



TORONTO POLICE SERVICE DISCIPLINE HEARING

IN THE MATTER OF ONTARIO REGULATION 268/10
MADE UNDER THE POLICE SERVICES ACT, RSO 1990,
AND AMENDMENTS THERETO:

IN THE MATTER OF THE

THE TORONTO POLICE SERVICE

AND CONSTABLE MATTHEW BREWER (90065)

Charge: 38.2018 - 1) Discreditable Conduct
 53.2018 2) Discreditable Conduct
 3) Use profane, abusive or insulting language to any
 other member of a police force
 52.2019 4) Discreditable Conduct

PENALTY DECISION

Hearing Officer: Superintendent Riyaz J. Hussein; Toronto Police Service

Prosecutor: Ms. Alexandra Ciobotaru, Toronto Police Service

Defence Counsel: Mr. David Butt

Case Number: 38.2018 / 53.2018 / 52.2019

Hearing Dates: 2020.03.10 (Guilty Plea)
 2020.09.10 (Penalty Submissions)

Decision Date: 2021.07.29

Before commencing my decision on penalty and sentencing in this matter, I would like to thank Mr. David Butt, Defence Counsel, and Ms. Alexandra Ciobotaru, the Service Prosecutor, for their submissions as to penalty and exhibits tendered, all of which have assisted me in reaching my decision.

Note: This decision is divided into four parts: PART I: OVERVIEW; PART II: THE HEARING; PART III: ANALYSIS AND FINDINGS FOR DISPOSITION; and PART IV: DISPOSITION.

PART I: OVERVIEW

Background

1. Constable Matthew Brewer # 90065 commenced his employment with the Toronto Police Service (TPS) in 2002. PC Brewer presently holds the rank of First Class Constable and is currently assigned to the Professional Standards Investigations Unit.

Allegations of Misconduct

2. **Charge 1:** Constable Matthew Brewer # 90065, being a member of the Toronto Police Service, you are alleged to have committed misconduct in that you did act in a disorderly manner prejudicial to discipline or likely to bring discredit upon the reputation of the police force, contrary to Section 2 (1) (a) (xi) of the Schedule Code of Conduct of Ontario Regulation 268/10 and therefore, contrary to Section 80(1) (a) of the Police Services Act, R.S.O. 1990, as amended. The particulars of the allegation are:

Being a member of the Toronto Police Service, you were attached to 51 Division in a uniform capacity.

On September 25, 2016, you were on duty and flagged down for an assault that just occurred at 589 Yonge Street, Toronto.

You and your partner, Police Constable Michael TATTERSALL (65668) located the accused T.H. T.H. fled the area on foot and was being pursued by PC TATTERSALL (65668). After a brief foot pursuit T.H. was stopped and a struggle ensued; additional officers assisted.

T.H. was eventually handcuffed and placed in the rear of one of the scout cars. On route to the police station, T.H. appeared to be pushing at the back door with his legs. The vehicle was stopped; you opened the back door and engaged T.H. in conversation.

You cautioned T.H. about mischief.

You used profanity, as you directed T.H. to stop damaging the door. You deployed your oleoresin capsicum (OC) aerosol spray on T.H., in an attempt to gain compliance.

T.H. was transported to 51 Division, then to St Michael's Hospital for medical treatment.

In doing so, you committed misconduct in that you did act in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the Toronto Police Service.

Charge 2: Constable Matthew Brewer # 90065, being a member of the Toronto Police Service, you are alleged to have committed misconduct in that you did act in a disorderly manner prejudicial to discipline or likely to bring discredit upon the reputation of the police force, contrary to Section 2 (1) (a) (xi) of the Schedule Code of Conduct of Ontario Regulation 268/10 and therefore, contrary to Section 80(1) (a) of the Police Services Act, R.S.O. 1990, as amended. The particulars of the allegation are:

Being a member of the Toronto Police Service, you were attached to 54 Division in a uniform capacity.

On Saturday, July 7, 2018, at approximately 19:30 hours, you attended the LA Fitness located at 350 Taunton Road East in Whitby,

L.D. was at LA Fitness at the time. You approached L.D. and you yelled abusive, insulting language at her. You threw her keys and water bottle against a wall.

On your way out of the building, you kicked over a garbage can, damaging the can and scattering garbage on the floor.

This incident occurred in front of the staff and other fitness club members.

In doing so, you committed misconduct in that you did act in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the Toronto Police Service.

Charge 3: Constable Matthew Brewer # 90065 being a member of the Toronto Police Service, you are alleged to have committed misconduct in that you did use profane, abusive or insulting language to any other member of a police force, contrary to Section 2(1) (a) (iv) of the Schedule Code of Conduct of Ontario Regulation 268/10 and therefore, contrary to Section 80(1) (a) of the Police Services Act, R.S.O. 1990 as amended. The particulars of the allegation are:

Being a member of the Toronto Police Service, you were attached to 54 Division in a uniform capacity.

Between Friday, July 6, 2018, and Saturday, July 7, 2018, you acted in an abusive and disrespectful manner during a telephone conversation and a text message exchange with Staff Sergeant David ZEBESKI (7674).

On Friday, July 6th, 2018, S/Sgt. ZEBESKI received a text message that read, "*we need to talk*". He phoned the number in order to identify the sender and when asked to identify yourself, you yelled your name "*Matt Brewer*".

S/Sgt, ZEBESKI noted the time of the first text message that he received from you and recorded some of the things you said to him. Inappropriate remarks you made included: "*You are fucking my wife...I'm gonna fuck you three ways from Friday*" and "*a fucking staff sergeant whose ass I'm gonna kick*".

On Saturday July 7th, 2018, you also sent the following text messages to S/Sgt. ZEBESKI, "*You're a funny guy...maybe we should talk about this like a couple of men*". And "*Exactly bitch*".

In doing so, you committed misconduct in that you did use profane, abusive or insulting language to any other member of the Toronto Police Service.

Charge 4: Constable Matthew Brewer # 90065, being a member of the Toronto Police Service, you are alleged to have committed misconduct in that you are guilty of a criminal offence that is an indictable offence or an offence punishable upon summary conviction, contrary to section 2(1) (a) (ix) of the Schedule Code of Conduct of Ontario Regulation 268/10 and therefore, contrary to Section 80(1) (a) of the Police Services Act, R.S.O. 1990 as amended. The particulars of the allegation are:

Being a member of the Toronto Police Service, assigned to 55 Division, you were off duty.

On Sunday May 5, 2019, Durham Regional Police (DRP) received a radio call to attend an address for a Personal Injury Accident. DRP officers attended the location and located two individuals involved in the incident.

You identified yourself as a member of the Toronto Police Service with your warrant card and badge. DRP officers immediately noticed signs of impairment. You were

subsequently arrested at 4:12pm. You were rude and belligerent to officers, firefighters, and paramedics who attended the scene.

Both vehicles involved in the accident sustained extensive damage. You complained of injuries and were taken to the hospital to be assessed by medical professionals. A DRP breath technician attended the hospital and conducted breath tests. You provided two readings:

Test 1: Registered at 291 mgs of alcohol in 100 ml of blood

Test 2: Registered at 287 mgs of alcohol in 100 ml of blood

On October 9, 2019, you plead guilty before the Honourable Justice Peter West at the Durham Region Courthouse in Oshawa to Dangerous Operation of a Motor Vehicle and Impaired Driving. You received an immediate one year driving prohibition with sentencing to take place on November 21, 2019.

Your actions are contrary to the Standards of Conduct the Toronto Police Service imposes on its members. In doing so, you committed misconduct in that you are guilty of a criminal offence that is an indictable offence or an offence punishable upon summary conviction.

Plea

3. On March 10, 2020, Constable Matthew Brewer # 90065, pleaded guilty and was found guilty of Discreditable Conduct x 3 and Use profane, abusive or insulting language to any other member of a police force (Charge 1,2,3 & 4), contrary to the Police Services Act.

Decision

4. I have carefully considered the submissions and relevant information presented by both the Prosecutor and Defence Counsel as well as reviewed previous Tribunal Decisions. In light of the mitigating and aggravating circumstances, and in particular, the seriousness of the matters, I impose the following sanction under Section 85(1) (b) of the Police Services Act (PSA).

For Discreditable Conduct x 3 in that PC Brewer is guilty of: Did act in manner prejudicial to discipline or likely to bring discredit upon the reputation of the Toronto Police Service and further For Use Profane, abusive or insulting language or is otherwise uncivil to a member of a Police Service – *resign within 7 days or be dismissed from the date of the judgement.*

My reasons for this are as follows.

PART II: THE HEARING

Exhibits

5. The exhibits for this matter are listed in Appendix 'A', attached hereto. To avoid repetition, all exhibits will be referred to by number without the preface of Appendix 'A'.

Representation

6. In this matter, Mr. David Butt represented PC Brewer during the Hearing and Ms. Alexandra Ciobotaru represented the TPS.

Agreed Statement of Facts (ASoF)

7. The facts of this matter as amended are substantially agreed upon by the parties. The ASoF, filed as Exhibit 4, state:

38.2018 - Pepper Spray

On September 25, 2016, PC Brewer was on duty and flagged down for a serious assault that just occurred at 589 Yonge Street, Toronto.

T.H., who has a long criminal record, was high on an illicit substance. He had entered a fast food restaurant on the night in question and used belligerent and racist profanity toward the restaurant staff. A customer spoke to T.H. about his behavior. T.H. said "I will fucking kill you white boy", reached into his pocket, pulled out a knife, and stabbed the patron in the face, causing a three-inch gash.

PC Brewer and his partner, Police Constable Michael Tattersall (65668) located the accused T.H. who fled the area on foot. After a brief foot pursuit, T.H. was stopped and resisted violently. A struggle ensued; additional officers assisted.

T.H. was eventually handcuffed and placed in the rear of one of the scout cars.

The knife with the restaurant patron's blood on it was found at the scene.

On route to the police station, T.H. appeared to be pushing at the back door with his legs. The vehicle was stopped, and PC Brewer opened the back door and engaged T.H. in conversation. PC Brewer cautioned T.H. about mischief.

PC Brewer used profanity, as he directed T.H. to stop damaging the door. PC Brewer deployed his oleoresin capsicum (OC) aerosol spray on T.H., in an attempt to gain compliance. T.H. was transported to 51 Division, then to St Michael's Hospital for medical treatment.

The matter proceeded through the Courts and was marked for Trial from December 5th to 8th, 2017. The presiding Judge found PC Brewer's testimony to be "for the most part candid (and quite heartbreaking regarding his current condition)". But the Judge rejected Constable Brewer's evidence on the use of the O.C. spray and agreed with the Crown concession that use of O.C. spray on T.H. in the back of the scout car was excessive force. The Judge stayed

the charges against T.H. for assaulting the arresting officers, but T.H. was convicted of assault with a weapon and threatening death for his knife attack on the innocent restaurant patron.

53.2018 - Supervisor

Between Friday, July 6, 2018, and Saturday, July 7, 2018, PC Brewer acted in an abusive and disrespectful manner during a telephone conversation and a text message exchange with Staff Sergeant David Zebeski (7674).

Prior to Friday, July 6th, 2018, Constable Brewer was in receipt of information that led him to believe that S/Sgt. Zebeski had been intimate with his common law partner. Constable Brewer was very upset about this information.

On July 6, 2018, S/Sgt. Zebeski received a text message from PC Brewer that read "we need to talk". S/Sgt Zebeski called PC Brewer.

S/Sgt, Zebeski noted the time of the first text message that he received from PC Brewer and recorded some of the things that were said to him. Inappropriate remarks made by PC Brewer included: "You are fucking my wife", "I'm gonna fuck you three ways from Friday" and "a fucking staff sergeant whose ass I'm gonna kick."

On Saturday July 7th, 2018, PC Brewer also sent the following text messages to S/Sgt. Zebeski: "You're a funny guy...maybe we should talk about this like a couple of men." and "Exactly bitch".

53.2018 - LA Fitness

On Saturday, July 7, 2018, at approximately 19:30 hours, while still angry about the belief that S/Sgt. Zebeski was being intimate with his common law partner, PC Brewer attended the LA Fitness located at 350 Taunton Road East in Whitby. His common law partner was at LA Fitness at the time.

PC Brewer approached his common law partner and yelled abusive, insulting language at her. PC Brewer threw her keys and water bottle against a wall. On his way out of the building, he kicked over a garbage can, damaging the can and scattering garbage on the floor. This incident occurred in front of the staff and other fitness club members. Witnesses confirmed that PC Brewer smelled of alcohol and was inebriated. Witnesses also confirmed that his vehicle was in the gym parking lot. No criminal charges resulted from this incident.

52/2019 - Impaired

On Sunday May 5, 2019, Durham Regional Police (DRP) received a radio call to attend an address for a Personal Injury Accident. DRP officers attended the location and located two individuals involved in the incident.

PC Brewer identified himself as an off-duty member of the Toronto Police Service. DRP officers immediately noticed signs of impairment. He was subsequently arrested at 4:12pm. He was rude and belligerent to officers, firefighters, and paramedics who attended the scene. Both vehicles involved in the accident sustained extensive damage. PC Brewer complained of injuries and was taken to the hospital to be assessed by medical professionals.

A DRP breath technician attended the hospital and conducted breath tests. PC Brewer provided two readings:

Test 1: Registered at 291 mgs of alcohol in 100 ml of blood

Test 2: Registered at 287 mgs of alcohol in 100 ml of blood

On October 9, 2019, PC Brewer plead guilty before the Honourable Justice Peter West at the Durham Region Courthouse in Oshawa to Dangerous Operation of a Motor Vehicle and Impaired Driving.

Sentencing took place on November 21, 2019 before Justice West. PC Brewer was ordered to pay a \$3000.00 fine, an 18 months driving prohibition, and probation for 18 months with terms and conditions designed towards rehabilitation.

