ms. Lucier until February 3, 2018 nearly six months after he told her he would. It was not until Ms. Lucier made repeated attempts to contact PC Tamminga and only after she called the Essex OPP Detachment expressing her continued frustration with the investigative delays that he acted.
- Between March 2018 and June 2018, Ms. Lucier left several messages on the Detachment answering machine. Her messages sounded increasingly frustrated with each call. The detachment administrator sent an email to PC Tamminga each time Ms. Lucier left a message. Despite receiving repeated messages to contact Ms. Lucier, PC Tamminga did not return her calls.
- In September 2017, six months after the incident, PC Tamminga formed the opinion, after legal consultation, that there were reasonable grounds to charge the driver of the automobile with Dangerous Driving. On or about February 4, 2018, PC Tamminga charged the at fault driver with Criminal Code offences of Dangerous Driving Causing Bodily Harm and Dangerous Driving Causing Death with a court date of March 22, 2018. On March 21, 2018, PC Tamminga called Ms. Lucier and told her not to attend court. He was less than forthcoming when he explained to her that there was an administrative problem in that the accused was not subpoenaed to court. The reason for the court not going ahead was that PC Tamminga had never submitted a court brief.
- In June 2018, the Crown Attorney's Office made an enquiry regarding the charges as they were unaware of the incident and the lawyer for the accused was requesting disclosure. PC Tamminga had still not submitted a court brief.

- On or about June 21, 2018, PC Tamminga attended a meeting with the Deputy Crown Attorney who expressed concerns for the delay. PC Tamminga accepted responsibility for the delay but failed to provide any reasons for not conducting a proper investigation.
- On or about July 5, 2018, the Deputy Crown Attorney advised PC Tamminga that due to the investigative delay, there would be no reasonable prospect of conviction.
- On or about September 14, 2018, PC Tamminga was interviewed by OPP Professional Standards Bureau (PSB). At the time of this interview he had still not completed a court brief. He admitted that he failed to communicate effectively with Ms. Lucier, that he did not maintain the level of contact she requested and was not forthcoming with the status of the investigation.
- As a victim, Ms. Lucier should have had access to resources offered by the Victim Witness Assistance Program. A support program for witnesses involved in cases where they are before the courts. Given that PC Tamminga failed to properly investigate the incident, and lay appropriate charges in a timely manner, Ms. Lucier was not entitled to the support.

## **Plea**

On October 17, 2019, PC Tamminga, accompanied by his counsel Mr. MacKenzie appeared before the tribunal and pled guilty and was subsequently found guilty of neglect of duty.

## **Positions on Penalty / Submissions**

Ms. Hodge submitted a penalty proposal of a 9 month demotion from First Class Constable to Second Class Constable. Mr. MacKenzie submitted a penalty proposal of 80 hours, either forfeited or worked without pay. Counsel supported their respective positions with submissions that are detailed within Part III of this decision.

## **Decision**

As a result of the guilty plea and upon reviewing the Agreed Statement of Facts (ASoF)<sup>1</sup>, I find there is clear and convincing evidence to support a finding of neglect of duty against PC Tamminga, contrary to section 2(1)(c)(i) of the Code of Conduct

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<sup>1</sup> Exhibit#15, Agreed Statement of Facts (ASoF)

contained in the Schedule to *Ontario Regulation 268/10*, of the *Police Services Act* as amended.

I order that PC Tamminga forfeit 120 hours off, to be worked without compensation, pursuant to 85(1)(f) of the *Police Services Act*.

My reasons for this decision are as follows:

## **PART II: THE HEARING**

### **Exhibits**

The exhibits for this matter are listed as Appendix A.

### **Agreed Statement of Facts**

On October 17, 2019, the prosecution, defence and public complainant submitted an ASoF which read as follows:

On Sunday April 09, 2017, a motor vehicle collision occurred in Kingsville, Ontario. PC Rene Tamminga of the Essex OPP Traffic Management Unit was assigned to conduct the investigation.

The driver of an automobile failed to stop at a stop sign and struck a motorcycle. The driver admitted fault for the collision and explained that he had failed to stop while using his phone for GPS. He acknowledged having consumed both alcohol and cannabis the prior evening, and a breath test administered at the accident scene indicated that he had 17mg of alcohol in 100ml of blood. The driver of the automobile sustained minor injuries.

Both individuals that were on the motorcycle – a female, Ms. Lucier and her husband – sustained catastrophic injuries.

The husband suffered multiple fractures, internal injuries, and lacerations to his body. The damage was devastating. Two weeks after the collision, on April 21, 2017, the husband succumbed to his injuries and died.

Ms. Lucier suffered numerous extremely serious and life-altering injuries including multiple fractures, soft tissue damage, a collapsed lung, and internal damage to her stomach and diaphragm. She required multiple pints of blood.

Her left leg, which was severed on impact, had to be amputated below the knee. Ms. Lucier remained in hospital from April 09 until August 01, 2017.

Ms. Lucier has suffered extensive and severe physical, emotional, and financial impacts. She has permanent scarring, chronic pain, difficulty sleeping, and will have serious lifelong impediments to her mobility. She had to relearn how to walk with a prosthetic leg and had to move into an accessible home. She has endured multiple surgeries to date and will require additional surgeries in the future. She continues to struggle with anxiety and is physically and mentally unable to return to her job as the Senior Accountant Office Manager. To cope with the impact of this incident, Ms. Lucier requires physiotherapy, occupational therapy, massage therapy, psychological therapy, medical care from multiple physicians, and the assistance of a Personal Support Worker.

#### The Facts Underlying the OIPRD Complaint:

On July 17, 2018, Ms. Lucier submitted a complaint to the OIPRD alleging that police failed to conduct a thorough investigation into the collision.

As the primary investigator, PC Tamminga committed neglect of duty in that:

After the collision, Ms. Lucier made numerous attempts to contact PC Tamminga to discuss the investigation. She made many phone calls, sent many emails, and repeatedly left messages for him with colleagues at his office. Contact from PC Tamminga was infrequent and inadequate, contributing to an overall failure of communication. Eventually Ms. Lucier threatened to file a complaint and contact local media.

- On August 17, 2017, Ms. Lucier spoke with PC Tamminga. He told her that the at-fault driver of the automobile would be charged with Careless Driving. Ms. Lucier questioned how a fatal collision could result in a 'traffic ticket'. PC Tamminga advised her that there were insufficient grounds to lay a criminal charge.
- In the same conversation on August 17, 2017, Ms. Lucier was asked for and agreed to complete a victim impact statement. PC Tamminga committed to delivering a blank victim impact statement to her the following week. He failed to do so.

- In September 2017, six months after the collision, PC Tamminga formed the opinion, after legal consultation, that there were in fact reasonable grounds to charge the driver of the automobile with the criminal charge of Dangerous Driving. He did not lay charges at that time.
- Between August 2017 and January 2018, Ms. Lucier had sent multiple emails and made multiple calls to PC Tamminga, with limited response. On January 23, 2018, Ms. Lucier called the Essex OPP Detachment and threatened to file a complaint due to a lack of response. She was later called back by the Staff Sergeant. She expressed her frustration with the investigation, the lack of communication by PC Tamminga, and that she never received the victim impact statement form. The Staff Sergeant assured her that he would have PC Tamminga contact her by the end of the day. Two days later, on January 25, 2018, PC Tamminga called her back. He then attended her residence and delivered the blank victim impact statement to her of February 03, 2018, nearly six months after he initially committed to doing so. He took responsibility for his lack of communication.
- On February 04, 2018, almost 10 months after the collision, PC Tamminga charged the at-fault driver with the Criminal Code offences of Dangerous Driving Causing Bodily Harm and Dangerous Driving Causing Death. The court date was scheduled for March 22, 2018. Ms. Lucier contacted PC Tamminga three times about attending court and was told that she was welcome to attend.
- On March 21, 2018, PC Tamminga called Ms. Lucier and told her not to attend court the next day. He was not forthcoming about why the matter was not going ahead, and instead misled Ms. Lucier in telling her that there was an administrative problem in that the accused was not subpoenaed to court. The actual reason that the court date did not go ahead was that PC Tamminga had never submitted the completed court brief and did not swear to an information.
- On May 24, 2018, Ms. Lucier emailed PC Tamminga and was told the file was moving forward despite the fact that the required paperwork had still not been filed.
- PC Tamminga never expressed any concerns to his supervisor, Staff Sergeant Sakalo, regarding the investigation, his workload, or any personal issues that would have impacted his performance in this case.

