

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

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

**AND IN THE MATTER OF  
TORONTO POLICE SERVICE  
AND  
POLICE CONSTABLE FIROUZEH ZARABI-MAJD, #10144**

**CHARGES:**

**DISCREDITABLE CONDUCT (4 counts)  
INSUBORDINATION (4 counts)**

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**DISPOSITION WITH REASONS**

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Before: Deputy Chief (Retired) Robin D. McElary-Downer  
South Simcoe Police Service

Counsel for the Prosecution: Mr. Noah Schachter  
Toronto Police Service

Counsel for Defence: Ms. Melanie Webb  
Webb Barristers

Hearing Disposition Date: March 2, 2023

This decision is parsed into four parts: PART 1: OVERVIEW; PART II: SUBMISSIONS; PART III: ANALYSIS AND FINDINGS; and, PART IV: DISPOSITION.

## **PART I: OVERVIEW**

### Background

Police Constable Firouzeh Zarabi-Majd, badge 10144, being a member of the Toronto Police Service (TPS) faced 11 counts of misconduct. In a decision dated December 19, 2022, she was found guilty of four counts of insubordination and four counts of discreditable conduct. Specific to the three remaining counts, all being discreditable conduct, the prosecutor withdrew one count and asked that a finding of not guilty be made on another. I found the officer not guilty on the last remaining count.

The two-day hearing was held in absentia.

### Summary of Findings

With respect to the four counts of insubordination, I found the prosecutor had proven a solid nexus between Constable Zarabi-Majd's off-duty conduct and the occupational requirements of her position. In each, she was lawfully ordered to cease and desist harmful activity, ordered to attend Professional Standards Unit (PRS) interviews and ordered to attend the tribunal. It was her duty to follow the lawful orders issued to her. On each occasion she wilfully and publicly disobeyed the orders.

I rejected the notion that her posttraumatic stress disorder (PTSD) and the pandemic provided a lawful excuse for her disobedience.

Specific to the three counts of the discreditable conduct which were related to Constable Zarabi-Majd's Twitter postings, I found the community holds police officers' conduct to a very high standard and her behaviour fell far short of this standard. The public rightly expects more. It is expected that police officers conduct themselves within the highest degree of decorum at all times and never stray from professionalism. Constable Zarabi-Majd's postings of racist and offensive images, her vulgarity, her disrespect and libelous comments towards her superior officers, and the Toronto Police Services Board was clearly in breach of the TPS governance policies, Standards of Conduct and Internet 17-10.

Further, it was inconceivable that the public would not be shocked that a police officer could publicly say such harmful, libelous things to another person, let alone the most senior commanding officer in the Service. I was convinced a reasonable person would find the comments and accusations Constable Zarabi-Majd levelled at Chief Ramer not in keeping with the high standard of conduct expected of a police officer. I not only found by virtue of

the content of her tweets that she was intent to destroy the reputation of TPS, but also single out and destroy the reputation of Chief Ramer. As upset and angry as Constable Zarabi-Majd may have been, she as all police officers was expected to demonstrate unwavering support and loyalty to her commander-in-chief. I think no person would disagree with me that Constable Zarabi-Majd failed miserably in this regard.

Specific to the count which related to her refusal to leave Mrs. Rice's property, I found Constable Zarabi-Majd's behaviour crossed the line. I was convinced a reasonable dispassionate citizen would find her conduct inconsistent with the expected standard of a police officer when she refused to leave. As a TPS officer, her behaviour did not live up to the high expectations the community has for police officers. Since Constable Zarabi-Majd held herself out to be a police officer to the Morrisburg citizens, I find her conduct undoubtedly had a negative impact on TPS's reputation and image.

As with the insubordination charges, I found a clear nexus existed between Constable Zarabi-Majd's off-duty conduct and the reputation of the TPS. The public expects police officers to demonstrate professionalism at all times; it is clear Constable Zarabi-Majd's behaviour was not in keeping with this standard and she subsequently brought discredit to the reputation and image of TPS if it were known.

#### Count 11 – Discreditable Conduct – Stayed

At the commencement of the disposition hearing on March 2, 2023 count 11 was stayed at the request of the prosecutor based on the *Kienapple* principle. This left the tribunal to consider the disposition on three counts of discreditable conduct and four counts of insubordination.