Positions on Penalty

8. The positions on penalty were contested. Prosecution submitted that dismissal be the appropriate penalty. Defence disagreed and suggested a demotion would be a sufficient penalty in this matter. A summary of Ms. Alexandra Ciobotaru's and Mr. David Butt's submissions, in support of this position, follows.

Witnesses

9. No witnesses were called by the Prosecution or the Defence.

Submissions

Prosecution Submissions

10. The Prosecutor - Ms. Alexandra Ciobotaru commenced by advising that the Prosecution and the Defence will be submitting different positions on this disposition. She further submitted that the Prosecution's position was that dismissal is the most appropriate penalty in this matter. And that Constable Brewer had been served notice in accordance with Section 85(4) of the P.S.A. that the Service is seeking his dismissal from the Toronto Police Service.
11. Ms. Ciobotaru then entered a Book of Records Vol.1 & 2 (Exhibit 7) and a Book of Authorities Vol. 1 & 2 (Exhibit 8).
12. Ms. Ciobotaru then described the test for dismissal as found in the Court of Appeal decision of Trumbley and Metro Toronto Police Service, 1986, found in the Prosecution's Book of Authorities – Exhibit 8, at Tab A. Specifically she submitted that, the test is whether the respondent is fit to remain an employee of the Service. And added that, courts have repeatedly adopted the principle that *“the basic object of dismissing a police employee is not to punish him or her in the evil sense of the word, but rather to rid the employer of the burden of an employee who has shown that he or she is no longer fit to remain an employee.”*

13. The Prosecutor then directed the Tribunal to a second decision, that of, Venables and York Regional Police Service, OCCPS, 2008, found in her Book of Authorities - Exhibit 8, at Tab B. In this matter, she submitted that, *“the commission asked whether the nature of the officer’s misconduct spent his potential usefulness as a police officer and whether his actions were so egregious that they raised insurmountable doubts about his future suitability as a police officer”*. She submitted that PC Brewer is not fit to remain an employee of the Toronto Police Service.
14. Ms. Alexandra Ciobotaru highlighted that there are fifteen considerations governing the determination of an appropriate disposition and they can be found in the 2017 Legal Aspects of Policing Manual, by Ceysens and Childs; these principals were submitted at Tab 1, in Exhibit 7. The Prosecution fully considered all fifteen of these principles and in the submissions to penalty, but noted the following as particularly relevant in this matter; public interest, the seriousness of the misconduct, the damage to the reputation of the police force, the need for specific and general deterrents, and the employment history.
15. The Prosecutor then outlined the objectives of discipline, which are to correct unacceptable behaviour, deter others from similar behaviour, and assure the public the police are under control.
16. Ms. Alexandra Ciobotaru submitted that PC Brewer’s actions have *public interest* implications as it relates to the public trust. She added, public interest arises where the misconduct has offended or undermined the public confidence in police. The Prosecutor submitted that there is no doubt that PC Brewer’s negligent actions have implications on the public trust that the Toronto Police Service as an organization strives to uphold. And PC Brewer must be held accountable for his behaviour so the public can be confident in our Service and in our discipline process.
17. The Prosecutor then brought my attention to Exhibit 8, Tab C – Bright, Konkle and the Niagara Board of Inquiry, 1997 that speaks to the necessity of a police officer to be of good character. She referenced the following passage in support, *“Good character in a police officer is essential to both the public’s trust in the officer, and to a police service’s ability to*

utilize that officer. The public has the right to trust that its police officers are honest and truthful, and that, absent extenuating circumstances, they will not be officers any longer if they breach this trust.”

18. Ms. Ciobotaru then referenced Exhibit 7, Tab 2, which contained the criteria for hiring a police officer in the PSA. She highlighted that at section 43(1) (d) the mandated need for an officer to be, “of good moral character and habit”. She submitted that the character in a police officer is essential to both the public’s trust in the officer and to a Police Service’s ability to utilize that officer. In regards to this matter, PC Brewer’s conduct did not meet the standard expected by either the TPS or the Public.
19. Ms. Ciobotaru then submitted that as observed in the Agreed Statement of Facts, at least three of the incidents before this Tribunal involve external members of the public. She added, incident number 38/2018, which she referred to as, the “pepper spray incident” involved a very public court decision where PC Brewer’s evidence was rejected and where in the judge accepted that PC Brewer used excessive force on a member of the public. Incident number 53/2018 occurred in a public place, it was at a public gym (LA Fitness) where people who attended the gym were witnesses to PC Brewer’s behaviour. Incident 52/2019 was PC Brewer’s impaired incident, which was not only witnessed by members of the public who called the police, but also Durham Police Officers and firefighters who responded. Finally she added that PC Brewer also pleaded guilty to this impaired charge in a public criminal forum.
20. In further addressing public trust, Ms. Alexandra Ciobotaru referenced Exhibit 7, Tab 3; of the submitted Book of Records. Herein, the Toronto Police Service Standards of Conduct was reviewed in which the Introduction states, *“Toronto Police Service members are held to a higher standard of conduct than other citizens. Not only is an expectation from the community, this standard is an expectation we place upon ourselves. This higher standard of behaviour is necessary to preserve the integrity of the Service”*. And further that, *“the community expects TPS members to conduct themselves and discharge their duties with diligence, professionalism, and integrity...comply with and be seen to act within the spirit and letter of the law”*.

21. The importance of public trust is further addressed by the Prosecutor with reference to Exhibit 7; the submitted Book of Records, at Tab 4 – *Oath of Secrecy* and Tab 5 – *Oath of Office*. Herein, Ms. Alexandra Ciobotaru noted that PC Brewer signed and swore both Oaths when he joined the TPS as being, “*I, solemnly swear/affirm that I will be loyal to Canada, that I will uphold the Constitution of Canada and that I will, to the best of my ability, discharge my duties as a Police Constable with the Toronto Police Service, faithfully, impartially and according to law*”. Ms. Ciobotaru added that, the public trust in policing is paramount and all actions taken by police officers must be able to withstand public scrutiny in order to maintain that trust. The public puts trust in the expectation that police officers’ will uphold their Oath of Office and that it’s clear that Constable Brewer both on and off duty had repeatedly failed to do so.
22. The Prosecutor also submitted that throughout the years the Service has reminded officers on numerous occasions with routine orders, as submitted in Exhibit 7, Tab 6 about the consequences associated to a conviction for criminal offences. Emphasized are comments on how misconduct affects the reputation of the Service and that it’s corrosive to the trust and confidence of the public. Impaired driving in particular is extremely serious and the Service has undertaken many efforts to eliminate it. As such, penalties may include reduction of rank or dismissal. A common thread among these messages is the Chief stressing the importance of public interest in the professional discipline context. Ms. Ciobotaru also referred to a video (not played for the Tribunal) featuring (Ret.) Acting Deputy Chief Stubbings entitled, “TPS Video Drinking and Driving” which reiterated the Service’s position on members involved in drinking and driving offences.
23. The Prosecutor then pointed to Tab 7 of Exhibit 7, PC Brewer’s Internal Resume that shows the various Drinking and Driving Awareness training he has completed. Specifically this included *Traffic Generalist* training on October 8th, 2010, and further electronic training with respect to *Drinking and Driving* via the Canadian Police Knowledge Network (CPKN), on December 16th, 2009.

24. Ms. Ciobotaru further added, *“when it comes to public interest, my submission is, this is absolutely an aggravating factor in PC Brewer’s case. Not just the impaired, but each of his convictions for misconduct for which he pled guilty demonstrate conduct that the public would be appalled to hear was committed by a police officer and in some of these PC Brewer was in uniform and in some he was not”*.
25. In addressing the *seriousness of the misconduct*, Ms. Alexandra Ciobotaru submitted that PC Brewer’s conduct falls on the most serious end of the spectrum. She then proceeded to discuss each of the four incidents, which give rise to this proceeding individually.
26. Ms. Ciobotaru in discussing the *Pepper Spray* incident (38/2018) then turned to Exhibit 7, Tab 8 - *Court Transcript – R. v Hines – Mar 27/18 OJC, Ont* and quoted Hon. Justice R. Blouin’s comments at paragraph 21-23. Specifically she quoted Justice Blouin as stating that, *“Brewer denies alcohol was a factor in this case and does not think that his mental health problems were either...this last contention was demonstrably false...T.H was handcuffed to the rear...Brewer stopped the scout car, opened the door...T.H was not resisting”*. She further summarized that in Justice Blouin’s view, there was no reason to deploy pepper spray against T.H. The Prosecutor added that PC Brewer was before this Tribunal because, *“he factually did not follow the use of force standards. He employed pepper spray on an individual who was already handcuffed...(that) police have a considerable amount of power and tools at their disposal that are only meant to be used when reasonably necessary. (And) based on this case, and the Crown’s own assessment, that he (PC Brewer) used excessive force, (and further that) it’s clear that his use of force was excessive. I would comment that this is a very serious incident of misconduct”*.
27. The Prosecutor then turned her submissions to the second (*Supervisor*) and third (*LA Fitness*) incidents that are contained within NoH 53/2018. The Prosecutor re-described the allegations outlined in the ASoF pertaining to each of these incidents. Concerning the Supervisor incident, she submitted that, though not an external conduct with a member of the public, use of such language with a colleague and supervisor is unprofessional and it does not meet the standards that we expect of our officers.

28. On the LA Fitness incident, the Prosecutor submitted that PC Brewer's conduct was *"unprofessional and unbecoming"*. Adding that (public) witnesses to the incident reported smelling alcohol on PC Brewer's breath during this incident. The Prosecutor did concede that, *"relative to the first incident, the unlawful use of force with the pepper spray and the fourth incident...the impaired, these two incidents are arguably less serious...at the same time still exhibit conduct against the TPS Standard and against what the public expects of our officers"*.
29. In next turning to incident 52/2019 – the *Impaired* – the Prosecutor referred to Exhibit 7, Tab 9 - *Court Transcript – R. v Brewer – Nov 21/19 OJC, Oshawa, Ont.* She directed the Tribunal to page 16 of the transcript, wherein the Hon. Justice P. West, states, *"an aggravating circumstance obviously is that you are a police officer...and there was an accident involved, which also is aggravating. ...you could have hurt somebody. You could have killed somebody. And then we would be talking about how long you were going to be spending in jail"*. Ms. Ciobotaru added that, *"this is the most serious of the four incidents although as I said, the first incident of excessive force is equally as serious"*.
30. Ms. Ciobotaru also noted, that in Exhibit 7, at Tab 10 were two statements from members of the public who had witnessed the accident associated with the impaired offence and various photos depicting the damage and seriousness of the accident referred to in incident 52/2019. She also reiterated PC Brewer's level of intoxication at the time of the impaired accident – as 291 and 287 milligrams of alcohol and 100 millilitres of blood.
31. Ms. Ciobotaru submitted that, *"the behaviour demonstrated by PC Brewer collectively and individually is a serious departure of what is expected of a police officer. And these facts strike at the core of policing duties, from dealing with members of the public and trusting our officers to use the right and reasonable amount of force, to not breaking the law themselves...this conduct must be assessed at the most serious end of the spectrum"*.

32. The Prosecutor also added, *“case law supports a finding that a series of events of misconduct are to be treated more seriously than a single isolated incident because a series of events that are carried out over a period of time cannot be considered single acts of human frailty. This is a significant aggravating consideration for disposition and I submit that the seriousness of misconduct by PC Brewer makes it such that any remedial disposition is neither possible nor reasonable”*.
33. On the principle of *recognition in the seriousness of misconduct*, the Prosecutor referred to Exhibit 8, at Tab D - Purbick and Ontario Provincial Police Service, OCCPS, 2011. She quoted from paragraph 81, *“pleading guilty is one of the most indisputable forms of admission of culpability or wrongdoing and responsibility”*. The Prosecutor recounted PC Brewer’s guilty plea both in criminal court on the impaired offence and guilty pleas here before this Tribunal and conceded that, *“(the Prosecution) acknowledge that he (PC Brewer) took responsibility for his actions almost immediately in both criminal and discipline context”*.
34. The Prosecutor then pointed to Exhibit 8, Tab E - Carson and Pembroke Police Service, 2001, OCCPS which stated, *“we have no doubt that a guilty plea should be recognized as a mitigating factor and taken into account along with other factors in determining an appropriate penalty.”* Ms. Ciobotaru submitted that by way of his guilty plea before this Tribunal, PC Brewer had demonstrated that he has accepted the responsibility for his misconduct.
35. The Prosecutor also added that in assessing PC Brewer’s *recognition of the seriousness of the misconduct*, that his post offence conduct should be considered. On this point she submitted that PC Brewer accumulated a string of four separate incidents that ultimately ended up in disciplinary charges before this Tribunal. In addition, that this conduct post-dates PC Brewer’s guilty plea to a separate incident in the Tribunal before another hearing officer. Thus, the prosecutor submitted, *“from the Prosecutor’s perspective, although a guilty plea is mitigating, in my submission it’s not mitigating enough to detract from the seriousness of his conduct and his blatant disregard for the proper conduct that the Service expects of its members”*.