PC Tamminga understood what his duties were, and was asked, reminded, and directed to fulfill them.

- Between March 2018 and June 2018, Ms. Lucier left several messages on the Detachment answering machine. Her messages sounded increasingly frustrated with each call. The Detachment Administrator sent an email to PC Tamminga each time Ms. Lucier left a message. Despite receiving repeated messages to contact Ms. Lucier, PC Tamminga inexplicably failed to return her calls.
- Around June 11, 2018, the Crown Attorney's Office made an enquiry regarding the charges. The lawyer for the accused had been requesting the full disclosure for several months. However, the Crown Attorney's Office was unaware of the status of the case as PC Tamminga had not submitted a completed court brief. At this point, approximately one year and two months had passed since the collision occurred.
- Early June 13, 2018, in an email to Wendy Sivell of OPP Case Management, Staff Sergeant Sakalo stated: "If there is any explanation needed to the Deputy then I would prefer Rene provide it. He is the one who is ultimately responsible for the lack of work on this file and should be the one to explain why it isn't completed. Issues like this quickly tarnish the reputation of the OPP and are preventable."
- On June 13, 2018, Staff Sergeant Sakalo was informed that the Crown's office was "extremely upset". The Crown's office was concerned that there may be complications related to delay and abuse of process. PC Tamminga was instructed to attend a meeting with the Crown to discuss why there had been a delay in processing this file and why it had not been completed to date. The Deputy Crown asked that the file be completed and submitted for review as soon as possible. She also asked that the accused not be arrested and that the information not be sworn to until she had the opportunity to review the file first.
- Also on June 13, 2018, Ms. Lucier emailed PC Tamminga and expressed her frustration with the length of time the investigation was taking. On June 18, 2018, she spoke to a civilian member at the Essex OPP Detachment and threatened to contact the local MPP and the Windsor Star.
- On June 18, 2018, PC Tamminga responded to Ms. Lucier and advised that he was meeting with the Crown the following week to secure a court



date. This was misleading as the actual purpose of the meeting was to ensure the Crown received the completed brief and to provide the Crown with an explanation for the delay.

- On June 20, 2018, counsel for Ms. Lucier requested a teleconference with PC Tamminga's supervisor. Staff Sergeant Sakalo sought direction from Inspector Glenn Miller and noted that "This situation is gaining momentum in the wrong direction". Inspector Miller advised that before agreeing to participate in a call, an Information Note would need to be completed and advice would need to be sought through Risk Management to ensure Regional Headquarters was kept informed.
- Following the enquiry from the Crown Attorney's Office, a meeting was scheduled with Staff Sergeant Sakalo, PC Tamminga and the Deputy Crown Attorney for Jun 21, 2018. This conflicted with another court matter PC Tamminga was scheduled to attend. Staff Sergeant Sakalo instructed PC Tamminga to request that the other court matter be adjourned so that PC Tamminga could attend the meeting with the Crown. At the meeting, the Deputy Crown Attorney expressed concerns about the inexplicable delay. PC Tamminga accepted responsibility for the delay but did not provide any reasons for failing to conduct a proper investigation and not completing the necessary paperwork.
- On June 28, 2018, PC Tamminga spoke with Ms. Lucier. She asked him if a mistake had been made and he responded "no". He told her that the court brief was being reviewed by the Crown for their opinion and he would keep her informed.
- Also on June 28, 2018, PC Tamminga emailed Staff Sergeant Sakalo to confirm that he had finally been able to speak with Ms. Lucier. He stated: "I am and have been committed to assisting her. I have provided her what I could without making promises I could not keep. I will reach out to her tomorrow again."
- The next day, on June 29, 2018, PC Tamminga followed up to ask if the Crown's opinion was ready. He indicated that he had promised Ms. Lucier that he would attempt to have more details by that date and was seeking a response that he could share with her. He emailed Ms. Lucier to tell her that the Crown office was closed and he had been assigned to marine duty. She has not heard from him or spoken to him since that date.

- On July 04, 2018, the Assistant Crown Attorney that reviewed the disclosure package emailed the Deputy Crown Attorney to share his assessment of the case. His opinion was that “the evidence available to the Crown when viewed objectively likely made out the offence of dangerous driving beyond a reasonable doubt at the time of the investigation or soon thereafter. However, due to pre-charge delay there no longer exists a reasonable prospect of conviction.”
- On July 05, 2018, the Deputy Crown Attorney advised PC Tamminga that due to the pre-charge delay, there was no longer a reasonable prospect of conviction.
- Despite the Crown’s opinion, PC Tamminga told his Sergeant that he would move forward with the charges anyway and that the completed brief would be submitted. That never occurred. PC Tamminga’s neglect of duty directly allowed the at-fault driver to evade criminal prosecution.

On July 17, 2018, Ms. Lucier submitted a complaint to the OIRPD alleging that police failed to conduct a thorough investigation into the collision.

#### PC Tamminga’s Interview with OPP PSB

On or about September 14, 2018, PC Tamminga was interviewed by the OPP PSB.

PC Tamminga took full responsibility for neglecting his duties. He did not have an excuse for his actions but admitted that he was overwhelmed around the time of the collision. He stated that he was the primary investigator on a number of fatalities at that time, maintained a heavy caseload, had significant issues in his personal life, and was coping with a colleague’s suicide. He acknowledged that he did not express any concerns or issues to his Staff Sergeant. He admitted that he failed to communicate effectively with Ms. Lucier, that he did not maintain the level of contact required, and that he was not forthcoming with the status of the investigation. He stated that his intentions were not to mislead Ms. Lucier but to delay her questions. He acknowledged that he did not follow OPP policy as it related to Niche RMS, legal procedures, and note taking.

#### Ms. Lucier’s Inability to Access Services from the Victim Witness Assistance Program (VWAP)

As a victim, Ms. Lucier should have had access to resources offered by the VWAP. The VWAP is a support program for victims and witnesses involved in cases that are before the courts, as well as for families of victims of traffic fatalities resulting in criminal charges. Ms. Lucier had contacted the VWAP to request their services, but they were unable to provide her any assistance until a charge was registered with the courts.

Due to PC Tamminga's failure to properly investigate this incident and lay appropriate criminal charges in a timely manner, Ms. Lucier was not entitled to access this program. PC Tamminga's neglect of duty was the reason that Ms. Lucier was not able to access the support services from this program that she otherwise would have qualified for and that she desperately needed.

### **PART III: SUBMISSIONS, ANALYSIS AND FINDINGS**

#### **Issue**

I accepted PC Tamminga's guilty plea to neglect of duty in this matter and find there is clear and convincing evidence to support the finding of misconduct. The issue remaining is the appropriate sanction which must meet the goals of the discipline process.

#### **Analysis**

The following analysis is based on the submissions of the prosecution, defence and public complainant. I will address those disposition considerations that were deemed relevant in this matter. I will determine whether those considerations are mitigating, aggravating or neutral, properly balancing and appropriately weighing them. These considerations will provide guidance and assist me in determining the most appropriate sanction. In order for a sanction to be fitting, it must strike a balance between the disciplinary interest of the organization, fairness to the officer and the public interest.

#### Public Interest

##### *Submissions:*

The prosecution submitted that public interest is of great concern in this case. The primary function of the police is to serve the public, thus the interests of the public

must always be considered in police misconduct cases. It is in the public interest that OPP officers are held to high standard of professionalism.

The prosecution referenced *OPP Orders*, Section 6.10.1: Professionalism in the OPP: Introduction, which states:

*The conduct of an employee, both on and off duty, is scrutinized and applied to the OPP as a whole. The more professional the conduct, the higher the public's confidence and co-operation.*

The prosecution also referenced *Ontario Provincial Police and Bierworth (2018)*<sup>2</sup>, which noted:

*... there is a correlation between the level of a police service's professional conduct and the public's confidence and cooperation in that service; the higher the professional conduct the greater the public's confidence and cooperation. Conversely, unprofessional conduct damages the public's confidence and trust in the individual officer and the OPP as a whole. Therefore it is in the public's best interest that police officers behave professionally both on-duty and off-duty.*

The public's trust in its police service is eroded when the conduct of those officers falls short of standards and expectations.