#### Representation and non-attendance of respondent officer

Prosecutor, Mr. Noah Schachter represented the TPS. On January 23, 2023 Ms. Melanie Webb introduced herself as counsel for the respondent officer. Following a conference call with the parties, the disposition hearing scheduled for February 7, 2023 was postponed to March 2, 2023 to accommodate Ms. Webb's availability.

As anticipated, Constable Zarabi-Majd did not attend the disposition hearing.

In an email to Ms. Webb on February 16, 2023 I inquired about the accommodation needs of Constable Zarabi-Majd. The following day, Ms. Webb responded in part:

March 2<sup>nd</sup> is fine for me and I am happy to attend in person. Unfortunately, however, Constable Zarabi-Majd continues to be unable to attend any proceedings in relation to her disciplinary charges due to her post-traumatic stress disorder, and therefore will not be in attendance (in person or virtually)

on the 2<sup>nd</sup> of March. I will be in attendance to make submissions on her behalf.

On the day of the disposition hearing, Constable Zarabi-Majd was neither present in person nor virtually. Ms. Webb again advised that her client was unable to attend due to her continuing PTSD condition. Despite this, she was not seeking an adjournment.

By way of backdrop, I have previously scrutinized Constable Zarabi-Majd's PTSD condition and non-tribunal appearances. Constable Zarabi-Majd raised two prehearing motions to adjourn the proceedings based on her PTSD. In decisions dated June 14, 2022 and September 24, 2022 the applications were denied. For the purposes of this proceeding, I believe it important to recap the circumstances that led the tribunal to holding the hearing in absentia.

As indicated, Constable Zarabi-Majd sought an adjournment to the proceedings based on her PTSD. Both applications were denied. In reaching my decision to move forward despite her non-attendance, I considered a number of things, including: The evidence presented during the two pre-hearing adjournment motions; Ms. Wilson's (then counsel for Constable Zarabi-Majd) email notification that neither she nor the officer would participate in the hearing; the service of the four notices of hearing; the relevant legislative authority; case authorities; and the prosecutor's submissions. In my decision dated December 19, 2022, I explained my decision to hold the hearing in absentia:

My decision to proceed in absentia

The pre-hearing motions provided Constable Zarabi-Majd fair opportunity to present her case to adjourn this proceeding on the grounds of her medical status. In both instances, after considering the evidence from both sides, I found she failed to satisfy me an adjournment was necessary to permit an adequate hearing. While I acknowledged Constable Zarabi-Majd suffered from PTSD, I was ultimately not convinced that her condition warranted an adjournment.

The email exchange between myself and Ms. Wilson, in particular the message she sent me on October 21, 2022 at 10:34am, led me to believe that despite my findings and decision in Constable Zarabi-Majd's quests for adjournment, a conscious, fully informed and educated decision had been made by the officer not to participate in the hearing proper. I am satisfied she was aware of the repercussions for failing to do so.

I reviewed the documentary evidence in regard to the service of the four notices of hearing. I found the *viva voce* evidence of both D/Sgt. Bangild and Ms. Found credible and reliable – it was clear, concise and aligned neatly with the documentary evidence presented. I accepted their testimony to be true. I am satisfied the notices of hearing Ms. Found forwarded to counsel for Constable Zarabi-Majd, Ms. Wilson, were in fact served on the officer. As such, I found the evidence clear and convincing that Constable Zarabi-

Majd had received notice of her alleged misconduct and consequent orders to attend the tribunal for first appearances.

I also considered my interactions with Ms. Wilson, which left me convinced that Constable Zarabi-Majd was sufficiently aware of the subsequent hearing dates.

Relying on the warning contained on the affidavits, I was content the officer was informed the tribunal had the power to proceed in her absence.

I am satisfied the legislative authority found in section 7(1) of the SPPA permits PSA tribunals to proceed in absence of a party provided they received notice of the proceeding. In this case, notice to Constable Zarabi-Majd has been proven based on clear and convincing evidence.