36. The Prosecutor then focused on PC Brewer's *employment history* and submitted that, *"employment history is an important disposition in all cases. Employment history as a mitigating or aggravating consideration closely relates to the disposition consideration of rehabilitation potential."* With that, she pointed at Exhibit 7, Tab 11 and 13 in the Prosecutions Book of Records. Here Ms. Ciobotaru outlined PC Brewer's complementary activities and conduct issue(s). Specifically she outlined that the officer had fourteen positive documentations / letters of appreciation and one noted conduct issue and one additional conduct issue / Tribunal conviction, which was missing from his submitted records.
37. Concerning the listed 2016-conduct issue, the Prosecutor pointed out that it involved PC Brewer using profanity and waiving a non-collapsible nightstick, where there was no threat in the area and involved alcohol. The Prosecutor noted that in Exhibit 8, at Tab F - Brewer and Toronto Police Service, 25/2017, was the missing Tribunal decision before (Ret) Supt. D. Andrews and the related details. She added that in PC Brewer's 2017 Tribunal matter, issues surrounding mental health and substance abuse were considered. She quoted (Ret) Supt. D. Andrews in stating, *"my comments in many of the above paragraphs demonstrate that I have considered the disposition factors of personal circumstances and handicap as well as his employment history. Constable Brewer's handicap, specifically PTSD and his reliance on alcohol to self-medicate, has been at the core of this hearing. I believe in both the diagnoses and Constable Brewer's commitment to reform therefore his personal handicap coupled with the potential for rehabilitation is a significant mitigating factor."*
38. Ms. Ciobotaru then submitted in relation to PC Brewer's previous Tribunal matter, *"PC Brewer was given the benefit of the doubt. In my submission, the joint position that was before the previous hearing officer was lenient and gave PC Brewer the opportunity to get help and to reform his behaviour and then subsequent to this (2017) decision and subsequent to these incidents, PC Brewer had these four additional misconduct issues before you; more than one involving alcohol but the most recent 2019 culminating in a impaired driving conviction. So in my submission, that factor is certainly aggravating"*.

39. The Prosecutor then pointed to Exhibit 7, Tab 12 - *Admission Letter-Renascent Residential Primary Care Addictions Treatment Program* indicating that PC Brewer had attended and attempted to get help for his issues in 2016. Also included at the same Tab was a transcript of an interview attended by PC Brewer at TPS-Professional Standards (TPS-PRS), on October 3rd, 2017. The Prosecutor pointed out that as witnessed in the TPS-PRS transcript alcohol has been a *“long-standing issue”* for PC Brewer.
40. The Prosecutor submitted that PC Brewer’s previous discipline disposition in the Tribunal is an aggravating factor in sentencing. In support of this she pointed at Exhibit 8, Tab G - Betts and Ontario Provincial Police Service, OCCPS, 1997. On the issue of repeated infractions, she quoted the Commission in its comments that, *“we agree that charges individually in that case are not of an overly serious nature yet the repeated infractions would suggest that an officer has failed to contemplate the professional requirements of his job as it relates to conduct.”*
41. Further, Ms. Ciobotaru submitted that at Tab 14 of Exhibit 7, are performance appraisals for PC Brewer from 2007 to 2014. She added that, *“the Prosecution considers PC Brewer’s employment history aggravating, it’s difficult to rely on these performance appraisals and positive comments considering he’s been having conduct issues for the past four years since 2016 and he only became an officer in 2008”*.
42. In terms of *consistency of disposition*, Ms. Alexandra Ciobotaru submitted that this represents one of the basic principles of the discipline process and flows from the idea that similar misconduct should be treated in a similar fashion, recognizing that no two cases are the same. She further submitted the issues of consistency of disposition, from Exhibit 8, at Tab H, in Schofield and the Metropolitan Toronto Police, 1982 where it was stated, *“each case must be judged on the facts peculiar to it. Consistency in the discipline process is often the earmark of fairness. The penalty must be consistent with the facts, and consistent with similar cases that have been dealt with on earlier occasions”*.

43. The Prosecutor added that the facts in this matter show a pattern of behaviour by an officer who consistently and repeatedly failed to follow the rules and obligations imposed upon him. In addition, that *“permitting Constable Brewer to maintain his employment with the TPS when viewed in the context of all of his misconduct would be an inconsistent finding of the standard of professionalism”*.
44. Ms. Ciobotaru then cited that earlier case law decisions contained in Exhibit 8, at Tab I - Kotzer and Toronto Police Service, 26/2019, Tab J - Power and London Police Service, OCCPS, 2014, Tab K - Benyi and Toronto Police Service, 10/2019, Tab L - Valiots and Ontario Provincial Police Service, 2018, Tab M - Sylvester and Toronto Police Service, 35/2005, 2007. She then summarized each of the historic cases, highlighting the similarities and differences, as they equate to PC Brewer’s matter.
45. In the area of *specific and general deterrence* the Prosecution submitted, that the correlation between penalty and deterrents, both general and specific, were cited from Exhibit 8, Tab N, in Andrews and Midland Police Service, 2002, OCCPS, where the Commission stated, *“He was also correct that the penalties imposed for misconduct must be strong enough to send a clear message to other officers that such conduct or any conduct of this nature will not be tolerated” and further that, “sufficient to punish and to deter while not causing undo or excessive hardship while demonstrating that reoccurrence will not be tolerated”*.
46. Ms. Ciobotaru added on the issue of *specific deterrence*, pointed at Tab O, of Exhibit 8, in Wildeboer and Toronto Police Service, OCCPS, 2006 and discussed the similarities as they apply to PC Brewer’s matter before this Tribunal. She submitted that, *“specific deterrence is not satisfied simply because PC Brewer admitted to his behaviour and has sought counselling. All members must understand that behaviour of this nature cannot and will not be tolerated and will result in the most serious of consequence. As such, my submission is that specific and general deterrence is an aggravating penalty”*.

47. Next in considering the factor of *Disability and other Relevant Personal Circumstances*, the Prosecutor turned to Exhibit 8, Tab P - Moraru and Ottawa Police Service, OCCPS, 2008. Here she quoted from the decision that, *“during the penalty phase of a disciplinary hearing, not unlike the sentencing phase of a criminal trial, it is incumbent on the trier of fact to consider whether PTSD and medically recognized illness influenced the actions of the officer and if so to what extent. Having concluded that Constable Moraru was suffering from PTSD the real issue before the hearing officer was what weight the effect of PTSD should be given as a mitigating factor in assessing penalty”*.
48. Further, on the issue of *Disability and other Relevant Personal Circumstances*, Ms. Ciobotaru referenced Tab Q, of Exhibit 8 - Orser and Ontario Provincial Police Service, OCCPS, 2018. Herein, she quoted from the Commission’s decision, *“reasons make clear that the hearing officer took the PTSD issue seriously and engaged in meaningful analysis of the evidence on the role that PTSD might have played in the misconduct. The hearing officer accepted the appellants suffered from PTSD but was not convinced that the appellant’s misconduct was in any way related to the PTSD diagnosis. His conclusions are reasonable and supported by the record we owe them deference. We find he did not commit an error in principle in treatment of the PTSD issue”*.
49. The Prosecutor then submitted that *“disability is a mitigating factor, what is aggravating in this instance is that PC Brewer already received help and was already given a lenient chance by a previous Hearing Officer in this Tribunal to seek treatment and help for his conditions... I would submit that disability is an explanation, uh, in terms of PC Brewer’s conduct but not a defence. It can explain some of the inappropriate conduct but it does not excuse it”*.
50. Ms. Ciobotaru then discussed a paper at Tab R, of Exhibit 8 entitled - Misconduct and PTSD - Balancing the Public Trust and Accommodation, 2012. She quoted from the conclusion of the paper, *“the existence of a disability is certainly a relevant factor in assessing appropriate discipline for misconduct. Where there is sufficient evidence of the disability and a nexus to the misconduct an employer must accommodate an employee to the point of undue hardship. Undue hardship may be reached in circumstances where the*

conduct is so egregious that the public interest would warrant termination or where there is no prognosis that the employee will be able to fulfil the essential duties of the job within a reasonable time. At this stage the officer's usefulness will be at an end".

51. In relation to PC Brewer's concurrent illness position, Ms. Ciobotaru further commented that, *"although this is a mitigating factor it's one of several factors to be considered by the hearing officer. It is not the be all, end all of the factors. It does not excuse the officer's misconduct".*

52. In regards to the *potential to reform or rehabilitate* the officer, the Prosecutor drew attention to Exhibit 8, Tab N where the Commission noted in Andrews and Midland Police Service, 2002, OCCPS, *"The Commission believes that rehabilitation is a key factor to be taken into consideration when a penalty is imposed, especially, when the offender has a prior unblemished employment record. Unless the officer is beyond rehabilitation (in which case he would be a candidate for dismissal), the door should be kept open for the officer to be rehabilitated. The penalty should be tailored to provide him with the opportunity to do so".* She added that PC Brewer does not have an unblemished employment record. In his previous tribunal conviction, he was provided an opportunity to reform.

53. The Prosecutor then drew attention in the decision to the fact that, in Williams and the Ontario Provincial Police, 1995, OCCPS; at Tab S, of Exhibit 8 wherein the Commission stated, *"even where a police officer can demonstrate steps taken towards rehabilitation or successful treatment dismissal may be appropriate for serious misconduct despite those attempts at rehabilitation".* Ms. Ciobotaru submitted that the steps taken by PC Brewer to seek help, *"are too late and the seriousness of the misconduct individually and collectively supports dismissal".*

54. The Prosecutor in support of her position on dismissal also referred to Tab T of Exhibit 8 - Karklins and Toronto Police Service, OCCPS, 2007. Here she quoted the Commission comments that, *"there may be singular acts of misconduct that strike to the heart of employment relationship and effectively exhausts an individual's potential usefulness to*

perform the key duties of a police officer. Such singular acts may raise obvious concerns with respect to character.”

55. The Prosecutor submitted, that in PC Brewer’s matter before this Tribunal, *“the out of character misconduct consideration can’t be applied to misconduct which has continued over an extended period of time...there is no evidence that PC Brewer took inventory of his actions or made any effort to correct them. Furthermore, it’s been two years since his last PSA issue which gave him ample time to take positive steps which may have reassured this Tribunal that he does have the ability to rehabilitate and I submit that that – those do not exist”*.

56. The Prosecutor, in addressing the *damage to the reputation of the Service* submitted that, the Service’s reputation suffers every time one of our officers breaches the oath of office. It negatively impacts the public’s trust. Ms. Ciobotaru added that PC Brewer’s conduct resulted in a criminal conviction, a driving prohibition, and a public criminal court decision.

57. Ms. Ciobotaru, further on the issue of *damage to the reputation of the Service*, pointed at Tab U, in Exhibit 8 - Bressette and Ontario Provincial Police Service, OCCPS, 2013 in which the Commission stated, *“the Service has made significant efforts to draw to the attention of the public and of its members the risks of operating a motor vehicle while impaired. To have one of their members commit such observable misconduct calls the reputation of the Service into disrepute.”*

58. The Prosecutor also pointed to the fact that this incident received considerable media coverage. She pointed to Tab 15, of Exhibit 7 and the contained various media coverage of PC Brewer’s matter.

59. In further submission regarding *damage to the reputation of the Service*, the Prosecutor referred to Tab V, in Exhibit 8 and Hassan and Peel Regional Police Service, OCCPS, 2006. The Prosecutor highlighted a passage from the decision, *“we see no reason why a hearing officer in the absence of direct evidence may not place himself in the position of a reasonable person in the community for the purpose of assessing the degree to which the*

conduct of an officer has brought harm to the reputation of a police force and the extent to which that harm were to continue if an officer were to remain employed”.

60. The Prosecutor submitted on this factor - *damage to the reputation of the Service* it is an aggravating factor on disposition.

61. In discussing the concept of, *“the straw that broke the camel’s back”*, the Prosecutor directed the Tribunal to Tab W of Exhibit 8, Coon and Toronto Police Service, OCCPS, 2003 from which she cited, *“the culminating incident is best described as the straw that broke the camel’s back. It permits the employer to justify the termination for the final incident based on the prior disciplinary record no matter how trivial the final incident is. The final incident, however, must at least be one meriting some discipline”*. She added, that the above concept applies to PC Brewer’s situation and further that the final incident or the last incident of misconduct was a criminal conviction for impaired driving, where his vehicle was severely damaged and his blood alcohol readings during the incident were approximately four times the legal limit.

62. In discussing the test of an officer’s usefulness to a Police Service, the Prosecutor highlighted at Tab X, of Exhibit 8, the decision of Guenette and Ottawa-Carleton Regional Police Service, OCCPS, 1998. Herein she described the three main elements of the test as, the nature and seriousness of the offence (or offence(s)), the ability to reform the officer, and the damage to the reputation of the police force should the officer remain. The Prosecutor applied these elements to PC Brewer’s matter before this Tribunal and submitted all elements were either at the high or extremely high end of the spectrum.

63. Next in support of the fact that one-off acts of deceit or discreditable conduct can justify dismissal, Ms. Ciobotaru drew attention to the matter of Nesbeth and Windsor Police Service, OCCPS, 2015, at Tab Y, of Exhibit 8. She submitted that, *“PC Brewer has less than ten years of experience working as an officer. He has a handful of incidents of misconduct. He has severely damaged the reputation of the Service and he is certainly at the point where his usefulness has been annulled”*.

64. As such, the Prosecutor submitted that most of the disposition factors that she spoke to today are aggravating and not mitigating. And that demotion in her submission is not appropriate in light of the misconduct in its totality.
65. Ms. Ciobotaru added, that there are many cases where officers have been dismissed where they have no previous discipline history let alone the fact that PC Brewer has a discipline history.
66. The Prosecutor concluded by stating that, the object of dismissing a police officer is not to punish him or her but rather it is to rid the employer of the burden of an employee who has shown that he or she is no longer to remain an employee. She added, *“in my submission, PC Brewer’s actual actions demonstrate clear as day that he is no longer fit to remain an employee with the Toronto Police Service and that he has spent his usefulness as a police officer”*.

Defence Counsel Submissions

67. Mr. Butt began by reminding the Tribunal that the Prosecution and Defense’s position on penalty position differs significantly.
68. Counsel submitted that it is critical to understand the complicated path of PTSD and substance abuse disorder in the context of policing.
69. Mr. Butt then reminded the Tribunal that there have been six suicides of TPS members in the past six years. And three of those have been in the current year – 2020. He added, *“so the mental health and recovery issues this case raises couldn’t be more serious for everyone”*.
70. On the topic of illness, Counsel drawing on the recent COVID pandemic submitted, *“no organization, no individual, no matter how much power and authority they hold can dictate the course of illness. Illness follows its own path”*.