The prosecution submitted that PC Tamminga's conduct infringed police orders including those that set out responsibilities related to the Niche record management system, legal procedures and notetaking. The evidence and admissions of PC Tamminga show that he neglected to maintain contact with the complainant, misled her regarding the status of the investigation, neglected to complete necessary court documentation, neglected to comply with *OPP Orders* and failed to charge the at-fault driver in a timely manner resulting in no criminal proceedings against him. PC Tamminga's failure to properly investigate the motor vehicle collision and his treatment of the complainant have brought discredit to the OPP. Additionally, by misleading Ms. Lucier, PC Tamminga acted against the public interest and demonstrated a lack of integrity.

The prosecution also referenced *Pierce and Ontario Provincial Police (2018)*<sup>3</sup>, where the Ontario Civilian Police Commission (OCPC) reiterated the importance of integrity in emphasizing that:

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<sup>2</sup> Exhibit#18, TAB 11 – Ontario Provincial Police and Bierworth, OPP, 2545017-0051, January 31, 2018.

<sup>3</sup> Exhibit#18, TAB 16 – Pierce and Ontario Provincial Police, OCPC, 2018ONCPC4 – 24 January 2018.

*The need for integrity by police officers cannot be overstated.*

The prosecution submitted that there is a general public interest in ensuring officers fulfill their police duties. The public needs to know that people who commit serious offences will be held accountable. Similarly, the public needs to know that if they are a victim of crime, the police will follow the appropriate investigative and legal processes in an effort to bring about justice. The public should be able to rely on police to follow through. In this case, a young driver did something illegal that had an extremely serious impact including loss of life and catastrophic injuries. This young man will never face any consequences as a result of this accident.

The prosecution submitted that public interest is a strongly aggravating factor and defence submitted that this was an aggravating factor.

*Analysis and Findings:*

Public interest is a relevant factor given that the misconduct has undermined public confidence in the police. Public confidence and trust are fundamental elements in effective policing.

Police officers must be held to a higher standard and are accountable to the public, an important consideration in assessing an appropriate sanction. Police officers are expected to uphold the law and conduct themselves with professionalism and integrity. An appropriate sanction will demonstrate confidence in the police and the discipline process and work towards restoring public trust.

In the matter of *Ontario Provincial Police and Bierworth (2018)*, the hearing officer agreed with the assertion by prosecution that there was a correlation between the professional conduct of an officer and the level of public confidence and cooperation with that police service. The referenced section of *OPP Orders* under professionalism supports the fact that the conduct of all employees will be scrutinized and impact the OPP as a whole. The public expects the police to maintain a high standard of professionalism both on and off duty. It is clear that unprofessional conduct damages public trust and confidence in that police service and its individual officers.

Additionally, in the matter of *Pierce and Ontario Provincial Police (2018)*, the importance of integrity for police officers is also high. The absence of integrity also damages public trust and confidence in that police service.

In the ASoF, it states:

*After the collision, [Ms. Lucier] made numerous attempts to contact PC Tamminga to discuss the investigation. She made many phone calls, sent many emails, and repeatedly left messages for him with colleagues at his office. Contact from PC Tamminga was infrequent and inadequate, contributing to an overall failure of communication.*

*PC Tamminga's neglect of duty directly allowed the at-fault driver to evade criminal prosecution.*

*[PC Tamminga] admitted that he failed to communicate effectively with [Ms. Lucier], that he did not maintain the level of contact required, and that he was not forthcoming with the status of the investigation.*

*[PC Tamminga] acknowledged that he did not follow OPP policy as it related to Niche RMS (records management system), legal procedures, and notetaking.*

Ms. Lucier was the victim of a serious motor vehicle collision who deserved to be apprised of the investigation and its status. Not only did PC Tamminga neglect to maintain adequate contact with Ms. Lucier, he misled her regarding the status of the investigation on more than one occasion, provided false information, and was neglectful in failing to complete the required court documentation to bring the at-fault driver to justice. The standard of professionalism and integrity demonstrated in this matter is far below the high standard expected of the police.

In Ms. Lucier's submitted statement<sup>4</sup>, she described how she was further victimized by PC Tamminga's misconduct. She was misled and ignored. Ms. Lucier now feels uneasy when she sees a police officer and admits she has lost trust in the police. Clearly there is damage to the public trust and confidence in the police in this matter.

The public expects the police to do their jobs including law enforcement and assistance to victims of crime. PC Tamminga's misconduct demonstrated neglect in these areas and brought discredit to the OPP.

I consider public interest to be a strongly aggravating factor.

### Seriousness of the Misconduct

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<sup>4</sup> Exhibit#17 – Statement of Ms. Lucier

*Submissions:*

The prosecution submitted that PC Tamminga knew or ought to have known the seriousness of his misconduct as an experienced officer.

The prosecution referenced *Aguiar and Toronto Police Service (2010)*<sup>5</sup>, where OCPC emphasized the seriousness of experienced officers failing to comply with policies of which they should be aware as follows:

*The role of a police officer carries considerable authority. With that authority comes accountability. Constable Aguiar was a veteran police officer. As a senior member of the Service, he would have been abundantly familiar with Service policies and procedures relative to note-taking and preservation of Service property, i.e., notebooks, following supervisors' directions and rules for taking assigned lunch breaks or applying for authorization from a supervisor. Obeying lawful orders is non-negotiable. The community must have confidence in the police officers sworn to serve and protect.*

The prosecution further submitted that PC Tamminga's failure to lay appropriate criminal charges in a timely manner had major implications and as a result, the driver has not faced any legal consequences. PC Tamminga's failure to fulfill the investigative duties was further exacerbated by the fact that he misled Ms. Lucier about the status of the case. Due to PC Tamminga's failure to properly investigate this incident and lay the appropriate criminal charges in a timely manner Ms. Lucier was not entitled to access the VWAP. His neglect of duty was the reason Ms. Lucier was not able to access the support services from this program that she would have otherwise have qualified for and that she desperately needed. These implications for both the legal process generally, as well as Ms. Lucier personally, significantly aggravate the seriousness of the misconduct.

The prosecution further submitted that the seriousness of the misconduct was aggravated because PC Tamminga had other options that could have prevented this neglect of duty from occurring. PC Tamminga has acknowledged that he never sought help to fulfill his duties in this case. If PC Tamminga was facing personal and professional challenges, he could and should have spoken to his supervisors or other colleagues to get the support he needed. The fact that PC Tamminga had other options but chose not to pursue them is an aggravating factor.

The prosecution submitted that seriousness of the misconduct is a strongly aggravating factor and defence submitted that this was an aggravating factor.

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<sup>5</sup> Exhibit#18, TAB 10 – Aguiar and Toronto Police Service, OCPC, 2010ONCPC5, November 29, 2010.

### *Analysis and Findings:*

Seriousness of the misconduct is a fundamental consideration and arises in all disposition decisions.

The motor vehicle collision occurred on April 9, 2017. The first noted contact between PC Tamminga and Ms. Lucier took place on August 17, 2017 (Ms. Lucier was in hospital until August 1, 2017). Given that Ms. Lucier was in hospital recovering from the collision and also adjusting to the loss of her husband, limited contact in the beginning is not unreasonable.

However, limited contact between August 2017 and January 2018 deserves to be questioned. It was only after Ms. Lucier contacted a Staff Sergeant at the Essex County OPP Detachment on January 23, 2018 that PC Tamminga followed up as promised (August 17, 2017) and delivered a blank victim impact statement. Ms. Lucier was the victim of a motor vehicle collision who deserved to be appraised of the investigation and its status. PC Tamminga took responsibility at that time for his lack of communication.