Lastly, I found the case authorities presented by Mr. Schachter instructive. Occasions have arisen in the past where a tribunal has moved forward despite the absence of the party / subject officer. Based on the merits of each case, the Commission supported the decision of the adjudicator to move forward. In addition to a party simply failing to attend their hearing on the day of, I am of the mind that extenuating and persuasive circumstances and evidence must exist before a decision to hold a hearing in absentia is made, especially when the stakes are high, as they are with this case. The prosecutor has on several occasions informed this tribunal that he is seeking Constable Zarabi-Majd's termination from employment if she is found guilty. I am satisfied that more than ample evidence and circumstances in this matter do exist to support a hearing in absentia. I am aware that from the beginning, Constable Zarabi-Majd has publicly resisted attending this tribunal.

The principles of procedural fairness and natural justice are not restricted to just Constable Zarabi-Majd, but they apply also to the TPS and public at large. I am guided by these principles in making my decision to hold or not to hold the hearing in light of the officer's absence.

Weighing all these considerations and reasons, I granted Mr. Schachter's request to proceed in absentia in accordance with section 7(1) of the SPPA.

My findings to proceed in absentia for the hearing proper remains applicable to moving forward in absence of the officer. Different than before, she is now well-represented by counsel who is in attendance for the proceeding. I am satisfied Constable Zarabi-Majd's voice will be heard especially in light of the serious jeopardy she faces.

#### Correction to the December 19, 2022 Decision

In my decision I stated on page 63 that I had discarded exhibit 19 (along with other exhibits) because the tweet came after the offense date. This was an error. Exhibit 19 formed the basis of charge 2 – insubordination.

### Application to intervene

On December 13, 2022 I held a conference call with the prosecutor to decide a date for this disposition hearing. Constable Zarabi-Majd's counsel at the time, Ms. Wilson, while invited, did not participate in the call.

Mr. David Butt, legal counsel for TPS Constable Julie Rice, did however join the call and pre-emptively gave notice he may be making an application to intervene. On January 4, 2023, Mr. Butt confirmed his intention and later filed his supporting material. Through counsel, Constable Zarabi-Majd responded to the application.

In a decision dated February 14, 2023, the application to intervene was denied. My decision is set out under a separate cover.

### Penalty Sought

Mr. Schachter advised that the TPS is seeking Constable Zarabi-Majd's termination from employment. Ms. Webb is seeking an appropriate sanction less than dismissal.

### Exhibits

The exhibits are listed in Appendix A. Those numbered 6a to 58 were tendered on and near the dates November 1 to 3, 2022. Exhibits 59-61 were filed following the installation of the new chief of police. And those numbered 62 to 70 were tendered in advance of and on March 2, 2023. Exhibits 71 to 74 were filed following the conclusion of the disposition hearing.

On occasion I have drawn on exhibits previously submitted during the pre-hearing motions. I have made reference of this in the respective footnotes.

### Decision

Taking into consideration the nature and seriousness of the misconduct, a demonstrated inability to reform and the likely damage to the TPS, coupled with all the other factors I contemplated, I find Constable Zarabi-Majd's usefulness as a police officer spent. I order Constable Zarabi-Majd to be dismissed within seven days unless she resigns before that.

## **PART II: SUBMISSIONS**

### Prosecution

Mr. Schachter advised the TPS is seeking the dismissal of Constable Zarabi-Majd, something he has repeatedly put on record from the onset of this matter. He pointed to subsection 85(4) of the *Police Services Act* (PSA) which states dismissal shall not be imposed unless the respondent officer received notice that demotion or dismissal was being

sought. He advised Constable Zarabi-Majd received such notice which contained the following language in each Affidavit of Service attached to her notices of hearing:

Take notice pursuant to Section 85(4) of the Police Services Act, 1990, the penalty of dismissal or demotion may be imposed if the misconduct or unsatisfactory work performance with which you are charged is proved on clear and convincing evidence.<sup>1</sup>

Mr. Schachter submitted that the test for dismissal in police disciplinary matters is articulated in *Trumbley and Metro Police Service*, 1986 CanLII 146 (ON CA). Foundationally the test is whether the respondent is fit to remain an employee. The 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 the burden of an employee who has shown that he or she is no longer fit to remain an employee. He submitted Constable Zarabi-Majd more than meets the definition.