71. Further Counsel submitted that, *“all we can do and it’s what we’re bound to do is learn, understand and react based on the best knowledge available. And that imperative implies whether we’re talking about responding to COVID, or addressing PTSD and substance abuse disorders... if we try to impose what we think should happen without understanding the complicated, tricky and frustrated path of illness, all we end up doing is looking arrogant and stupid. We look out of touch”*.
72. Mr. Butt continued his submission pointing out what he called the “irony” in the prosecution’s submissions. Specifically he stated, *“(Prosecution) said dismissals not about punishment. But then you heard an hour and half about framing the behavior as being about character, moral uprightness and bad choices. Setting aside the irony, that’s all about punishment”*. Defense added, *“that approach wrongly casts illness as a moral failing. That approach fails to understand. That approach is outdated in light of the PTSD and mental crisis we find ourselves in right now”*.
73. Counsel in addressing how to determine a just penalty in this matter suggested, *“overreliance on punishment imposes unnecessary suffering on those already coping with illness. It makes those imposing the punishment look in furious, ill-informed and sometimes even cruel, and it corrodes faith in the discipline process as a whole”*.
74. Mr. Butt, added, we have to approach the *“journey of understanding illness”* in the context of policing and how to deal with discipline properly with humility and open-mindedness. Not arrogance, not a blind reliance on past precedence that don’t engage in the complex questions of mental illness in policing, and certainly not in a rush to judgement.
75. Counsel, next turned to PC Brewer’s previous discipline decision, located at Tab F, of Exhibit 7 - Brewer and Toronto Police Service, 25/2017. Quoting the Adjudicator’s finding that, *“this incidence involves the actions of a good man who was experiencing an acute and severe mental health crisis”*. He added that the cause of this severe mental health crisis was found to be PTSD and concurrent substance abuse disorder.

76. Counsel then paused to enter the Defense Book of Records as Exhibit 9.
77. Mr. Butt then requested that an Order be made to seal the medical records contained within Exhibit 9 at Tabs 2, 6, 7, 9, and 10. The request was granted and the Order made to seal the aforementioned records in an envelope and protected from public access.
78. Counsel directed the Tribunal to Tab 2, of Exhibit 9 - Homewood Health Discharge Records (July 29, 2019). Mr. Butt then walked the Tribunal through the Discharge Summary – Physician Inpatient contained within the Tab and the various facets of testing that were conducted on PC Brewer during his assessment and treatment from May – August of 2019. Specifically, Mr. Butt stopped to discuss the DSMV 11 criteria, its score interpretation and how PC Brewer scored at intake and then again at discharge, post-treatment. He noted that based on PC Brewer’s intake score, *“that we’re dealing with an existence of a substance abuse disorder at the highest possible end of the scale”*. He added, *“bear in my mind that this is a disorder. This is not somebody making bad choices to drink too much. This is a diagnostic disorder”*.
79. On the Prosecution’s submission regarding PC Brewer’s blood alcohol reading(s) at the time of his impaired arrest, Mr. Butt submitted that, *“if somebody blows 290, you just got to do the math, that’s more than 20 drinks. This accident took place in the middle of the afternoon. That’s substance abuse disorder that’s out of control. It’s totally consistent with the Homewood diagnostic of severe”*.
80. Defense counsel then turned to the *Past Psychiatric History* section of the Homewood Health Discharge Records (July 29, 2019), at Tab 2, in Exhibit 9. Here he highlighted the reported cause in the findings as, *“Post-traumatic stress disorder (PTSD) related to occupational events as a police officer”*. Counsel submitted that this is a critical consideration. On the issue, he added, *“Brewer sacrificed his health serving his community. We can’t look away from that fact. That is the medical evidence. And what else does it mean? It means the community owes him gratitude for his sacrifice – sacrificing his health...if he died in the line of duty; we have no problem talking about*

people as heroes. But it's strangely ironic that if they sacrifice their mental health serving their community, we treat them as pariahs. We actually owe him gratitude for not paying the ultimate price, but close to the ultimate price. And in that context, talk about firing somebody falls flat.

81. Mr. Butt also submitted, PC Brewer suffered from a concurrent illness – PTSD and Substance Abuse Disorder and that the course of recovery from that illness “*is not a straight line*”.
82. In further discussion regarding concurrent illness, Mr. Butt turned to Tab 9, of Exhibit 9 - Report of Tom Gabriel: Service Members with Concurrent Disorders and Discipline. Mr. Butt quoted from the report a definition of concurrent illness and challenges in managing the same. Specifically he quoted, “*when a person is suffering from both substance abuse disorder and has a diagnosis of a mental health disorder, this is commonly known as a concurrent disorder...a person with a concurrent disorder usually has complex issues that can be difficult to manage and requires intensive treatment with a well-organized circle of care for positive outcomes*”.
83. Mr. Butt then cautioned against “*judgementalism*”, stating that, “*he went to a counsellor, and he still wasn't fit, misbehaved. He went to a counsellor so relapse is a poor moral choice, we should condemn and punish. That is wrong. It is simply wrong. It is not what the medical literature says. It's not just wrong, it's destructive*”.
84. Counsel added, “*people who are actually struggling along this complicated path to recovery need to know that they have support, not just when they overcome easy obstacles, but also when they overcome and perhaps even more so, when they overcome difficult obstacles that inevitably involve setbacks. That's the medical reality that Constable Brewer was struggling with. That is the evidentiary reality of this case. That is how this officer needs to be understood if he is to be judged fairly*”.

85. Mr. Butt next turned to a discussion about the *police culture*. In doing so he pointed the Tribunal at Tab 1, of Exhibit 9 - *Report of the Expert Panel on Police Officer Deaths by Suicide, 2019*. He submitted that the key findings of the Provincial Report included, “*a serious systemic problem inside policing regarding mental health and wellbeing*”...*the job (policing) makes incredible demands on the mental health and wellbeing (of members)... (and that) the culture denigrates those suffering from mental illness and discourages treatment*”.
86. In addition to the above, Counsel submitted, that according to this panel of experts, “*policing culture plays a big role in creating exactly the kinds of crisis and exactly the kinds of complex health challenges that Constable Brewer suffered*”.
87. Remaining on a discussion about the *Report of the Expert Panel on Police Officer Deaths by Suicide, 2019*, located at Tab 1, of Exhibit 9, Mr. Butt next turned to the Section entitled, “*Stigma and Self-stigma for Mental Health Issues*”. Here he began by quoting the report as stating, “*we often hear stigma as a major factor in how society responds to persons experiencing mental health issues... says the starting point for the average police member may be no different than for others...estimates run as high as 40% calls for service are tied to incidents involving people with mental health*”.
88. Mr. Butt discussed how the *police culture* views individuals suffering from mental health and wellness issues, he further quoted from the aforementioned Section of the Report that, “*Police members have reported to us directly and in other studies we’ve consulted that notwithstanding their high degrees of compassion, training and professionalism...most police members will soon come to regard any person with mental health issues as someone they never want to be*”. He added that the report found that officers often become disillusioned about the effectiveness of mental health care when they bring acutely unwell people to hospital, only to see them leave shortly afterwards with little or no change. Counsel submitted thus based on the above finding, policing creates sinicism about whether treatment works and an aversion to ever being “*one of them*”.

89. Counsel then discussed another nuance of the policing culture, which operates against disclosure or treatment. For this he turned again to Exhibit 9, Tab 1, and page 7, of the Report, where he quoted, *“in policing, if a member reports or displays mild mental health issues, for at least some colleagues and even for the member himself or herself, such ‘odd behaviour’ can rise to life and death significance. It could be interpreted as, or merely feared to become a direct threat to the member and any colleagues who may be called to rely upon him or her at any time during a shift... when combined with the self-stigma described above, this fear of being the one to let down the team may be even greater for the officer with the mental health issue, no matter how mild or moderate”*.
90. Mr. Butt, remaining on the issue, further quoted the aforementioned section of the report, *“due to the early training and conditioning and the ongoing workplace culture of policing, many officers report becoming quite binary in their view of such things: either you are fit for duty, or you are not. As such, any loss or limit on your ability to perform the full scope of your duties can amount, in the mind of the individual, to a loss of your identity as a police officer”*.
91. Counsel submitted, that these cultural factors negatively impact mental health challenges. Adding, that this is the case in PC Brewer’s situation and led to his a *“place of crisis”*.
92. Mr. Butt continued to describe the deleterious effects of the policing culture and highlighted the following passage from the Report found again at Tab 1, of Exhibit 9; *“The harsh and unfortunate term that is often invoked in policing is broken toys. You’re no longer fit for duty. And once a toy is broken, it cannot be fixed... a great number of police members will deny and shield the presence of mental health issues for as long as they can. The literature suggests that they may turn, in greater than average numbers, to alcohol and other substance use, and other often-harmful self-medicating activities, in efforts to mitigate symptoms and to contain their underlying issues from exposure and treatment. Despite considerable investments by police services in their*

human resource departments, employee and family assistance programs (EFAP), and many other supportive options, many will avoid such doorways out of fear of exposure”.

93. Mr. Butt summarized his point in relation to the above noted deficiency in the policing culture by submitting that the traditional method of simply *“putting up a few posters, and handing out a few pamphlets and hiring a few psychologists”*, does not solve the complicated cultural problem in policing, towards member mental health and wellness.
94. Counsel then pointed the Tribunal to additional passages from the Report at Tab 1, of Exhibit 9, specifically, *“too often by the time their condition either forces them to seek help or is recognized by others or by consequences that lead them no choice but to seek help, they will already have travelled well down all three of the pathways described above. They may be a point of greater criticality in their mental health issues”*. Mr. Butt added that the above mirror PC Brewer’s situation, arguing that he worked in a *“tough division (51 Division)”*, a division “rife” with calls for people with mental health crisis, that he was a dedicated officer, and as described by the Hearing Officer in his previous Tribunal matter as, *“a good man and a good officer”... “who was drinking on the job”*.
95. Mr. Butt argued that this consumption of alcohol in October of 2016, was the combination of PTSD induced by the service to the community and the culture of policing that led to suppression of the symptoms, self-medication until it was out of control. He added that by December of 2016, PC Brewer was in *“full-blown mental health crisis”*.
96. Counsel submitted that PC Brewer’s concurrent illness problem (PTSD and Substance Abuse), combined with the culture of policing, by 2016 was very complicated to manage, and it would be unrealistic for any reasonable person or any informed person to expect a simple straight-line recovery.

97. Mr. Butt then moved to the *High Cost of Accommodation*, section of the Report found again at Tab 1, of Exhibit 9. Here he pointed the Tribunal to the passage, *“Stigma and misinformation about mental health care and recovery can lead to harsh and even hostile presumptions among peers, supervisors and managers that a member’s behavior is simply malingering, especially when there have been past performance issues or workplace conflict. So the judgements about struggles make it even worse”*. In addition, the submitted Report, evidences that the policing culture discourages seeking treatment until the illnesses are “flagrantly out of control”. Further that, once a member does seek treatment, they are further stigmatized for being accommodated.
98. Defense Counsel in continuance of the discussion of stigmatization, then drew a parallel to PC Brewer’s situation by pointing the Tribunal to Tab 11, of Exhibit 9 - Article: *PTSD cop’s lawyer blasts anonymous critic for ignorance* (Toronto Sun, March 14, 2019).
99. Mr. Butt submitted that the aforementioned media article is evidence of how PC Brewer had to endure stigmatization not only internally within the police culture but also publically in the media, while struggling with his mental health issues.
100. Counsel in response to the Prosecution’s submission of the Toronto Sun’s Article – entitled, *“Toronto Cop “hiding behind PTSD” faces new charges, fellow cops want him out”*, highlighting negative media attention associated with PC Brewer’s situation, at Tab 15 of Exhibit 7 submitted, *“this kind of inappropriate stigmatization by an anonymous, bullying coward is exactly what this Expert Report is referring too. That is exactly the kind of cultural problem that makes the suffering of people with PTSD and substance abuse disorders worse. It is false. It is discriminatory. It’s ill informed”*.
101. Mr. Butt, in continuing to make submissions on systemic factors that makes the problems of mental health in policing difficult to address, next turned to page 9 and 10 of Tab 1, in Exhibit 9. Here he quoted the following passage, *“once sworn, a police officer carries his or her authorities and responsibilities 24 hours a day. Since they tend to see themselves serving and defined by a calling, and they operate tightly within a*

team culture... disappointing one's colleagues on the job may also be, in their own perception, to disappoint those others outside of work and to fall short of that important identity for everyone". Counsel submitted that heightened disappointment leads to attempts to mask mental health issues and to avoid treatment, which culminates in attempts to self-medicate and substance abuse.

102. Mr. Butt, in commenting on observations made in the Report, at Tab 1 of Exhibit 9, regarding resource shortages in policing and officer dedication, quoted from page 10 of the said Report, *"It is in their nature to keep coming to work. It is in their nature to deploy into harm's way even when understaffed. It is also in their nature to minimize and suppress their own symptoms until they can no longer do so"*. He submitted that, *"the very best aspects of what makes a good police officer – selflessness, sacrifice, bravery are also in an under resourced environment, profound contributors to the exacerbation of mental health challenges. These aren't bad choices. This is an officer who gave till it hurt, inside a system whose culture makes his problems worse"*.
103. Counsel then suggested that the fourteen recommendations found in the Provincial Report at Tab 1, of Exhibit 9, at pages 19-21 are forward looking and indicative that much work remains to be done on the issue of mental health and wellness with policing. He added that these recommendations were not in place when PC Brewer's situation materialized between 2016 to 2019. Counsel summarized the submission as it relates to PC Brewer by stating, *"(PC Brewer was) profoundly disabled by serving his community, whose disability was made worse by the systemic culture in policing at the time, which has not yet been addressed, and that is not his fault"*.
104. Mr. Butt next turned to Part Three of the Report at Tab 1, of Exhibit 9, the Section entitled *Seven Pathways to Better Outcomes*. In discussing the first *pathway* – Normalization, here he highlighted the Report's observation that a key facet is the removal of stigma. Counsel submitted this is much easier said than done. Adding that, *"People who struggle with recovery are not failures"*. And that normalization includes, integrating people with mental health challenges productively into the policing culture in a non-judgmental way.