In the ASoF, it states:

*In September 2017, six months after the collision, PC Tamminga formed the opinion, after legal consultation, that there were in fact reasonable grounds to charge the driver of the automobile with the charge of Dangerous Driving. He did not lay charges at that time.*

However, it wasn't until five months later, on February 04, 2018, that PC Tamminga charged the at-fault driver with the *Criminal Code* offences of Dangerous Driving Causing Bodily Harm and Dangerous Driving Causing Death with a court date of March 22, 2018. On March 21, 2018, PC Tamminga told Ms. Lucier not to attend court suggesting an administrative problem (not subpoenaed to court). In actual fact, PC Tamminga had not yet submitted the completed court brief which includes the formal process of filing the charges before the court. Not only did PC Tamminga mislead Ms. Lucier, he attempted to deflect blame from his own neglect.

Again in March 2018 and June 2018, Ms. Lucier made attempts to contact PC Tamminga with no return calls. Even after taking responsibility for his lack of communication early on, PC Tamminga continued with the same practice of not keeping Ms. Lucier apprised of the investigation and its status.



On May 24, 2018, Ms. Lucier was told the file was moving forward even though the required paperwork was not completed. Since March 21, 2018, a two month period had passed which allowed PC Tamminga time to address the issue by completing the court brief and accompanying court documents. Again, PC Tamminga misled Ms. Lucier by providing false information and remained neglectful in his actions to properly address the matter and bring the at-fault driver to justice.

Around June 11, 2018, the Crown Attorney's Office began making inquiries about the charges as a result of defence counsel seeking disclosure (for several months). In the absence of a court brief, the Crown Attorney's Office had no knowledge of the charges. Not only was PC Tamminga neglectful in his actions for failing to complete the required court documents, he also placed the Crown Attorney's Office in a difficult position thus compounding the issue.

On June 13, 2018, Ms. Lucier, in an email to PC Tamminga, expressed her frustration with the length of time the investigation was taking. On June 18, 2018, Ms. Lucier again contacted the Essex OPP Detachment and at that time threatened to contact the local MPP and local media. On the same date, PC Tamminga responded to Ms. Lucier where he advised her of the upcoming meeting with the Crown and suggested it was to set a date. In actual fact, it was to ensure the Crown received the court brief and to explain the delay. Again, PC Tamminga misled Ms. Lucier by being less than forthcoming with her and providing false information.

On June 21, 2018, PC Tamminga met with the Deputy Crown Attorney who expressed concerns about the delay. PC Tamminga accepted responsibility but did not provide any reasons for failing to conduct a proper investigation or for not completing the necessary paperwork.

On June 28, 2018, PC Tamminga spoke with Ms. Lucier who asked if a mistake had been made and he responded "no". PC Tamminga advised that the court brief was being reviewed and that he would keep her informed. On June 29, 2018, PC Tamminga sent an email to Ms. Lucier which indicated the Crown's office was closed and he had been assigned to marine duty. This was the last date that PC Tamminga and Ms. Lucier had been in contact.

On July 05, 2018, PC Tamminga learned from the Deputy Crown Attorney that due to a pre-charge delay, there was no longer a reasonable prospect of conviction. PC Tamminga told his Sergeant that he was going to move forward and submit the court brief which never happened. Even after a portion of the crown brief was already completed and reviewed, a completed brief was not submitted.

At no time did PC Tamminga bring any concerns to the attention of his supervisor. If PC Tamminga, a veteran police officer, was in fact facing either personal or professional challenges, he should have reached out to his supervisors or colleagues. PC Tamminga had options available to him and for whatever reason, chose not to pursue them resulting in this misconduct which could have been avoided.

PC Tamminga's failure in proceeding with criminal charges and submitting the required court documentation has resulted in the at-fault driver avoiding criminal prosecution for the collision. This driver will not be held accountable for his actions even though he admitted fault and was directly responsible for the collision.

PC Tamminga's failure to follow through with the criminal charges and applicable court documentation had a direct impact on Ms. Lucier's ability to seek support services from VWAP. PC Tamminga formed an opinion, after legal consultation, that there were reasonable grounds to proceed with criminal charges in September 2017. It was the direct result of PC Tamminga's neglect that Ms. Lucier was unable to access these services. Even after PC Tamminga committed to his supervisor to move forward with the charges in July 2018, he failed to do so again leaving Ms. Lucier without access to these services. It was at this point PC Tamminga and Ms. Lucier had no further contact. Ms. Lucier was the victim of a serious motor vehicle collision who deserved better service than what she received.

PC Tamminga neglected to maintain adequate contact with Ms. Lucier, misled her regarding the status of the investigation on more than one occasion, and provided false information. PC Tamminga's neglect was not a single act, instead it was an ongoing event over approximately 15 months. The fact that PC Tamminga took responsibility in January 2018 for his lack of communication should have been an indication that the matter was not being handled properly.

As Ms. Lucier's statement indicated, she now considers herself a victim of PC Tamminga's neglect which has added a new layer of pain and suffering because she was lied to and misled.

In the matter of *Aguiar and Toronto Police Service (2010)*, the OCPC decision noted that as a senior member, the officer should be familiar with applicable service policies and procedures. PC Tamminga is a senior member with more than 30 years of service as a police officer, 17 of which was with the OPP. PC Tamminga should be familiar with the applicable OPP policies in relation to Niche RMS, legal processes and notetaking. PC Tamminga's neglect included the fact that he did not follow OPP policy as it related to Niche RMS, legal procedures and notetaking.

I agree that PC Tamminga either knew or ought to have known the seriousness of his misconduct given his experience as a police officer.

I consider the seriousness of the misconduct to be a strongly aggravating factor.

### Recognition of the Seriousness of Misconduct

#### *Submissions:*

The prosecution submitted that PC Tamminga initially did not demonstrate a recognition of the seriousness of his misconduct despite the ongoing delays, he failed to respond to Ms. Lucier's increasingly frustrated messages in a timely manner. This continued for over a year, sometimes involving lengthy gaps without any communication. There is certainly a sense that her concerns were taken much more seriously only after she threatened to file complaints and contact the local media.

The prosecution further submitted that there appears to be a shift in PC Tamminga's recognition of the seriousness of the misconduct after Ms. Lucier filed her complaint with the OIPRD. PC Tamminga accepted full responsibility for neglecting his duties in an interview with PSB. He admitted that he failed to communicate effectively with Ms. Lucier, that he did not maintain the level of contact that was required, and that he was not forthcoming with the status of the investigation. He acknowledged that he did not follow OPP Policy as it related to the Niche records management system, legal procedures and notetaking. PC Tamminga has also plead guilty rather than proceed through a full hearing. By pleading guilty, he accepted responsibility for his actions, saved considerable time and financial resources for all parties and spared Ms. Lucier from the full impact of reliving each detail of this case through days of the hearing. Additionally, the prosecution noted that PC Tamminga was cooperative in the development of a just and accurate ASoF.

The prosecution submitted that the recognition of the seriousness of the misconduct is somewhat mitigating. The defence submitted that PC Tamminga's guilty plea should be considered a mitigating factor.

#### *Analysis and Findings:*

Recognition of the seriousness of the misconduct can be considered acceptance of responsibility and remorse which is a consideration when determining penalty.

PC Tamminga took responsibility for neglecting his duties and pled guilty to the misconduct. By pleading guilty, PC Tamminga has spared Ms. Lucier from the full impact of a hearing and having to relive the details of this case. PC Tamminga was also cooperative with the PSB investigation during the interview.

Given the opportunity, PC Tamminga addressed the tribunal as follows:

*I want to express my regrets that we have to be here. I acknowledge that I failed in this matter. I elected to plead guilty, rather than having a hearing and from the beginning have expressed my wish to do so. I did this because it was the right thing to do. For Ms. Lucier, for the OPP and even for myself. I take and have taken responsibility for my role.*

*Ms. Lucier, ... I have dropped "the ball" so to say. I have failed you in this matter and I am sorry for that. I would like you to know how ... I regret this and it will always be with me. I would ask also that you accept that it is not who I am or how I do my work. Nor should it be a reflection on how the OPP is or how it works.*

PC Tamminga did not dispute the misconduct, has accepted responsibility, has apologized for his actions, and was cooperative with the investigation and the development of the ASoF. I give credit to PC Tamminga for taking ownership of his neglect and admitting he failed Ms. Lucier in this matter.

I consider recognition of the seriousness of the misconduct to be a mitigating factor.