Mr. Schachter pointed to *Venables and York Regional Police*, 2008 ONCPC 8 (CanLII), where the Commission essentially asks itself whether the nature of the officer's conduct 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."

Mr. Schachter submitted these two cases begin the framework that has been established for dismissal. Throughout his submissions the test should be kept in mind when determining the officer's penalty.

With respect to penalty considerations, the laws that relate to police discipline are well-established and outline the necessary considerations a hearing officer must consider in order to determine an appropriate penalty. The case law as articulated indicates 15 factors which may be relevant to the determination of an appropriate penalty. These factors are outlined in Legal Aspects of Policing. All factors must be considered. The factors he intends to focus on are public interest, damage to the Service, the need for specific and general deterrence, and the egregious behaviour of Constable Zarabi-Majd over an extended period of time.

In addition, the case law provides for the basic objectives of discipline in this framework: Correct unacceptable behaviour; deter others from similar behaviour; and, assure the public the police are under control. The proposed penalty engages all three of these objectives.

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<sup>1</sup> Exhibit 62: Tab 9: Affidavits of Service for 12/2021, 20/2021, 17/2022 and 42/2022

The public interest must be considered in this case given that one of the objectives of the police disciplinary process is the protection of the public. Police have considerable power and discretion over matters that can affect the fundamental human rights of the members of the public. As a result, police officers are held to a higher standard and are highly scrutinized by the public and the media, who expect and deserve the transparency of the police.

Public interest arises when misconduct has offended or undermined the public confidence in the police. Constable Zarabi-Majd used social media as a vehicle for much of her misconduct. Her social media account had thousands of followers. Detective Sergeant (D/Sgt.) Bangild testified it was over 5000.

As part of his Book of Records, Mr. Schachter advised he included transcripts of two instances in which Constable Zarabi-Majd testified under oath in criminal court. One of those instances was on May 12, 2021. At tab 11, on page 35 of the transcript, she stated, "I have tweeted over 20,000 tweets... So, I'm very proud of my Twitter." The number of followers she had and the number of tweets that she sent demonstrates how pervasive the public exposure of her misconduct has been. There is no doubt that Constable Zarabi-Majd's intentional public actions have implications with the public's trust that TPS as an organization strives to uphold.

One of the objectives of discipline is to assure the public that the police are in control. This is why Constable Zarabi-Majd must be held accountable for her behaviour so that the public can be confident in the TPS and its disciplinary process.

Mr. Schachter pointed to *Bright, Konkle and Niagara Board of Inquiry*, March 14, 1997 and advised it is a decision that speaks to the good character required of police officers. On page 13 it states:

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.

Again, that is what is expected of our officers and as an organization, those are the traits we look for in our people. Good character traits are entrenched in our hiring criteria. Subsection 43(1)(d) of the PSA states that a police officer must be of good moral character and habits.

Mr. Schachter highlighted that the public has the right to trust its police officers are honest and truthful. Constable Zarabi-Majd has been the opposite of truthful and honest since the notices of hearing have been laid and during this tribunal process. She has repeatedly,



through her counsel, claimed that she is unable to participate in the tribunal process, nor been able to retain counsel, while simultaneously instructing counsel on other litigation and actively participating in that litigation. Further to this, he pointed to her testimony on May 12, 2021 and December 6, 2022 where she testified under oath as a witness for an accused during a *voir dire*. In both instances, she repeatedly discussed topics that are related to her employment experiences and are at issue before the tribunal, which she repeatedly claimed through her counsel that she could not discuss or be exposed to. These two transcripts demonstrate she was not honest or truthful with this tribunal, which was clearly motivated by her desire to avoid responsibility and penalty for her misconduct.

Mr. Schachter noted that the December 6, 2022 transcript is just an excerpt. In tab 13 of his Book of Records, there is an email from the transcriptionist. It would have cost \$2000 to obtain the full transcript. Since in his opinion the officer has already wasted enough TPS and taxpayer resources, he decided not to order the full transcript.