105. Counsel next turned to the concept of Punishment within the context of Normalization. Here he argued that, *“Punishment is the opposite of integration. It’s disassociation. It’s exclusion. It’s banishment. It’s stigmatizing”*.
106. In discussing *Return to Work Transitions*, as highlighted in the Report at Tab1, of Exhibit 9 – Mr. Butt quoted the Report at page 10 as stating, *“high-risk points for police members with mental health issues, but situations where officers face charges and/or public embarrassment through mainstream or social media could be described as the most acute”*. Mr. Butt submitted that this is where we find ourselves currently in PC Brewer’s situation. He emphasized the point by stating, *“this is an acute inflexion point on the path to recovery, and if all of us in this fail to recognize that, we run the risk of creating very real harm, and we run the risk of misunderstanding the realities of managing the long path back and through mental health challenges”*.
107. Counsel next turned to Tab 7, of Exhibit 9 - Report of Patricia A. Davies, RP (October 3, 2019). Quoting from the therapist who treated PC Brewer that, *“It has been my experience listening to many police officers facing similar mental health issues and their consequences, that loss of hope contributes to suicidal thoughts and difficulty in dealing with the stigma, judgement and media attention”*.
108. Mr. Butt submitted, that in congruence with the Report earlier discussed at Tab 1, of Exhibit 9 and the included concept of Normalization, and the Report of Patricia Davies at Tab 7, of Exhibit 9 – that hope is an integral component of normalization. He added, *“over emphasis on the stigmatizing excluding of punishment, dismissal, condemnation, criticism of bad moral choices, all of which is ill informed takes away hope, and that itself is destructive”*.
109. Counsel in addressing PC Brewer’s recovery, then turned to Tab 10, of Exhibit 9 - Letter from Dr. Gary B Challis (dated August 26, 2020) and quoted the therapist in stating, *“the opportunity to continue in his (PC Brewer’s) chosen career as well as maintaining positive support networks, will continue to enhance his recovery and help to ensure adherence to the changes he has created”*. Mr. Butt emphasized the need

to bring those suffering from mental illness into the fold, not stigmatize and exclude them.

110. Mr. Butt then speaking to PC Brewer's path to recovery submitted that, *"PC Brewer throughout this difficult period starting in 2016 has been actively engaged in the complicated process of recovering from a crisis. A crisis that was caused by public service and exacerbated by police culture... that concurrent disorders are complicated. His (PC Brewer's) was anything but a mild case. So we expect the difficulties in the severe cases"*.
111. In support for his assertion that PC Brewer has actively participated in a course of recovery, Mr. Butt turned to Exhibit 8, Tab F - Brewer and Toronto Police Service, 25/2017. Here he quoted the following findings, from PC Brewer's previous Tribunal decision, "the medicals tendered by the defense illustrate a recovery process that is well underway with a well prognoses for sustainability." Obviously, in hindsight it was not a perfect prognosis for sustainability. Mr. Butt, conceded that since this finding, there have been "setbacks". But attributed them to the complexity of PC Brewer's illness.
112. Mr. Butt, in continuing to quote from PC Brewer's previous Tribunal Decision found in Exhibit 8, at Tab 10, further quoted, *"the Prosecution, who has an interest in protecting the Toronto Police Service from further risk, does not contest the PTSD diagnosis or the medical evidence that indicates acceptance and commitment on the part of Constable Brewer towards his recovery"*.
113. Counsel then addressed Prosecution's comments, indicating that PC Brewer's previous sentence was *"lenient"*. He countered that, *"it was agreed upon by the Prosecution. It was endorsed by an independent Hearing Officer. It was not appealed. It was based on careful consideration of evidence. It was not lenient. It was right. And it does not lie in either my mouth or any other party's mouths to talk despairingly about a previous decision that was joined on and not appealed. As lawyers, we're bound. We don't have that liberty. I'm more concerned that what an argument about leniency is*

code for he shouldn't have had so much consideration of his mental crisis, he should've been punished. I'm really concerned that that's the subtext, and that's problematic".

Mr. Butt then asked that the Tribunal disregard Prosecution's comments or suggestions that PC Brewer's previous penalty was "lenient".

114. Mr. Butt then directed the Tribunal back to Exhibit 9, Tab 2 - Homewood Health Discharge Records (July 29, 2019) and the related three tests discussed therein, as they applied to PC Brewer. Specifically referencing, at Tab 3 - Generalised Anxiety Disorder Assessment (GAD-7), at Tab 4 - PHQ-9 Questionnaire for Depression Scoring and Interpretation Guide, and at Tab 5 - Using the PTSD Checklist for DSM-5 (PCL-5).
115. Mr. Butt then proceeded to walk the Tribunal through each of the tests described in Tab 3, 4 and 5 of Exhibit 9 and their respective findings on PC Brewer's condition.
116. Specifically, Mr. Butt submitted that, concerning the GAD-7, *"the scale is, 5 is mild, 10 is moderate, and 15 is severe. On admission to Homewood, in May 2019, PC Brewer was diagnosed as severe. And it was 0 on discharge"*.
117. Concerning the PHQ-9 Counsel submitted that, *"0 to 4 is minimal, 5 to 9 is mild and 10 to 14 is moderate. On admission, he (PC Brewer) had a score of 11, which is moderate, and on discharge, 3 which is minimal"*.
118. Finally, in regards to the PCL-5, Mr. Butt summarized that, *"a score of 31 to 33, is indicative of probable PTSD. On admission, Constable Brewer was 35, which is above probable, and on discharge, (PC Brewer was) 13"*.
119. Mr. Butt submitted that this "scientific data" discussed above, is indicative of, *"despite his efforts in 2019, he (PC Brewer) was still struggling when he went into Homewood, but when coming out of Homewood, due to his hard work and of course effective intervention, significant improvement. And it's continued since then. This is all under the theme of how hard he has been working to recover and make progress"*. Counsel

added that PC Brewer has maintained his sobriety since May 2019 and thus for over one year and four months.

120. Counsel then further commenting on PC Brewer's recovery and prognosis submitted, *"you can't assume a complex illness is completely resolved, but what does it say? It says that the hard work that needed to be done has been done. That is the first thing. And the second thing that it says is that there is stability. Not only current, but sustained stability"*. In support of his submission, Mr. Butt added that PC Brewer has demonstrated, *"sustained sobriety for over a year. Dramatically improved numbers at Homewood to provide the foundation. (And) you now have an illness that has been successfully managed for well over a year"*.
121. On the issue of recent positive *work history*. Counsel submitted that PC Brewer demonstrated a positive work history for nearly 14 years, from 2002 – 2016, when he went into crisis.
122. On the issue of *risk* associated with PC Brewer's mental health crisis and continued employment, Mr. Butt submitted that, *"a mental health crisis based on the evidence we now have, has been successfully and stably managed for a year and four months... it's not only unreasonable – it's virtually impossible to say there's an unacceptable risk. It's just not consistent with the evidence"*.
123. Mr. Butt summarized his submissions thus far by stating that PC Brewer's situation is, *"a picture of solid work, significant crisis made worse by the culture in which it occurred and solid efforts to manage it that were not successful for a while because of the complexity of the problem, but are now stable"*.
124. Counsel then turned to a discussion of the misconduct before the Tribunal. He first began with reminding the Tribunal of the chronology of the misconduct, indicating that the current set of acknowledged misconduct commenced in September of 2016.

125. Mr. Butt pointed out that in 2016, PC Brewer's mental health crisis was building and culminating in an extreme event on December 1st. He added, that the warning signs appeared even earlier in October, when PC Brewer was found to be *"drinking on the job"*.
126. Counsel then submitted that as per Tab 2, of Exhibit 9 - Homewood Health Discharge Records (July 29, 2019) and Dr. Challis' report found at Tab 6, of Exhibit 9 - Letter from Dr. Gary B Challis (October 8, 2019), PC Brewer was suffering from repeated exposure to workplace trauma. He then summarized PC Brewer's situation as, *"we have somebody already in the grips of this illness and doing again, what the culture requires, which is to suppress, deny, minimize and medicate with alcohol. You can't look at that incident without taking all of that into account, because if you do that, you're turning a blind eye to the medical and cultural realities of mental health challenges in policing"*.
127. Next on the topic of regressive discipline, Mr. Butt submitted that, *"to punish somebody more heavily for an earlier episode of misconduct. That is wrong. So the Prosecution has a very serious regressive discipline problem with that first incident"*.
128. Mr. Butt then spoke to a concern about denial of *procedural fairness* in his previous criminal trial, in front of Justice Blouin, found in Exhibit 7, at Tab 8, Counsel submitted that, *"Constable Brewer was ultimately subjected to criticism by the Judge. But, he was not on Trial. He did not have Counsel. He did not have procedural fairness like the benefit of presumption. He did not have the right to argue his position. The Crown conceded at the beginning that his use of force was excessive. He had no opportunity to present his side of the story. That was a concession from the outset"*. Mr. Butt added, *"where a Judge ends up being critical, you have to ask yourself, how fair is that to Constable Brewer? It's not, plain and simple"*.
129. Mr. Butt next on the topic of *procedural fairness* pointed to the ASoF (Exhibit 4). Here Counsel pointed out that when Professional Standards (PRS) became involved and the matter was further investigated, what came out was, *"there was aggressive pushing of the door with feet. Justice Blouin said there was nothing. He was wrong. What we have agreed on here is that there was in fact behavior that created a risk of damage."*

That he was told not to engage in, and then the OC Spray was deployed". Counsel added, "And we're pleading guilty. We're not saying that the OC Spray was appropriate. It was an overreaction, but it was not as Justice Blouin said a lie and that T.H wasn't doing anything to warrant intervention. He was. It's just the intervention – intervention was warranted, and the degree of intervention exceeded".

130. Mr. Butt then submitted that mitigating factors to the *pepper spray* incident were, *"they had just finished a very violent struggle, with a person crazy high on drugs who had just stabbed a hockey dad taking his kid to the game, for virtually no reason. And the fight to take him down was significant. So you got somebody coming immediately off an adrenaline high of a fight with a person with a knife, who then has to deal – who also has PTSD in the background – who then has to deal with somebody who was actively pushing against the door"*. Counsel added that when this incident occurred PC Brewer had no previous discipline history and that the pepper spray incident should be treated as a *"first offence"*, and *"PTSD is very much in the background"*.
131. Mr. Butt next turned to discuss the *supervisor incident*. And submitted, that, *"he (PC Brewer) had received information that that Supervisor was having sexual relations with his then common law partner... I would actually fully expect that somebody would be a) mad as hell, and b) express that anger in no uncertain terms to the person who they believe is engaging in that kind of behavior"*. Counsel added, *"yes, it's disrespectful language to a Supervisor. Yes, it is misconduct. Yes, we have pleaded guilty to it. But, as a human being, as somebody in committed loving relationship who honestly believes that that has happened, what do you expect? Of course he has to be punished for the breach of Service – the Code of Conduct in the PSA.... on a human level, it's exactly what you'd expect. Yes, it is an offence. But no, it is not aberrant. And no, it is not indicative of bad character"*. Mr. Butt concluded on the matter by reminding the Tribunal that this incident also occurred between 2016 and 2019, while PC Brewer was struggling with his concurrent illnesses.

132. On the L.A Fitness incident, Counsel submitted, *“yes, members of the public saw it, and its “discreditable”. That’s the rhetoric of the case law...the human reality of kicking a garbage can when you’re mad and struggling with a substance abuse disorder simply doesn’t take us very high on a scale”*. Mr. Butt added, *“Constable Brewer is under the microscope, little things become big things. It’s the unintended consequences because we can ask ourselves this question – if he weren’t under the microscope, would being drunk and kicking a garbage in a health club get to the Tribunal? There’s a really good argument that says, probably not”*.
133. Next in discussing the Impaired Incident, Counsel submitted that the date of this incident and the high readings found during the subsequent criminal investigation, were indicative that PC Brewer was suffering from the substance abuse disorder described in prior submissions. As further support for his submission, Mr. Butt stated, *“you don’t get twenty plus drinks in your system in the early afternoon without having a serious substance abuse disorder. And we know that a very short time later – same month – occurs in May, he’s in Homewood...he’s ticking all 11 of the 11 boxes of the substance abuse disorder”*.
134. Mr. Butt then commented on PC Brewer’s guilty pleas – both in Criminal Court and here in front of this Tribunal. Counsel, pointed out that a common feature of substance abuse is, denial, minimization, and shifting of blame. However the stark difference in PC Brewer’s circumstance and mitigating factor is that his pleas represent, *“commendable progress towards recovery that Constable Brewer has made...acknowledgment of the harm to the Service, the community and himself...clear eyed recognition, that yes I have a disorder, but it’s on me to manage it because it is destructive”*.
135. Counsel then on one of Prosecution’s submissions regarding PTSD, submitted that, *“my friend said, and in talking about PTSD, it cannot excuse, but it can explain. I agree totally. I think my friend has hit the nail in the head. We pled guilty. We accept that there is now a record of multiple episodes of misconduct that calls for significant penalty. It is not an excuse. But it does explain”*.