### Employment History

#### *Submissions:*

Ms. Hodge submitted a Career Profile<sup>6</sup> and three (3) accompanying Performance, Learning and Development Plans (PLDPs)<sup>7</sup> for consideration. Mr. MacKenzie submitted a Career Profile and four (4) accompanying PLDPs along with some loose records of appreciation and recognition for consideration. The Career Profiles and three of the four PLDPs were the same.

The prosecution submitted that PC Tamminga has a positive employment history overall. From when he joined the OPP until the neglect of duty started in 2017, PC Tamminga's career profile was exemplary. Since that time, there have been two

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<sup>6</sup> Exhibit#18, TAB 4 – Career Profile – PC Tamminga

<sup>7</sup> Exhibit#18, TAB 5 – 8 – Performance Learning and Development Plans (PLDPs) – PC Tamminga

notations of informal discipline. The first notation of informal discipline was for failing to complete a criminal investigation in accordance with OPP policy and procedures and failing to follow his supervisor's direction to amend police documents required for court. The second record of informal discipline was for failing to comply with the policy in his submission for a 2018 DRE investigation. Both instances were resolved through informal discipline with penalties of 24 hours each.

The defence submitted that PC Tamminga has been a police officer for over 31 years, the last 17 with the OPP. Prior to joining the OPP, PC Tamminga spent four years with the Chatham-Kent Police Service and ten years with the Toronto Police Service. There is no indication of any disciplinary history prior to joining the OPP. The defence further submitted that the timing in relation to the informal discipline matters is all around the same time as Ms. Lucier's case where PC Tamminga accepted responsibility for both. The defence submitted that PC Tamminga's employment history has been exemplary.

The prosecution submitted that employment history is a somewhat mitigating factor. The defence submitted that employment history is a mitigating factor.

*Analysis and Findings:*

Employment history represents an important disposition factor in all cases.

I am heavily impacted by employment history whether positive or negative. Previous history of misconduct or conversely, exemplary conduct can provide insight into an officer's ability to overcome the incident and rehabilitate.

I have carefully reviewed the Career Profile and PLDPs of PC Tamminga. PC Tamminga joined the OPP in June 2002 and had about 15 years of service with the OPP and 29 years of service as a police officer when the misconduct started in 2017.

The Career Profile lists a number of items including:

- Letter of appreciation from January 21, 2004 describing PC Tamminga's compassion and assistance at a serious motor vehicle collision;
- Commissioner's Citation for Lifesaving from April 19, 2006 in relation to a water rescue;
- Letter of thanks from November 15, 2007 for PC Tamminga's assistance with a disabled vehicle;
- Police Exemplary Service Medal from July 21, 2008 in recognition of 20 years of loyal and exemplary service to law enforcement;

- Letter of thanks from February 28, 2010 for PC Tamminga's professionalism, thoughtfulness, dedication and strong leadership in relation to the 2010 Vancouver Olympic Integrated Security Deployment;
- Letter of thanks from January 13, 2014 for PC Tamminga's professionalism and courtesy assisting a stranded motorist; and
- Letter of thanks from May 10, 2017 for a successful recruit referral.

These letters and awards all speak positively to PC Tamminga's employment history.

The Career Profile also lists two Records of Informal Discipline from an incident on July 13, 2017<sup>8</sup> and on August 03, 2018<sup>9</sup>. The first record pertained to not following the direction of a supervisor in relation to identified deficiencies in a court brief and for failing to submit the amended brief. PC Tamminga was silent on this issue until confronted by a Sergeant. PC Tamminga accepted a 24 hour penalty. The second record pertained to not following direction or policy in relation to investigative submissions required for court purposes which resulted in a court delay. PC Tamminga accepted a 24 hour penalty. I find that both records are similar to the misconduct involving Ms. Lucier whereby PC Tamminga failed to submit the required court documentation as was required of him. These incidents also took place around the same time as the misconduct involving Ms. Lucier however they were not addressed by way of penalty until April 2019. As such, with progressive discipline, I am unable to place any weight on these two records when considering sanction in this matter. Had the first record been addressed at the time or shortly thereafter and within the time of the misconduct involving Ms. Lucier, it would be given applicable weight.

The first PLDP from the evaluation period of June 24, 2015 to June 24, 2016 was completed by Sergeant Gruszka while employed at the Essex OPP – Lakeshore Detachment. This evaluation was a positive one with 4 out of 20 categories with exceeds ratings and the remaining 16 out of 20 categories that meet the requirements. In reference to the supervisor's comments, Sergeant Gruszka noted:

*[PC Tamminga] is a well-respected member of D platoon reporting out of the Lakeshore Detachment. [PC Tamminga] certainly defines the leadership principle of leading by example.*

The second PLDP from the evaluation period of Jun 24, 2016 to June 24, 2017 was completed by Sergeant Gruszka while employed at the Essex OPP – Lakeshore

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<sup>8</sup> Exhibit#10, TAB 8 – Record of Informal Discipline – COM009 – 2545019-0025 – July 13, 2017.

<sup>9</sup> Exhibit#18, TAB 9 – Record of Informal Discipline – COM009 – 2545019-0016 – August 03, 2018.

Detachment. This evaluation was a positive one with 3 out of 20 categories with exceeds ratings and the remaining 17 out of 20 categories that meet the requirements. In reference to the supervisor's comments, although unsigned, Sergeant Gruszka noted:

*PC Tamminga is a hard working well respected member of the Traffic Management Unit at the Essex County Detachment.*

*[PC Tamminga] continues to perform at a high level of enforcement.*

The third PLDP from the evaluation period of June 24, 2017 to June 24, 2018 was completed by Staff Sergeant Sakalo while employed at the Essex OPP – Lakeshore Detachment. This evaluation was a positive one with 2 out of 20 categories with exceeds ratings and the remaining 18 out of 20 categories that meet the requirements. In reference to the supervisor's comments, although unsigned, Staff Sergeant Sakalo noted:

*PC Tamminga can be counted on to carry out his duties with the [Traffic Management Unit] with little supervision.*

The fourth PLDP from the evaluation period of June 24, 2017 to 30 September 2019 was completed by Sergeant Lenehan while employed at the Essex OPP – Lakeshore Detachment. This evaluation was a positive one with 20 out of 20 categories that meet the requirements. I am unable to afford the ratings any weight in this PLDP as it is not clear if they reflect the informal discipline that PC Tamminga received. Although this evaluation appears incomplete, the supervisor's comments acknowledge knowing the reason for PC Tamminga's re-assignment and recent events but are not specifically mentioned. The comments overall were extremely positive about PC Tamminga's efforts and accomplishments.

The remaining loose records included an email from August 2017 acknowledging PC Tamminga's efforts assisting a platoon with workload; a general incident form from May 2018 acknowledging PC Tamminga's assistance with a person who was experiencing a mental health crisis; a general information form from November 2018 acknowledging PC Tamminga for involvement in a serious motor vehicle collision; and an email dated October 17, 2019 acknowledging PC Tamminga for how he had a positive, life changing impact on an individual. These all speak positively to PC Tamminga's employment history both during the period of misconduct involving Ms. Lucier and after.

I must agree that despite the most recent incidents of informal discipline and the misconduct matter involving Ms. Lucier, PC Tamminga had an exemplary career. He should be commended for his prior work history and I encourage PC Tamminga to continue forward as a contributing and committed member of the OPP.

I consider employment history to be a mitigating factor.

#### Potential to Reform or Rehabilitate the Police Officer

##### *Submissions:*

The prosecution submitted that PC Tamminga's overall positive employment record and his performance issues in the last few years renders his potential for reform uncertain. PC Tamminga's records show that for many years he was a highly valued, productive, positive member of the service. However, when evaluating the last couple years, PC Tamminga's work performance has suffered considerably.

The prosecution made reference for the Record of Informal Discipline from the incident on August 03, 2018 where he, in accepting the informal discipline, PC Tamminga wrote:

*HAVE ALL THE HOURS YOU WANT*

*YES SENSE THE FRUSTRATION*

The prosecution submitted that this comment does not suggest remorse or a desire to reform.

The prosecution raised concern about the fourth PLDP from the evaluation period of June 24, 2017 to 30 September 2019 suggesting it was incomplete and unsigned. The prosecution asked that it be given the applicable weight. The defence submitted that Sergeant Lenehan was fully prepared to testify to this PLDP and his comments.