Mr. Schachter submitted that ultimately Constable Zarabi-Majd's conduct did not meet the standard of trust expected. Police officers are always held to a higher standard, and this is stipulated in the Introduction of the Standards of Conduct. In it, the Chief states, "Toronto Police Service members are held to a higher standard of conduct than other citizens. Not only an expectation from the community, this standard is an expectation we place upon ourselves. The higher standard of behaviour is necessary to preserve the integrity of the Service. The community expects the 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 the letter of the law."

Mr. Schachter submitted it is evident from the findings of this tribunal that none of Constable Zarabi-Majd's actions were in accordance with these standards.

Constable Zarabi-Majd swore an Oath of Secrecy as well as an Oath of Office and did so upon becoming a police officer in accordance with the PSA. These oaths require officers to discharge their policing duties faithfully and impartially and according to the law. The public trust in policing is paramount and all actions taken by police officers must be able to stand the public scrutiny in order to maintain that trust. The public puts trust in the expectation that police officers will uphold their Oath of Office. Constable Zarabi-Majd's conduct has repeatedly failed to do so.

As recent as 2020, the Chief of the TPS warned officers in a routine order that when it comes to social media, content that jeopardizes the reputation and the integrity of the Service and its members may be subject to discipline. The Service is aware of the impact social media can have and has taken steps to try to avoid what we are doing here today.

Mr. Schachter turned to *Manning and Hamilton Police Service*, January 31, 2022 (unreported) where the hearing officer wrote:

Constable Manning had a significant following on Twitter, members of the public by the thousands were following his tweets at the time of his misconduct. Constable Manning informed the public that he was a serving member of the Hamilton Police Service and a former undercover officer. Regardless of why he did so, having a serving police officer with that level of expertise lends credibility to his critique of his employer in the eyes of the community. Fortunately, in Canada, the public has a great deal of trust in police officers and expects them to exude integrity at all times, but behaviour of this nature casts a poor light on the reputation of the Hamilton Police Service. When a serving member of the police service, especially one with the level of experience and seniority as Constable Manning, speaks out so brazenly against his employer, it attracts the attention of the public and negatively affects the reputation of the employer.

Constable Zarabi-Majd also repeatedly held herself out on social media to be a member of the TPS. She identified herself in tweets as a member and her profile picture on Twitter was her in police uniform wearing a TPS hat with the TPS insignia clearly displayed. Mr. Schachter submitted that when it comes to public interest, it is an aggravating factor in Constable Zarabi-Majd's case. The public would be appalled to hear the insubordination and discreditable conduct committed by her and it would affect the TPS greatly as a result of that misconduct.

Mr. Schachter turned next to the seriousness of the misconduct, which he advised is a fundamental consideration and necessarily arises in all disposition decisions. The formal public hearing process initiated by the Chief in this instance is a reflection of the seriousness of the misconduct at issue. The misconduct taken both individually and collectively represents a serious departure from the expectation of police officers. The facts underlying the misconduct strike at the core of policing duties and must be assessed on the most serious end of the spectrum of misconduct. He submitted Constable Zarabi-Majd's conduct was very serious.

There was a substantial amount of evidence led during the hearing, all of which were made exhibits. That evidence was coupled with the testimony of D/Sgt. Bangild. Mr. Schachter encouraged the tribunal to review the staggering amount of evidence before rendering a disposition.

In count one – insubordination – D/Sgt. Adam of the PRS received information that Constable Zarabi-Majd was a witness to misconduct. The D/Sgt. sent a direct order to the officer to attend PRS and to provide evidence of the misconduct she witnessed. Constable

Zarabi-Majd acknowledged receipt of the order and then refused to attend. D/Sgt. Adam then received information that Constable Zarabi-Majd committed misconduct. She again sent a direct order to the officer to attend and provide a compelled statement in relation to the alleged misconduct. Constable Zarabi-Majd acknowledged the order and then again refused to attend.

PRS is tasked with protecting the integrity of the TPS, policing in Canada as a whole, and to maintain the public's trust in the Service. They are mandated to investigate misconduct and one of the most powerful tools to do so are compelled interviews of officers who are both witnesses to misconduct and subjects of misconduct. This is vital to ensure that PRS investigators have as much information as possible to determine whether misconduct occurred and to the extent of that misconduct if it did. For an officer to refuse to attend a PRS interview in and of itself is a serious offense. A further aggravating feature is that the officer called the superior officer who issued the order, being D/Sgt. Adam, and yelled and swore at her for issuing the order. A further aggravating feature of this is exhibit 16 where she posts on Twitter the order for her to attend PRS as a witness and the text of the tweet indicates that she thinks this is reprisal and she states, "TPS is a fucking bully".