136. Mr. Butt then paused to summarize his submission thus far. Specifically he stated, *“We’ve got an irrefutably well documented complex concurrent disorder. We’ve got systemic and cultural failings inside of policing that have made this a much harder journey than it ought to be. We have considerable sustained and stable rehabilitation from that disorder. We have an expert report that says we got a lot of work to do, and that the key theme is normalization, not punishment if we’re going to move forward. We have virtually no risk going forward because we have an excellent work record of 12 – 14 years leading up to 2016. A dramatic change during which he was in the grip of a complex and difficult concurrent disorder, made worse by the culture. We have that now managed. So that there is in my submission, nothing in this record properly understood allowing anyone to say that based on the evidence – the likelihood of successful public service going forward is poor”*.
137. Counsel then turned to address the test(s) for dismissal – is PC Brewer fit to remain a Police Officer (with the Toronto Police Service) or has his usefulness to the Service been spent. Counsel submitted that on both counts the answer was *“no”*.
138. In support of his submission at paragraph 136, Counsel turned to Tab 8, of Exhibit 9 - Article: *Police officers find ways to cope with PTSD through group therapy* (Globe and Mail, June 13, 2019). From the article he quoted, *“and today, three years after a successful return to the front line, Constable Leng says his struggles have made him a better officer: “It enables you to have a better appreciation [for their situations]. I can say ‘Yup, I get it, I’m an alcoholic’ ”*.
139. Counsel then moved to contrast Constable Leng’s comments with a passage from Tab 1 - Staying Connected - Report of the Expert Panel on Police Officer Deaths by Suicide, 2019, of Exhibit 9, where counsel read into the record, *“most police members will soon come to regard any person with mental health issues as someone they would never want to be”*. Mr. Butt added that, *“this idea of normalizing and integrating and not punishing and ostracizing and getting rid of, can be a gateway to precisely the kind of empathy that can help fix one of the systemic and cultural failings”*.

140. Counsel then argued that that there is an added value in keeping PC Brewer employed, as he can serve as a mentor and support mechanism for other officers who may be experiencing mental health issues. Specifically Mr. Butt offered, *“if there are more Constable Brewer’s on the job, they’ll be responding to people in the community with mental health challenges – not as others, but as one of them that they can empathize with. And when their colleagues are worried about masking symptoms, because they’ll be broken toys, it’s the Constable Brewer’s in the Service that can say, you’re not a broken toy. You have a disorder. I had it, I have it. I work with it. We can move through this. We can move through together”*.
141. Mr. Butt then conceded that general deterrence needs to be considered. That said he submitted, *“while we do not abandon general deterrence and we impose penalties that hold people accountable, we recognize that as my friend and I both agree, serious illness is an explanation, we mitigate that”*. Counsel added, *“I’m going to ask for a significant demotion”*.
142. Mr. Butt then commented on PC Brewer’s ability to continue to perform his duties as a Police Officer, despite having acquired a McNeil disclosure requirement. Counsel submitted that, *“there would not be any significant interference with Constable Brewer’s ability to serve the public as a Police Officer”*.
143. On the issue of an appropriate *disposition*, Mr. Butt submitted that, *“the last penalty, and only penalty, from this Tribunal Constable Brewer has received was five days. He has since fought hard and wrestled down a very serious concurrent disorder and is in now in a state of sustained stability. That concurrent and complex disorder does not excuse, but it explains in that context to go from five days to dismissal is a jump, too large, particularly when we have a serious regressive discipline problem for the September incident”*.
144. Continuing with submissions regarding *disposition*, Counsel added that, *“given the number of offences, and the seriousness of at least one of them, possibly two, a substantial jump is warranted. In terms of progressive discipline, we have to distinguish between progress and prematurely throwing up our hands when the experts say that*

is not what should be done...the right place to arrive in recognition of what's going on in this case is a significant demotion". In support of Counsel's position, he offered three reasons, "one - and this is probably the most important because the evidence is: Constable Brewer can be a productive officer, two - it appropriately reflects the gravity of the offending behavior as mitigated by the mental health context in which it is deeply embedded and three - it's the gateway to dismissal".

145. Mr. Butt concluded by asking the Tribunal, that if dismissal was disposition, that it be structured to read, *"resign within 30 days or be dismissed from the date of the judgement"*. Counsel added that this would provide sufficient time to consider next steps, be it an appeal or motion to lift a stay of proceedings.

Prosecution Reply:

146. The Prosecutor began by indicating that there was no objection to Mr. Butt's request to structure a dismissal disposition, in the manner he had suggested.

147. Next Ms. Ciobotaru submitted a point of clarification, *"that the Service is not disputing the concurrence of the officer's disorders or the severity of them... we're not disputing the evidence in terms of the medical documentations that has been put forward"*. She added, *"the officer's mental health at the time of these incidents, it's but one factor"*. And invited the Tribunal to look at Tab 1 of Exhibit 7 and the discussion at point V regarding, *disability and personal circumstance*.

148. On issue of regressive discipline as raised by Mr. Butt. The Prosecutor acknowledged that the use of force incident predated PC Brewer's previous Tribunal proceeding, but explained that the Service only became aware of the incident in December of 2017, after the Tribunal disposition had been issued. And thus refutes suggestions that the Prosecution is intentionally addressing a regressive discipline scenario.

149. Next on Defense Counsel's comments regarding the L.A Fitness incident. Prosecution suggested that the facts surrounding the incident were somewhat minimized by Mr. Butt's suggestions. That in fact it was not merely the kicking of a garbage can, but rather involved, *"yelling abusive and insulting profanity at his common law partner in public per the Agreed Statement of Facts, throwing keys and water bottle against the wall, kicking over the garbage can, damaging it, and that this incident occurred in front of staff and other fitness club members, as well people (witnesses) confirm that alcohol was on (PC Brewer's) breath"*.
150. The Prosecutor also submitted that, *"All I'm asking the Hearing Officer to do is look at this misconduct as a whole and as a pattern. And in terms of the pattern and the string, some of the incidents yes are going to be considered more serious and some less"*. Adding that, *"you don't have to give a last chance warning, um, and you don't have to look at collective acts of misconduct as a gateway to dismissal. In these circumstances dismissal is the most appropriate penalty"*.
151. Ms. Ciobotaru also submitted that she disagreed with Mr. Butt's submissions regarding a "systemic cultural feelings" in policing as a potential consideration, for continued employment with the Service. Adding that PC Brewer has been provided with the assistance of MAS.
152. The Prosecutor submitted that in PC Brewer's situation the test of dismissal should be, *"does this officer's rehabilitation or prospect of rehabilitation outweigh the risks to the public trust, public safety, the reputation of our Service as a whole, and in my submission it does not"*.
153. Ms. Ciobotaru concluded by submitting that a *"last chance"* warning is not mandatory.

Analysis and Decision:

154. In Williams and the Ontario Provincial Police, 1995, OCCPS the Commission identified three key elements a Hearing Officer must take into account when imposing a penalty. These are: the nature and seriousness of the misconduct; the ability to reform or rehabilitate the officer, and the damage to the reputation of the Police Force that could occur if the officer remained on the Force.
155. The Commission has also instructed that there are other factors to be considered in light of a particular misconduct, which include the public interest in the administration of justice, the recognition of the seriousness of the misconduct, the employment history, the need for deterrence, the need for consistency of disposition, management approach to misconduct in question, procedural fairness, the effect on the police officer and police officer's family, handicap and other relevant personal circumstances.
156. A proper balance must be struck between a fair consideration of the officer's past misconduct, sought treatment, current state of wellness and potential to continue and future usefulness to the Service, when considering the appropriate disposition, up to and including dismissal, as the Prosecution has requested.
157. In considering the appropriate disposition for PC Brewer's admitted misconduct. I turn to the relevant factors contained in Dispositions-2017 Ed., Ontario Police Services Act by Ceysens & Childs found at Tab 1, of Exhibit 7.
158. In this case Constable Brewer violated the **public's trust** by not living up to his Oath of Office on multiple occasions as outlined in the Agreed Statement of Fact – Exhibit 4. Specifically, he pepper sprayed a non-combative, handcuffed prisoner, conducted himself in a non-becoming manner at the L.A Fitness, incurred an arrest and conviction for impaired driving, and further used profanity or abusive language in his interaction with a supervisor, all of which are contrary to the Oath of Office he had sworn.

159. The public must have confidence in the ability of the Service to deal with any misconduct on the part of its members and as such, the public also has an interest in ensuring that Constable Brewer is held accountable for his actions. The public must be assured that Officers' can maintain professionalism and calm even in the face of provocation, frustration or adverse situations. Officers are held to a higher standard.
160. In considering the ***seriousness of the misconduct***, PC Brewer pepper sprayed a handcuffed individual (and based on the assigned Crown's assessment) used excessive force, used language with a colleague and supervisor which was unprofessional and failed to meet the standards that we expect of our officers, was again "unprofessional and unbecoming", in front of L.D and in a Public venue, during his aggressive conduct in the LA Fitness incident and culminating in his arrest for impaired driving – which also involved an accident witnessed by members of the public.
161. I accept Ms. Ciobotaru's submission that, *"the behaviour demonstrated by PC Brewer collectively and individually is a serious departure of what is expected of a police officer. And these facts strike at the core of policing duties, from dealing with members of the public and trusting our officers to use the right and reasonable amount of force, to not breaking the law themselves...this conduct must be assessed at the most serious end of the spectrum"*. I find significant aggravating consideration for disposition.
162. The Prosecutor's submission that, *"case law supports a finding that a series of events of misconduct are to be treated more seriously than a single isolated incident because a series of events that are carried out over a period of time cannot be considered single acts of human frailty"*, is supported in the Commissions finding in Wildeboer and Toronto Police Service, OCCPS, 2006, found at Tab O, of Exhibit 8 wherein The Commission noted, *"it is also evident that this was not an isolated incident, but rather a course of conduct. Constable Wildeboer made thirteen separate C.P.I.C. queries on six separate occasions over the course of 10 months"*.

163. I find in the case of Constable Brewer that his actions were not a single act of human frailty, but a series of incidents over a course of time, which cumulatively situate them at the most serious end of the discipline spectrum.
164. On the principle of ***recognition in the seriousness of misconduct***, the Prosecutor referred to Purbick and Ontario Provincial Police, OCCPS, 2011 (Exhibit 8, Tab D). The Prosecutor drew attention in the decision to the fact that, *“a guilty plea is, one of the most indisputable forms of admission of culpability, wrongdoing and responsibility”*.
165. Ms. Ciobotaru, in assessing PC Brewer’s recognition in the seriousness of misconduct, asked that I consider PC Brewer’s post-incident conduct, and in particular his guilty plea both in Criminal Court and in this Tribunal.
166. The Prosecutor pointed to Exhibit 8, Tab E - Carson and Pembroke Police Service, 2001, OCCPS which stated, *“we have no doubt that a guilty plea should be recognized as a mitigating factor and taken into account along with other factors in determining an appropriate penalty”*. I concur with the principle outlined in the quoted decision and find PC Brewer’s guilty plea(s) both before this Tribunal and in his related criminal matter, as mitigating.
167. In considering PC Brewer’s ***employment history*** the Prosecutor submitted that, *“employment history is an important disposition in all cases. Employment history as a mitigating or aggravating consideration closely relates to the disposition consideration of rehabilitation potential.”* I concur.
168. At Exhibit 7, Tab 11 and 13 in the Prosecutions Book of Records, a review of PC Brewer’s complementary activities and conduct issue(s) outlines that the officer had 14 positive documentations / letters of appreciation and one additional conduct issue in 2016 and a previous Tribunal conviction from 2017.
169. The listed 2016-conduct issue involved PC Brewer using profanity and waiving a non-collapsible nightstick. Of note, is PC Brewer’s 2017 Tribunal matter wherein issues surrounding mental wellness and substance abuse were considered. The Prosecutor quoted (Ret) Supt. D. Andrews, in his decision pertaining to this earlier Tribunal matter

as stating, *“my comments in many of the above paragraphs demonstrate that I have considered the disposition factors of personal circumstances and handicap as well as his employment history. Constable Brewer’s handicap, specifically PTSD and his reliance on alcohol to self-medicate, has been at the core of this hearing. I believe in both the diagnoses and Constable Brewer’s commitment to reform therefore his personal handicap coupled with the potential for rehabilitation is a significant mitigating factor”*.

170. Ms. Ciobotaru submitted that, *“PC Brewer was given the benefit of the doubt (in 2017 Tribunal matter). In my submission, the joint position that was before the previous Hearing Officer was lenient and gave PC Brewer the opportunity to get help and to reform his behaviour and then subsequent to this (2017) decision and subsequent to these incidents, PC Brewer had these four additional misconduct issues before you; more than one involving alcohol but the most recent 2019 culminating in a impaired driving conviction. So in my submission, that factor is certainly aggravating”*. I concur.

171. The Prosecutor submitted that PC Brewer’s previous discipline disposition in the Tribunal is an aggravating factor in sentencing. In support of this she pointed at Exhibit 8, Tab G - Betts and Ontario Provincial Police Service, OCCPS, 1997. On the issue of repeated infractions, she quoted the Commission in its comments that, *“we agree that charges individually in that case are not of an overly serious nature yet the repeated infractions would suggest that an officer has failed to contemplate the professional requirements of his job as it relates to conduct”*.

172. Further, Ms. Ciobotaru submitted that at Tab 14 of Exhibit 7, are performance appraisals for PC Brewer from 2007 to 2014. She added that, *“the Prosecution considers PC Brewer’s employment history aggravating, it’s difficult to rely on these performance appraisals and positive comments considering he’s been having conduct issues for the past four years since 2016 and he only became an officer in 2008”*.