The defence further submitted that there is no issue with PC Tamminga's potential to reform. PC Tamminga has sufficient service to effectively tender a resignation and receive a full pension. He could have walked away from this prosecution which would have left Ms. Lucier feeling more empty. PC Tamminga's instructions from the beginning were to plead guilty. PC Tamminga hopes that in pleading guilty and accepting responsibility, it provides some closure for Ms. Lucier.



The prosecution submitted that the potential to reform or rehabilitate is somewhat aggravating.

*Analysis and Findings:*

The potential to reform or rehabilitate speaks to the likelihood of recurrence and is closely connected with remorse and employment history.

I must agree that with the exception of the two Records of Informal Discipline and this misconduct involving Ms. Lucier, PC Tamminga had an exemplary career. In addition, PC Tamminga continues to receive recognition for positive work performance. Although I am unable to put any weight on the Records of Informal Discipline for the purposes of determining sanction, I will acknowledge that he accepted responsibility in each matter. I find that the comments of PC Tamminga in the second record disappointing and leave me to question his level of remorse.

In considering the PLDP from the evaluation period of June 24, 2017 to 30 September 2019, I agree that the evaluation appears incomplete and am unable to put any weight on the ratings as it is not clear if they reflect the Records of Informal Discipline. Sergeant Lenehan's comments were extremely positive suggesting that PC Tamminga was in fact moving forward and setting a positive example for others. I further noted the comments of PC Tamminga:

*I look forward to continuing my career. I believe we have crested a difficult hill and desire to "just move forward".*

The comments of PC Tamminga and Sergeant Lenehan suggest to me that rehabilitation is possible. As this PLDP is unsigned and not dated, it is not clear when these comments were made. I agree that since the period of evaluation extends back to June 24, 2017, the comments of the previous supervisor should have been included and would have carried more weight.

I acknowledge that PC Tamminga does have sufficient service that he could have retired thus effectively removing this tribunal's jurisdiction to proceed on this matter. I commend PC Tamminga for accepting responsibility and pleading guilty to this misconduct to, as suggested, provide some closure to Ms. Lucier.

Given PC Tamminga's employment history, the ongoing recognition for positive work performance, acceptance of responsibility and his apology, I believe that the likelihood of future misconduct is unlikely and there appears to be a desire to move forward and put this misconduct behind him.

I consider the potential to reform or rehabilitate to be a mitigating factor.

### Specific and General Deterrence

#### *Submissions:*

The prosecution submitted that neglect of duty undermines public trust. The public needs to see that police officers are held accountable to uphold the high professional and ethical standards expected of them.

The prosecution further submitted that the proposed sanction would send a meaningful statement to all members of the OPP that such misconduct will not be tolerated. The public should feel confident that when an OPP officer is called, the officer will do their job in a professional, thorough and timely manner. The public should be able to trust the officers.

The prosecution further submitted that this sanction would also serve as a meaningful reminder to PC Tamminga to conduct himself differently in the future. Specific deterrence is an important factor in this case. The misconduct in this case encompasses a series of incidents that took place throughout a time span of over a year and was not an isolated incident. It was a prolonged failure to fulfill PC Tamminga's duties.

The defence submitted that there is no need for specific deterrence. There is no pattern of misconduct or formal discipline requiring deterrence. The defence submitted that general deterrence is necessary to demonstrate that police officers will be held accountable for neglecting their duty.

The prosecution submitted that specific and general deterrence are both aggravating factors.

#### *Analysis and Findings:*

Deterrence of the respondent officer (specific deterrence) and of other police officers (general deterrence) is a recognized objective of police discipline.

I agree that the public, including Ms. Lucier, needs to know that police officers will be held accountable for the high professional and ethical standards expected of them.

I acknowledge that this misconduct occurred over a number of months and was not an isolated incident. As I believe that the likelihood of future misconduct is unlikely, I do not believe specific deterrence in this matter is necessary.

Misconduct of this nature does undermine public trust. The public must be assured that police officers will do their jobs in a professional, thorough and timely manner. I find that general deterrence is necessary and the sanction will demonstrate to other members of the OPP that such misconduct will not be tolerated.

I consider specific deterrence to be a neutral factor and general deterrence to be an aggravating factor.

#### Effect on Police Officer and Police Officer's Family

##### *Submissions:*

The prosecution submitted that a temporary demotion could impact PC Tamminga and his family and that this could be a mitigating factor in determining his penalty. When considered as part of the whole context of relevant factors, this factor is mitigating but must be balanced against the public interest, the damage to the OPP's reputation, the seriousness of the misconduct and the need for deterrence.

##### *Analysis and Findings:*

The effect on the police officer and police officer's family is a consideration based on the officer's particular circumstances.

I agree that any penalty could impact PC Tamminga and his family however in the absence of any specific information, the seriousness of this misconduct and other factors, the sanction is appropriate and within the range of penalties.

I consider the effect on the police officer and police officer's family to be a neutral factor.

#### Consistency of Disposition

##### *Submissions:*

The prosecution submitted that there is a broad range of penalties that have been imposed for neglect of duty.

The prosecution and defence each submitted a Book of Authorities for consideration.

*Analysis and Findings:*

The consistency of the disposition is one of the basic principles of the discipline process and ensures that similar misconduct is treated in a similar fashion.

*Ontario Provincial Police and Lad (2018)*<sup>10</sup>, is a matter that involved an OPP Officer who was originally charged with neglect of duty and deceit. PC Lad responded to a call for service involving the death of a family dog that was shot. PC Lad failed to conduct a proper investigation, was unprofessional with a member of the public, misled PSB investigators and provided false information in his duty report. PC Lad pled guilty to discreditable conduct and was ordered demoted from First Class Constable to Second Class Constable for 6 months.

I find the matter of *Lad (2018)* to be more serious than PC Tamminga's misconduct. PC Lad failed to conduct a proper investigation and was unprofessional with a member of the public. There was also an element of deceit in *Lad (2018)* where he misled investigators and falsified paperwork, which are significant factors. I have also considered the similarities between these matters which include a public complainant, both pled guilty, both were senior members, as well as mitigating and aggravating factors. I find this matter is of some assistance in determining penalty and note it is a recent case.

*Ontario Provincial Police and Jansen (2018)*<sup>11</sup> is a matter that involved an OPP Officer who was charged with neglect of duty. PC Jansen intentionally withheld information in relation to an ATV collision involving serious injuries which he was a witness to. It wasn't until almost six years after the incident, he disclosed this fact to a supervisor. PC Jansen pled guilty to neglect of duty and was ordered demoted from First Class Constable to Second Class Constable for a period of 1 year.

I find the matter of *Jansen (2018)* to be more serious than PC Tamminga's misconduct given PC Jansen's neglect involved the withholding of relevant information from investigators for a number of years. There was also an element of deceit in this matter which is a significant factor. PC Jansen did eventually come forward on his own, cooperated with investigators and pled guilty. I find this matter is of little assistance in determining penalty.

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<sup>10</sup> Exhibit#18 – TAB 14 – Ontario Provincial Police and Lad, OPP, 2531017-0034, September 10, 2018.

<sup>11</sup> Exhibit#18 – TAB 12 – Ontario Provincial Police and Jansen, OPP, 2545017-0097, June 1, 2018.

*Ontario Provincial Police and Pigeau (2017)*<sup>12</sup> is a matter that involved an OPP Officer who was originally charged with neglect of duty and deceit. PC Pigeau failed to follow proper policy and procedure with respect to notebooks and associated confidential informant documentation. PC Pigeau pled guilty to neglect of duty and discreditable conduct and was ordered demoted from First Class Constable to Second Class Constable for a period of 2 years.

I find the matter of *Pigeau (2017)* to be more serious than PC Tamminga's misconduct given PC Pigeau's neglectful acts were ongoing between 2007 and 2013. PC Pigeau had corrective action taken against him for similar circumstances in 2010. There was also an element of deceit in this matter where he misled supervisors and PSB investigators and also communicated false information to the federal Crown Attorneys which are significant factors. I find this matter is of little assistance in determining penalty.

*Ontario Provincial Police and Pigeau (2018)*<sup>13</sup> is a matter that involved an OPP officer who was charged with discreditable conduct and deceit. PC Pigeau was less than forthcoming and misled police investigators in relation to an Impaired Driving investigation where he was covering for a friend. This matter was further aggravated by PC Pigeau's failure to stop his friend from driving when given the opportunity, failure to report the incident, he attempted to assist his friend by removing the vehicle and involved his girlfriend. PC Pigeau pled guilty to discreditable conduct and deceit and was ordered demoted from Second Class Constable to Third Class Constable for a period of 3 years.

I find the matter of *Pigeau (2018)* to be of no assistance to me in determining penalty.

*Stitt and York Regional Police (1997)*<sup>14</sup> is an OCPC appeal matter that involved a York Regional Police Constable who was charged with two counts of neglect of duty and one count of deceit. Constable Stitt was idle on duty and failed to respond to a request for assistance in relation to a commercial break in. Constable Stitt was found guilty on all three counts and was ordered to forfeit 8 hours of pay for the first count of neglect; demoted from First Class Constable to Second Class Constable for a period of 1 year for the second count of neglect; and a forfeiture 40 hours for the count of deceit. On appeal, the penalty for the second count of neglect was varied to a demotion of 6 months and the penalty for the deceit was varied to 16 hours of pay.

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<sup>12</sup> Exhibit#18 – TAB 17 – Ontario Provincial Police and Pigeau, OPP, 2545016-0062, February 22, 2017.

<sup>13</sup> Exhibit#18 – TAB 18 – Ontario Provincial Police and Pigeau, OPP, 2545017-0010, February 15, 2018.

<sup>14</sup> Stitt and York Regional Police Service, OCPC, February 28, 1997.

I find the matter of *Stitt* (1997) to be of no assistance to me in determining penalty.

*Ontario Provincial Police and Johnson* (2018)<sup>15</sup> is a matter that involved an OPP officer who was charged with neglect of duty. PC Johnson was the lead investigator of an ATV related collision involving the death of one of the riders. PC Johnson failed to interview all the witnesses until directed to do so, failed to seek direction or advice from a supervisor in relation to interviewing witnesses outside of OPP jurisdiction, failed to re-interview a witness when directed to do so and failed to follow up in relation to inconsistencies in some of the witness statements. PC Johnson pled guilty to neglect of duty and was ordered to forfeit 48 hours.

I find the matter of *Johnson* (2018) to be less serious than PC Tamminga's misconduct. PC Johnson was an inexperienced officer while PC Tamminga was a veteran officer. PC Johnson failed to properly investigate the collision and failed to follow the direction of a supervisor. I have also considered the similarities between these matters which include a death related investigation, positive employment history, public complainant, first formal discipline matter, both pled guilty, both failed to maintain communication with a victim, both had not sought assistance of a supervisor, as well as mitigating and aggravating factors. I find this matter is of some assistance in determining penalty and note it is a recent case.

*Ontario Provincial Police and Quemby* (2019)<sup>16</sup> is a matter that involved an OPP officer who was charged with neglect of duty. PC Quemby was the lead investigator in a sexual assault. PC Quemby failed to properly and thoroughly investigate the matter and made inappropriate comments to the victim. PC Quemby pled guilty to neglect of duty and was ordered to forfeit 80 hours.

I find the matter of *Quemby* (2019) to be less serious than PC Tamminga's misconduct. PC Tamminga's matter involved a death and the serious life-altering injuries of Ms. Lucier. I have also considered the similarities between these matters which include a public complainant, both pled guilty, a mishandled investigation resulting in the at-fault individual(s) evading criminal prosecution, a failure to follow policy with respect to legal processes, involvement of the Crown Attorney's Office as well as mitigating and aggravating factors. I find this matter of assistance in determining penalty and note it is a recent case.

*Dinsdale and Ontario Provincial Police* (2004)<sup>17</sup> is an OCPC appeal matter that involved an OPP officer who was charged with neglect of duty. PC Dinsdale was the

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<sup>15</sup> Ontario Provincial Police and Johnson, OPP, 2531015-0240, July 31, 2018.

<sup>16</sup> Ontario Provincial Police and Quemby, OPP, 2531017-0371, August 12, 2019.

<sup>17</sup> Dinsdale and Ontario Provincial Police, OCPC, OCPC-04-014, December 30, 2004.

lead investigator of a fatal motor vehicle collision involving the death of five family members and the serious injury of two others. PC Dinsdale failed to conduct a proper investigation. Constable Dinsdale pled guilty to neglect of duty and was ordered to forfeit 20 days or 160 hours of pay. On appeal, the penalty was varied to 6 days or 48 hours off.

I find the matter of *Dinsdale* (2004) to be less serious than PC Tamminga's misconduct. PC Dinsdale, although a senior officer, did raise a concern with his supervisor about level of experience at the time of the event. After consultation with the crown, the at-fault driver was charged with Careless Driving under the *Highway Traffic Act*. The applicable court documentation was delayed and incomplete although not all deficiencies were attributable directly to PC Dinsdale. Additionally, PC Dinsdale failed to interview essential witnesses and failed to complete tasks as requested by the Crown Attorney. The involved Acting Sergeant was also charged with neglect of duty. The appeal decision includes mention that the penalty must take into account the systemic failure around this investigation and further noted:

*Constable Dinsdale pled guilty to misconduct. The seriousness of the fatal accident should not be allowed to overshadow the Hearing Officer's balanced review of the evidence presented, both positive and negative, taking into account the myriad of factors and the organizational/institutional context in which the neglect occurred.*

I have also considered the similarities between these matters including the fact that both pled guilty, and both were senior officers with positive employment records. I find this matter is of some assistance in determining penalty but is also 15 years old.

*Ontario Provincial Police and Clark* (2016)<sup>18</sup> is a matter that involved an OPP officer who was charged with neglect of duty. PC Clark responded to an assault and failed to investigate the matter properly or take the required actions in accordance with policy. PC Clark pled guilty to neglect of duty and was ordered to forfeit 60 hours.

I find the matter of *Clark* (2016) to be less serious than PC Tamminga's misconduct. PC Clark failed to take the steps necessary to investigate the assault, failed to make proper notifications and failed to properly record the incident in accordance with policy. The at-fault suspect was later charged and held accountable for their actions. I have also considered the similarities between these matters including the fact that both officers took responsibility and pled guilty, as well as mitigating and aggravating factors. I find that this matter is of some assistance in determining penalty and note that it is a fairly recent case.

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<sup>18</sup> Ontario Provincial Police and Clark, OPP, 2545015-0151, November 03, 2016.

*Ontario Provincial Police and Neild (2016)*<sup>19</sup> is a matter that involved an OPP officer who was charged with neglect of duty. Sergeant Neild failed to properly supervise a death investigation and summons the appropriate resources. Sergeant Neild was found guilty of neglect of duty and was ordered to forfeit 24 hours.

I find the matter of *Neild (2016)* of no assistance to me in determining penalty.

I appreciate the case submissions from the defence and prosecution which assist me in determining an appropriate penalty. I find that the range of penalties in the noted authorities are within the range of a 24 hour forfeiture to a 3 year demotion in rank. The range for consideration is between a 48 hour forfeiture and 6 month demotion in rank. At the 6 months, the matter involved an element of deceit which is a serious integrity issue and is not the same here. Similarly, in considering 48 hours or 80 hours, this matter involves a neglect of duty that allowed the at-fault driver to evade criminal prosecution, involved the crown attorney's office, involved a misconduct that that was ongoing for a period of time, involved a senior member and involved a misconduct that prevented the victim from accessing needed services. A 120 hour forfeiture is considered reasonable given the comparable cases and within the range of penalties.

#### Damage to the Reputation of the Police Force

##### *Submissions:*

The prosecution submitted that when an officer neglects their duties, they cause damage to the reputation of the police force. Damage to the OPP's reputation harms the public's respect for the police and reduces the public's willingness to cooperate with police.