173. The Tribunal notes that, in Venables and York Regional Police Service, OCCPS, 2008, in Exhibit 8, at Tab B, the Commission noted, *“notwithstanding mitigating factors in his favour, to our mind, it was certainly open to the Hearing Officer to conclude that Constable Venables’ actions were so egregious that they raised insurmountable doubts about his future suitability as a police officer”*.
174. Past behaviour is often an indication of what can be expected from a person in the future. Constable Brewer’s employment history is sullied by a previous Tribunal finding / conduct issue, and as such is an aggravating factor.
175. In considering the **consistency of disposition**, issues of consistency of disposition, as found in Exhibit 8, at Tab H, in Schofield and the Metropolitan Toronto Police, 1982 affirm that, *“each case must be judged on the facts peculiar to it. Consistency in the discipline process is often the earmark of fairness. The penalty must be consistent with the facts and consistent with similar cases that have been dealt with on earlier occasions”*.
176. The Prosecutor submitted that PC Brewer’s conduct in these matters before the Tribunal demonstrate a pattern of behaviour by an officer who consistently and repeatedly fails to follow the rules and obligations imposed upon him. In addition, Ms. Ciobotaru submitted that, *“permitting Constable Brewer to maintain his employment with the TPS when viewed in the context of all of his misconduct would be an inconsistent finding of the standard of professionalism”*.
177. The Tribunal concurs with the Prosecutor and finds that by PC Brewer’s return before this Tribunal upon a host of varied charges, including a second arrest / apprehension by an external police service does support a consistent pattern of behaviour which has repeatedly compromised rules and obligations imposed upon him as a police officer. I find this to be aggravating.

178. Further direction on consistency of disposition can be found in Exhibit 8, at Tab T - Karklins and Toronto Police Service, OCCPS, 2007. The actions of Karklins are distinguishable from those of Constable Brewer. However, what is notable was the reference by the court of the Commission's review, "*...dismissal is reserved for the most egregious cases where the potential for rehabilitation is poor and the usefulness of the officer to the service is effectively spent*". The Commission further noted, "*there may well be singular acts of misconduct that strike to the heart of the employment relationship and effectively exhaust an individual's potential usefulness to perform the key duties of a police officer. Such singular acts may raise obvious concerns with respect to character.*"
179. In considering the factor of **deterrence** (both specific and general deterrence) the correlation between penalty and deterrents, both general and specific, are cited in Exhibit 8, Tab N, in Andrews and Midland Police Service, 2002, OCCPS, where the Commission stated, "*He was also correct that the penalties imposed for misconduct must be strong enough to send a clear message to other officers that such conduct or any conduct of this nature will not be tolerated*" and further that, "*sufficient to punish and to deter while not causing undo or excessive hardship while demonstrating that reoccurrence will not be tolerated*".
180. From Tab O, of Exhibit 8, in Wildeboer and Toronto Police Service, OCCPS, 2006 the Prosecutor discussed similarities as they apply to PC Brewer's matter before this Tribunal and submitted that, "*specific deterrence is not satisfied simply because PC Brewer admitted to his behaviour and has sought counselling. All members must understand that behaviour of this nature cannot and will not be tolerated and will result in the most serious of consequence. As such, my submission is that specific and general deterrence is an aggravating penalty factor*". I concur with her submission.
181. In regards to general deterrence, the outcome of these proceedings will be published on TPS routine orders and a summary of this decision will be published on the TPS Intranet. Those documents are available to the entire Service membership and will reinforce the previous messaging in regards to the potential consequences for this type of misconduct.

182. All ***procedural fairness considerations*** have been addressed in this instance. He was provided the opportunity to make full answer and defence and has had the benefit of an experienced counsel throughout these proceedings.
183. In regards to the ***potential to reform or rehabilitate*** the officer, the Prosecutor drew attention to Exhibit 8, Tab N where the Commission noted in Andrews and Midland Police Service, 2002, OCCPS, *“The Commission believes that rehabilitation is a key factor to be taken into consideration when a penalty is imposed, especially, when the offender has a prior unblemished employment record. Unless the officer is beyond rehabilitation (in which case he would be a candidate for dismissal), the door should be kept open for the officer to be rehabilitated. The penalty should be tailored to provide him with the opportunity to do so”*. She added that PC Brewer does not have an unblemished employment record. In his previous Tribunal conviction, he was provided an opportunity to reform and yet he found himself again before this Tribunal on a series of new charges.
184. The Prosecutor further submitted that, in Williams and the Ontario Provincial Police, 1995, OCCPS; at Tab S, of Exhibit 8 wherein the Commission stated, *“even where a police officer can demonstrate steps taken towards rehabilitation or successful treatment, dismissal may be appropriate for serious misconduct despite those attempts at rehabilitation”*. Ms. Ciobotaru submitted that the steps taken by PC Brewer to seek help, *“are too late and the seriousness of the misconduct individually and collectively supports dismissal”*.
185. The Prosecutor in further support of her position on dismissal also referred to Tab T of Exhibit 8 - Karklins and Toronto Police Service, OCCPS, 2007. Here she quoted the Commission, *“there may be singular acts of misconduct that strike to the heart of employment relationship and effectively exhausts an individual’s potential usefulness to perform the key duties of a police officer. Such singular acts may raise obvious concerns with respect to character”*. PC Brewer’s individual and collective actions have negatively struck at the heart of the Employer-Employee relationship.

186. The Prosecutor submitted, that in PC Brewer's matter before this Tribunal, *"the out of character misconduct consideration can't be applied to misconduct which has continued over an extended period of time...there is no evidence that PC Brewer took inventory of his actions or made any effort to correct them. Furthermore, it's been two years since his last PSA issue which gave him ample time to take positive steps which may have reassured this Tribunal that he does have the ability to rehabilitate and I submit that that – those do not exist"*.

187. I concur with the Prosecutor, PC Brewer does not possess an unblemished employment history. I also concur that the principles as outlined in Williams and the Ontario Provincial Police, 1995, OCCPS; at Tab S, and Karklins and Toronto Police Service, OCCPS, 2007, at Tab T, of Exhibit 8 are applicable in PC Brewer's matter. Finally, I agree with the Prosecutor, that the *"out of character"* consideration is null void, in this matter. Hence, I find, this also an aggravating factor.

188. In considering the issue of ***damage to the reputation of the Service and effect of publicity***, Prosecution pointed at Tab U, in Exhibit 8 - Bressette and Ontario Provincial Police Service, OCCPS, 2013 in which the Commission stated, *"the Service has made significant efforts to draw to the attention of the public and of its members the risks of operating a motor vehicle while impaired. To have one of their members commit such observable misconduct calls the reputation of the Service into disrepute."* And further added, the fact that this incident received considerable media coverage, as witnessed at Tab 15, of Exhibit 7.

189. The Prosecutor further submitted from Tab V, in Exhibit 8, Hassan and Peel Regional Police Service, OCCPS, 2006, *"we see no reason why a hearing officer in the absence of direct evidence may not place himself in the position of reasonable person in the community for the purpose of assessing the degree to which the conduct of an officer has brought harm to the reputation of a police force and the extent to which that harm were to continue if an officer were to remain employed"*.

190. The Service's reputation suffers every time one of our officers breaches the Oath of Office. It negatively impacts the public's trust. PC Brewer's conduct resulted in a criminal conviction, a driving prohibition, a public Criminal Court decision and considerable media coverage. PC Brewer's actions strike at the very heart of his employment relationship with the Service. In Williams and the Ontario Provincial Police, 1995, OCCPS; at Tab S, of Exhibit 8, it was stated that, the reputation and image of a police force would be seriously harmed if the circumstances were to become public knowledge. It is both the individual and cumulative effect of Constable Brewer's actions that is aggravating.

191. The involvement of members of the DRPS when Constable Brewer was arrested, as well as members of the public who observed his actions both at the LA Fitness facility and at the scene of the vehicle accident, have all negatively affected the Service's reputation. There has also been considerable mainstream media coverage after PC Brewer's last appearance before this Tribunal. The fact that an officer has put himself (and the Service) in the position to have to explain one's conduct as to why he remains hired, to the point that the reputation and image of the Service would be harmed if the circumstances were known, is damaging to all officers, as well as the employer.

192. On the issues of *damage to the reputation of the Service and effect of publicity*, I find this to be an aggravating factor on disposition.

193. On the issues of ***financial loss resulting from unpaid interim administrative suspension*** – PC Brewer has been paid his full salary while on suspension, and awaiting disposition of this matter and as such this factor is negligible.

194. ***Effect on the police officer and police officer's family***, I have no doubt that the criminal proceedings and the disciplinary proceedings have had an impact on Constable Brewer. This has been a long journey for him, the Service and the community. Mr. Butt noted that Constable Brewer is committed to sobriety. However, it was Constable Brewer's actions, as early as 2016 that started the constellation of events moving forward. This issue was also addressed during his previous matter before this Tribunal.

195. Next in considering the factor of ***disability and other relevant personal circumstances***, the Prosecutor cited from Exhibit 8, Tab P - Moraru and Ottawa Police Service, OCCPS, 2008. Here she quoted from the decision that, *“during the penalty phase of a disciplinary hearing, not unlike the sentencing phase of a criminal trial, it is incumbent on the trier of fact to consider whether PTSD and medically recognized illness influenced the actions of the officer and if so to what extent. Having concluded that Constable Moraru was suffering from PTSD the real issue before the hearing officer was what weight the effect of PTSD should be given as a mitigating factor in assessing penalty”*.
196. Further, on the issue of this factor, Ms. Ciobotaru referenced Tab Q, of Exhibit 8 - Orser and Ontario Provincial Police Service, OCCPS, 2018. Herein, she quoted from the Commission’s decision, *“reasons make clear that the hearing officer took the PTSD issue seriously and engaged in meaningful analysis of the evidence on the role that PTSD might have played in the misconduct. The hearing officer accepted the appellants suffered from PTSD but was not convinced that the appellant’s misconduct was in any way related to the PTSD diagnosis. His conclusions are reasonable and supported by the record we owe them deference. We find he did not commit an error in principle in treatment of the PTSD issue”*.
197. I concur with the Prosecutor’s submission that, *“disability is a mitigating factor, what is aggravating in this instance is that PC Brewer already received help and was already given a lenient chance by a previous hearing officer in this Tribunal to seek treatment and help for his conditions... I would submit that disability is an explanation, in terms of PC Brewer’s conduct but not a defence. It can explain some of the inappropriate conduct but it does not excuse it”*.
198. Ms. Ciobotaru also discussed a paper at Tab R, of Exhibit 8 entitled - Misconduct and PTSD - Balancing the Public Trust and Accommodation, 2012. She quoted from the conclusion of the paper, *“the existence of a disability is certainly a relevant factor in assessing appropriate discipline for misconduct. Where there is sufficient evidence of the disability and a nexus to the misconduct an employer must accommodate an employee to the point of undue hardship. Undue hardship may be reached in*

circumstances where the conduct is so egregious that the public interest would warrant termination or where there is no prognosis that the employee will be able to fulfil the essential duties of the job within a reasonable time. At this stage the officer's usefulness will be at an end".

199. I accept that there is a nexus between PC Brewer's personal circumstance and his misconduct that might support mitigation. There is considerable medical information submitted to substantiate disability issues. I also concur with the Prosecutor that, *"disability is an explanation, in terms of PC Brewer's conduct, but not a defence. It can explain some of the inappropriate conduct but it does not excuse it"*. And further that, *"although this is a mitigating factor, it's one of several factors to be considered by the Hearing Officer"*.

200. This ***medical information and the submissions*** of both Prosecutor and Defense council are discussed below.

201. The Prosecution, argues that the four incidents which give rise to these proceedings should be assessed collectively and are indicative of a pattern which warrants dismissal of PC Brewer.

202. The Defense argued that PC Brewer's misconduct should be considered within the context of a concurrent illness – specifically medically diagnosed PTSD and a substance abuse disorder. That this should further be evaluated with a policing culture which negatively impacted his particular situation. Mr. Butt further argues, that PC Brewer has worked hard to address his concurrent illness and can report 1 year and 4 months of sobriety – with no additional misconduct incidents, and that his usefulness to the Service has not been exhausted. He further argued that PC Brewer should be provided with a Last Chance provision, combined with a significant demotion – which would serve as a gateway to dismissal for future serious misconduct.

203. Defense submitted that PC Brewer suffered, at the time of these allegations from a concurrent illness – PTSD and Substance Abuse Disorder. And provided the Tribunal with medical evidence in support of the submission, found at Tab, 2, 3, 4, 5, 6 and 10 of Exhibit 9 and in Exhibit 10.
204. It should be noted that the Prosecution accepted the Defense medical findings regarding PC Brewer and did not seek an independent assessment. This is of significant note, as it leaves the Tribunal with only Defense’s uncontested medical submissions and reports contained within Exhibit 9 and 10 respectfully.
205. In reviewing the only medical evidence before the Tribunal, one can only find in congruence with the Defense submission that PC Brewer at the time of these incidents was suffering a severe mental health crisis, has sought professional assistance and subsequently has completed the residency program at Homewood. In addition, Mr. Butt on behalf of PC Brewer points out that the Officer has maintained his positive mental health since the treatment approximately 16 months ago and offers the absence of any new incidents of misconduct as evidence in support of this submission.
206. I agree with the Defense’s submission that the course of recovery from that illness “*is not a straight line*”. But this must be considered within the described test for dismissal, as outlined in Trumbley and Metro Toronto Police Service, 1986, at Tab A and Venables and York Regional Police Service, OCCPS, 2008, at Tab B of Exhibit 8.
207. As well I find Defense’s submissions regarding the *Police Culture* and its traditional impact on Officers self identifying as suffering from mental illness and seeking professional help can be restrictive to timely treatment.
208. Further, I find support for the Defense submission that Policing can no longer remain insensitive to the realities and existence of legitimate and medically established mental health concerns of its members. To do so would be to ignore the relevant findings and recommendations of the recent Provincial Report found at Tab 1, of Exhibit 9 and further incongruent with the greater contemporary societal norms.