The prosecution submitted that PC Tamminga's conduct has negatively impacted Ms. Lucier's trust in the OPP. In Ms. Lucier's submissions, she stated that this incident has caused her to lose faith in the OPP. She expressed substantial frustration and distrust. She reflected on how she sees the police differently now. Before the accident, she felt safe and secure but now she feels anxious when she sees the police. Ms. Lucier wonders if she can trust the police to help her and whether she can trust them to do their jobs.

The prosecution further submitted that the impact has also extended to the general public and the trust they have in the OPP. Ms. Lucier explained that she frequently

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<sup>19</sup> Ontario Provincial Police and Neild, OPP, 2545015-0051, December 9, 2016.



gets asked about what happened to the driver and that she feels embarrassed having to explain that the driver will never face legal consequences because of PC Tamminga's conduct. When members of the public hear how a driver admitted fault at the scene, that killed one person and severely injured another ended up evading legal consequences because of a failure by the police, undermines public trust in police.

The prosecution further submitted that this misconduct has also negatively impacted the professional relationship with other justice section partners. The successful functioning of our justice system depends on police officers and crown attorneys being able to work together effectively and with trust. This case created significant frustrations for the crown attorney's office and tensions between the OPP and the crown's office. It is ultimately the crown who will need to address any delay issues raised by defence. When the actions of police officers impede the ability for crowns to do their jobs, the relationship between the police and crown attorneys is damaged. This sentiment is reinforced in the disposition in *Ontario Provincial Police and Pigeau* (2017) where the Hearing Officer states:

*The OPP has worked long and hard to build trust with the Public Prosecutions Service of Canada and actions like this undermine that trust in an instant. Undermining the confidence and trust that other law enforcement agencies place in the OPP is clearly unacceptable and damages the reputation of the OPP.*

*Anytime a police officer exhibits behaviour which results in a guilty finding arising from the Code of Conduct, it damages the reputation of their police service.*

The prosecution submitted that damage to the reputation of the police force is an extremely aggravating factor. The defence acknowledged there has been damage to the reputation of the OPP and submitted that this is an aggravating factor.

#### *Analysis and Findings:*

Damage to the reputation of the police force is a standard disposition consideration.

In this matter, the reputation of the OPP has clearly been damaged. Both public damage and damage to the relationship with the Crown Attorney's office has occurred from PC Tamminga's misconduct.

Ms. Lucier, a member of the public, is a victim of PC Tamminga's misconduct because she was lied to and misled. Ms. Lucier's statement notes:

*At this time, I have lost my trust in most of them except for a few. I have little respect for some. I only hope that over time I will once again regain my trust and respect for these officers who are out there to protect us.*

Ms. Lucier's own statement describes the loss of trust in the OPP. Additionally, when considering the extended general public, Ms. Lucier's statement notes:

*People ask me all the time, what ever happened to the driver? I tell them how Paul and I were let down by the officer handling the investigation. I must tell them that the at fault driver will never be charged or be before the courts. They are astounded. How can that be, they say to me? I, with embarrassment must tell them how PC Tamminga let the file and me drag on so long it is now impossible to press charges.*

Knowledge of the fact that the at fault driver will never be charged or brought before the courts along with the fact that PC Tamminga allowed this to "drag on", puts a negative spotlight on the OPP and its handling of this investigation. Although PC Tamminga is mentioned by name, he represents the organization and in turn, the reputation of the organization is damaged.

I must also consider the damage done to the reputation between the OPP and the Crown Attorney's office. As the ASoF notes:

*Staff Sergeant Sakalo was informed that the Crown's office was "extremely upset". The Crown's office was concerned that there may be complications related to the delay and abuse of process.*

As a justice service partner, the relationship between the OPP and the local Crown Attorney's office is an important one as they work together to deliver on public safety commitments to the community. The Crown Attorney's office trusts the OPP do their job as the OPP trusts the Crown Attorney's to do theirs. This misconduct has a negative impact on that trust and directly damages the relationship between the two partners.

Public awareness of this misconduct exists and has a negative impact on the OPP. Furthermore, the awareness of this matter by the Crown Attorney's Office negatively impacts the relationship between that office and the OPP. This negative impact reflects poorly on the organization as a whole and each of its members. While the

degree of damage is difficult to measure, the damage in this matter is significant. It is not too much to ask the police to do their job by investigating the matter and holding people accountable by bringing them to justice.

The sanction in this matter must demonstrate to the public, our partners and other members that the police service takes this misconduct seriously.

I consider damage to the reputation of the police force to be a strongly aggravating factor.

### Effect of Publicity

#### *Submissions:*

The prosecution submitted that there has been limited publicity regarding this occurrence apart from the initial accident. In terms of the broader public, Hearing Officers have considered what the public might hypothetically think of the misconduct if it were to become known. In *Martin and Windsor Police Service (2009)*<sup>20</sup>, the Commission noted:

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

It is also well known that the media often requests access to police misconduct records, a concern that has been recognized in other cases such as in *Ontario Provincial Police and Jansen (2018)*. If the general public were to learn about PC Tamminga's misconduct, this information would likely cause significant concern and undermine trust in police.

The prosecution submitted that effect of publicity is an aggravating factor.

#### *Analysis and Findings:*

Effect of publicity is a disposition consideration that can further impact the reputation of the police service and/or the involved police officer.

I agree with prosecution that the potential exists for media to request access to police misconduct records as supported in *Jansen (2018)*:

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<sup>20</sup> Exhibit#18, TAB 15 – Martin and Windsor Police Service, OCPC, OCCPS-09-12, August 17, 2009.

*All misconduct is a concern. It is well known that the media often request access to police misconduct records.*

As previously mentioned, public awareness of this misconduct has had a negative impact on PC Tamminga and the OPP. The addition of publicity on this matter will further the reputational harm of the OPP and its members. The consequences will negatively impact both the OPP and PC Tamminga.

I consider the effect of publicity to be an aggravating factor.

### **Conclusion**

I have considered the cases referenced by the prosecution and defence counsel, assessed all the relevant penalty principles and weighed each, given the aggravating and mitigating factors.

PC Tamminga has been found guilty of misconduct based on clear and convincing evidence. Based on my analysis and the totality of the circumstances, I find the penalty meets the goals of discipline and is a fair and consistent sanction.

### **PART IV: DISPOSITION**

#### **Disposition**

I order that PC Tamminga forfeit 120 hours off, to be worked without compensation, under the direction of, and in agreement with the Detachment Commander.

This order is made pursuant to section 85(1)(f) of the *Police Services Act*, R.S.O. 1990.

X



Shawn Nash  
Inspector  
OPP Adjudicator

Date Electronically Delivered: 10 January 2020

## Appendix A

The following exhibits were tendered during the hearing:

- Exhibit#1 – Delegation – Adjudicator – Superintendent Taylor (I/Commissioner Couture)
- Exhibit#2 – Delegation – Adjudicator – Superintendent Bickerton (I/Commissioner Couture)
- Exhibit#3 – Designation – Prosecutor – Inspector Doonan (I/Commissioner Couture)
- Exhibit#4 – Designation – Prosecutor – Inspector Young (I/Commissioner Couture)
- Exhibit#5 – Designation – Prosecutor – A/Inspector LePage (I/Commissioner Couture)
- Exhibit#6 – Delegation – All Officers (I/Commissioner Couture)
- Exhibit#7 – Delegation – Adjudicator – Superintendent Taylor (Commissioner Carrique)
- Exhibit#8 – Delegation – Adjudicator – Superintendent Bickerton (Commissioner Carrique)
- Exhibit#9 – Designation – Prosecutor – Inspector Doonan (Commissioner Carrique)
- Exhibit#10 – Designation – Prosecutor – Inspector Young (Commissioner Carrique)
- Exhibit#11 – Designation – Prosecutor – A/Inspector LePage (Commissioner Carrique)
- Exhibit#12 – Delegation – All Officers (Commissioner Carrique)
- Exhibit#13 – Delegation – Adjudicator – Inspector Nash (Commissioner Carrique)
- Exhibit#14 – Designation – Prosecutor – Erika Hodge (Commissioner Carrique)
- Exhibit#15 – Agreed Statement of Facts
- Exhibit#16 – Public Complainant Statement – Ms. Lucier
- Exhibit#17 – Victim Impact Statement – Ms. Lucier
- Exhibit#18 – Prosecutor's Book of Documents / Authorities