209. I further agree with Mr. Butt that punishment in the face of established mental illness is not the most appropriate approach. Certainly not, in the current environment where Policing is under acute public scrutiny to demonstrate reform and reflect contemporary values. However, this does not preclude an appropriate penalty up to and including dismissal for misconduct committed, and in full consideration of all aggravating and mitigating factors.
210. It should be noted that medical assessments and correspondence pertaining to PC Brewer, submitted in Exhibit 9, at Tab 2, 6, 7, 9 & 10 range in an analysis from July 29th, 2019, for Homewood Health Discharge Records (Tab 2) through to the Updated Medical Assessment – Report by Dr. Jake Bobrowski dated March 1/21, in Exhibit 10.
211. I agree with the Prosecutor's submission that the test for dismissal as found in the Court of Appeal decision of Trumbley and Metro Toronto Police Service, 1986, found in Exhibit 8, at Tab A is to determine if PC Brewer is fit to remain an employee of the Service.
212. I further agree with Ms. Ciobotaru's submission that, *"courts have repeatedly adopted the principle that the basic object of dismissing a police employee is not to punish him or her in the evil sense of the word, but rather to rid the employer of the burden of an employee who has shown that he or she is no longer fit to remain an employee"*.
213. I also note that essential for consideration is the Prosecutor's submission from Venables and York Regional Police Service, OCCPS, 2008, found in Exhibit 8, at Tab B where she quotes from the aforementioned that, *"the commission asked whether the nature of the officer's misconduct spent his potential usefulness as a police officer and whether his actions were so egregious that they raised insurmountable doubts about his future suitability as a police officer"*.
214. This forward-looking proposition; *"future suitability as a police officer"* is something which the Tribunal must consider in arriving at a fair, well-considered and proper disposition.

215. As noted above, the medical reports originally submitted in Exhibit 9, by Defense only provides a cross-sectional analysis of the PC's well being concluding in August of 2020. Hence, out of a commitment to diligence and a full and fair assessment of the member's "future suitability as a police officer", an updated contemporary medical assessment was requested.

216. On March 1st, 2021, Mr. Butt provided an assessment conducted by Dr. Jake Bobrowski, entered as Exhibit 10.

217. Both Prosecution and Defense were asked if they wished to make any further submissions as they pertain to Exhibit 10. Both indicated that they had no further submissions to offer regarding the updated medical assessment.

218. The updated medical assessment, though acknowledging progress made by PC Brewer on his ongoing health challenges, also highlights two insurmountable concerns regarding the member's continued usefulness as a member of the TPS. [REDACTED]

[REDACTED]

219.

[REDACTED]

220.

[REDACTED]

I find this as aggravating.

221.

[REDACTED]

[REDACTED]

223.

[REDACTED]

224.

[REDACTED]

[REDACTED]

225. In Karklins and Toronto Police Service, OCCPS, 2007, at Tab T, of Exhibit 8, the Commission noted, *“there may well be singular acts of misconduct that strike to the heart of the employment relationship and effectively exhaust an individual’s potential usefulness to perform the key duties of a police officer. Such singular acts may raise obvious concerns with respect to character”*. PC Brewer’s actions have affected his employment relationship and have exhausted his usefulness to perform the key duties of a police officer. I have significant concerns about his ability to represent this organization and this profession.

226. Applying the principles, as outlined in Hassan and Peel Regional Police Service, OCCPS, 2006, at Tab V, of Exhibit 8, and in conjunction with PC Brewer’s ambivalence and [REDACTED] – and noting that PC Brewer finds himself before this Tribunal for a second time in the span of only 4 years. I do not believe that, *“a reasonable person in the community for the purpose of assessing the degree to which the conduct of an officer has brought harm to the reputation of a police force and the extent to which that harm were to continue if an officer were to remain employed”* would be seen as acceptable nor foster positive sentiment (from the public) with regards to the harm upon the reputation of the Service – if the officer was to remain employed. Thus I consider this factor to be aggravating.

227. In summary and applying the test(s) for dismissal as outlined in Trumbley and Metro Toronto Police Service, 1986, found in Exhibit 8, at Tab A, “*the basic object of dismissing a police employee is not to punish him or her in the evil sense of the word, but rather to rid the employer of the burden of an employee who has shown that he or she is no longer fit to remain an employee.*” And Venables and York Regional Police Service, OCCPS, 2008, found also in Exhibit 8, at Tab B, “*the commission asked whether the nature of the officer’s misconduct spent his potential usefulness as a police officer and whether his actions were so egregious that they raised insurmountable doubts about his future suitability as a police officer*” the Tribunal turns the aforementioned aggravating factors.

228. On the issue of **ability of reform or rehabilitation**, the member’s [REDACTED]
[REDACTED]
[REDACTED] poses continued risk and “*a burden of an employee who has shown that he or she is no longer fit to remain an employee*”.

229. In revisiting the **reputation of the police service**, and applying again the principles, as outlined in Hassan and Peel Regional Police Service, OCCPS, 2006, at Tab V, of Exhibit 8, [REDACTED]
[REDACTED] – and noting that PC Brewer finds himself before this Tribunal for a second time in the span of only 4 years with a previous 2017 Tribunal conviction. This combined with PC Brewer having being arrested / apprehended by an external police service twice in the span of only 3 years (2016 & again in 2019 for Charge 4 in the present set of misconduct before this Tribunal), I do not believe that, “*a reasonable person in the community for the purpose of assessing the degree to which the conduct of an officer has brought harm to the reputation of a police force and the extent to which that harm were to continue if an officer were to remain employed*” would be viewed positively (by the public) – if the officer was to remain employed.

230. In revisiting the conduct which is before this Tribunal. A significant portion of Defense submissions aimed to draw a nexus to PC Brewer's concurrent illness and his current conduct issues before this Tribunal. Of note is that there was no submission that alcohol was consumed or involved in the first on duty incident – Charge 1 - where PC Brewer pepper sprayed a handcuffed individual.

231. Each of the current incidents, pepper spraying a handcuffed individual, the offensive language used towards a colleague / supervisor, the aggressive action in a public venue (L.A Fitness) towards his (former) common law partner and his subsequent arrest for impaired driving are very serious individually. It should also be noted, that PC Brewer's arrest in 2019 constitutes his second arrest / apprehension by Durham Regional Police within a 3 year span (previously in 2016 and in 2019) for Charge 4 – Impaired Driving – in the current set of misconduct before this Tribunal. [REDACTED]
[REDACTED] I find to be aggravating.

232. PC Brewer's continued misconduct demonstrates a pattern of misconduct, over an extended period of time. I concur with the Prosecution that the current set of misconduct should be considered collectively, and as such the Tribunal finds the current set of misconduct is individually and collectively egregious. As such and in keeping with the test as outlined in Venables and York Regional Police Service, OCCPS, 2008, found also in Exhibit 8, at Tab B the Tribunal finds that, PC Brewer's actions were so egregious that they raise insurmountable doubts about his future suitability as a police officer.

233. PC Brewer's repeated misconduct, though perhaps explained by the acknowledged disability and personal circumstances can not excuse his current misconduct, given the officer's previous appearance before this Tribunal and an opportunity to seek treatment and management of his concurrent illness in 2017. [REDACTED]
[REDACTED]
[REDACTED] Hence the Tribunal finds that, "the *officer's (collective and repeated) misconduct spent his potential usefulness as a police officer and raises insurmountable doubts about his future suitability as a police officer.*"

234. In the absence of information before this Tribunal that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] This strikes at the very heart of the employee – employer relationship.

235. In Bressette and Ontario Provincial Police Service, OCCPS, 2013, at Tab U of Exhibit 8, the Commission noted, *“Bressette’s misconduct offends the public interest and community’s sense of well-being. They reasonably and quite rightly do not expect an officer to conduct himself in this manner. Case law has repeatedly reinforced the fact that an officer’s conduct is held to a higher standard and must at all times be above reproach”*.

236. For a decision to meet the standard of reasonableness, it must be justifiable, transparent, intelligible and within the range of acceptable outcomes. In reaching my decision I have not ignored the possibility of lesser sanctions, including the suggestion by Mr. Butt of a *“significant”* demotion.

237. I have carefully reviewed the mitigating and aggravating factors and considered the submissions of Mr. Butt and Ms. Ciobotaru and I have determined the appropriate disposition in this case.

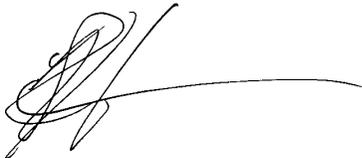
Will the officer please stand?

Penalty:

The penalty in this matter imposed under 85 (1) (b) of the Police Services Act will be:

Considering the seriousness of these allegations, and bearing in mind all the evidence before me, I find Constable Brewer is unfit to perform his duties in the capacity of a police officer and his usefulness to the Toronto Police Service and the community has been annulled.

It is the decision of this Tribunal that Constable Brewer *resign within 7 days or be dismissed from the date of the judgement.*



Riyaz J. Hussein
Superintendent
Hearing Officer

July 29, 2021

Appendix 'A'

- List of Exhibits 38/2018 + 53/2018 + 52/2019 - PC Matthew Brewer (90065)

Hearing Officer R. Hegedus Letter of Delegation (**Exhibit 1**)

Hearing Officer R. Hussein Letter of Delegation (**Exhibit 2**)

Prosecutor Ms. Alexandra Ciobotaru Letter of Designation (**Exhibit 3**)

Agreed Statement of Facts (**Exhibit 4**)

Hearing Officer R. Hussein Letter of Delegation – Chief J. Ramer (**Exhibit 5**)

Prosecutor Ms. Alexandra Ciobotaru Letter of Designation – Chief J. Ramer (**Exhibit 6**)

Prosecution Book of Record (Vol.1 & 2) (**Exhibit 7**)

Dispositions-2017 Ed., Ontario police Services Act by Ceysens & Childs (Tab 1)

Ontario Police Services Act s. 43(1)-Criteria for Hiring (Tab 2)

Toronto Police Service Standards of Conduct, Introduction, Chief Blair (Tab 3)

Toronto Police Service Oath of Secrecy – PC Brewer (Tab 4)

Toronto Police Service Oath of Office-PC Brewer (Tab 5)

Toronto Police Service – Routine Orders – Apr. 5/13 & Sept. 27/12 (Tab 6)

Toronto Police Service - Internal Resume - PC Brewer (Tab 7)

Court Transcript – R. v Hines – Mar 27/18 OJC, Ont (Tab 8)

Court Transcript – R. v Brewer – Nov 21/19 OJC, Oshawa, Ont (Tab 9)

Witness Statements and Photographs re Collision (Tab 10)

Activity Report /Awards Recommendations-TPS 950 – PC Brewer (Tab 11)

Admission Letter-Renascent Residential Primary Care Addictions Treatment Prog. (Tab 12)

Awards Recommendation – PC Brewer (Tab 13)

Uniform Performance Appraisal and Development Plan – PC Brewer (Tab 14)

Media Articles – PC Brewer (Tab 15)

Prosecution Book of Authorities (Vol. 1 & 2) **(Exhibit 8)**

Trumbley and Metro Toronto Police Service, 1986, (Tab A)
Venables and York Regional Police Service, OCCPS, 2008, (Tab B)
Bright, Konkle and the Niagara Board of Inquiry, OCPC, 1997-01 (Tab C)
Purbick and Ontario Provincial Police Service, OCCPS, 2011, (Tab D)
Carson and Pembroke Police Service, OCCPS, 2001 (Tab E)
Brewer and Toronto Police Service, 25/2017, (Tab F)
Betts and Ontario Provincial Police Service, OCCPS, 1997, (Tab G)
Schofield and Metropolitan Toronto Police, 1984, OCCPS, (Tab H)
Kotzer and Toronto Police Service, 26/2019, (Tab I)
Power and London Police Service, OCCPS, 2014, (Tab J)
Benyi and Toronto Police Service, 10/2019 (Tab K)
Valiots and Ontario Provincial Police Service, 2018, (Tab L)
Sylvester and Toronto Police Service, 35/2005, 2007 (Tab M)
Andrews and Midland Police Service, 2002, OCCPS (Tab N)
Wildeboer and Toronto Police Service, OCCPS, 2006, (Tab O)
Moraru and Ottawa Police Service, OCCPS, 2008, (Tab P)
Orser and Ontario Provincial Police Service, OCCPS, 2018, (Tab Q)
Misconduct and PTSD - Balancing the Public Trust and Accommodation, 2012, (Tab R)
Williams and Ontario Provincial Police Service, OCCPS, 1995, (Tab S)
Karklins and Toronto Police Service, OCCPS, 2007, (Tab T)
Bressette and Ontario Provincial Police Service, OCCPS, 2013, (Tab U)
Hassan and Peel Regional Police Service, OCCPS, 2006, (Tab V)
Coon and Toronto Police Service, OCCPS, 2003, (Tab W)
Guenette and Ottawa-Carleton Regional Police Service, OCCPS, 1998, (Tab X)
Nesbeth and Windsor Police Service, OCCPS, 2015, (Tab Y)

Defense Book of Record **(Exhibit 9)**

Staying Connected - Report of the Expert Panel on Police Officer Deaths by Suicide, 2019
(Tab 1)
Homewood Health Discharge Records (July 29, 2019), (Tab 2)
Generalised Anxiety Disorder Assessment (GAD-7), (Tab 3)
PHQ-9 Questionnaire for Depression Scoring and Interpretation Guide, (Tab 4)
Using the PTSD Checklist for DSM-5 (PCL-5), (Tab 5)
Letter from Dr. Gary B Challis (October 8, 2019), (Tab 6)
Report of Patricia A. Davies, RP (October 3, 2019), (Tab 7)
Article: Police officers find ways to cope with PTSD through group therapy
(Globe and Mail, June 13, 2019), (Tab 8)
Report of Tom Gabriel: Service Members with Concurrent Disorders and Discipline, (Tab 9)
Letter from Dr. Gary B Challis (August 26, 2020), (Tab 10)
Article: PTSD cop's lawyer blasts anonymous critic for ignorance (Toronto Sun, March 14,
2019), (Tab 11)

Updated Medical Assessment – *Report by Dr. Jake Bobrowski* dated March 1/21 **(Exhibit 10)**