Mr. Schachter pointed to exhibit 17 and 18 where Constable Zarabi-Majd again posted the orders requiring her to attend PRS as a subject officer. In the text of the tweet, it is clear for many followers that she will not be attending the interview. Most aggravating is exhibit 19, where on the day that she was supposed to attend the interview, she tweeted that she was sexually assaulted and states, "Stop silencing women with threats and retaliation". Constable Zarabi-Majd is claiming that TPS is silencing women on the same day that she refused to attend PRS for an interview relating to that alleged sexual assault. Not only did she not attend the two interviews, but she advertises the insubordination to the public and her fellow officers.

Mr. Schachter advised the advertising of the misconduct is going to be a theme in his submissions as it relates to an aggravating feature of this misconduct and other misconduct of which she has been found guilty. It is one of the many reasons why he submits the only appropriate penalty is one of dismissal. The tribunal needs to send a strong message this misconduct will not be tolerated and in appropriate circumstances, which this is, will result in an officer's dismissal.

Mr. Schachter painted this picture: A member of TPS is subject to a PRS investigation. They have been ordered to give a compelled statement. They realize that the statement, if they are honest, will be an admission to very serious misconduct. The officer then remembers the very public way in which Constable Zarabi-Majd refused to attend PRS for an interview and she was penalized with a demotion, as an example, rather than dismissed. Why would

that officer or any other officer who has committed serious misconduct attend for an interview? They would rather commit insubordination by refusing to attend, take the demotion for not attending and hope the PRS could not prove the more serious conduct. If this tribunal does not dismiss, it will be setting a precedent that officers can refuse to attend interviews and keep their job. This cannot be the message sent from this tribunal to officers.

Mr. Schachter referred to the next count of insubordination which involved two members of the TPS, one being Constable Julie Rice, who Constable Zarabi-Majd claims is her friend. The two officers complained to the TPS that Constable Zarabi-Majd is identifying them and sharing information about them in her tweets. They are asking the Service to get Constable Zarabi-Majd to stop. Not to stop tweeting as a whole, but simply stop mentioning them in her tweets. Superintendent Branton sent her a very clear order, "I am hereby ordering you to immediately stop posting any material, naming these members or their families". Constable Zarabi-Majd then posted the order on Twitter, which contains the names of her two colleagues. She then continued to post personal information about these two individuals again. Not only is she being insubordinate, but she is advertising the insubordination.

Mr. Schachter submitted this affects the reputation of the police service as a whole, and this behaviour affects the reputation of other officers. As well, it significantly affects those two police officers who advised they were already being negatively affected by her tweets. This behaviour is clearly aggravating. Mr. Schachter pointed to my decision where I wrote on page 64, "It struck me by doing so, she was waving the proverbial middle finger at the order demonstrating intentional and utter defiance."

Mr. Schachter pointed to page 63 of my decision where I indicated I had disregarded exhibits 19, 22 and 23 because they were tweets that came after the notice of hearing was laid. While the tribunal did not consider them in the findings, these posts are post offense conduct and they are relevant and clearly another aggravating feature. After Constable Zarabi-Majd was served a notice for insubordination, contrary to a direct and lawful order, she continued to post about these two officers.

Mr. Schachter turned to charge three, a six-month sample of tweets posted by Constable Zarabi-Majd. They contained vulgarities, obscenities, libelous and false information and degrading comments towards TPS senior officers, the TPS Board, members of municipal government and members of the public. Not only was this discreditable conduct, but it was also insubordination, which is another aggravating feature, as found on page 69 of the decision. Many of the appendices in D/Sgt. Bangild's affidavit, as well as exhibits 24 to 43, contain tweets that violate the TPS Internet policy 17-10.

Mr. Schachter pointed to page 71 of the decision where I stated I had discarded some of the tweets because they were posted after the charges were laid. He submitted that while it was correct not to consider them then, it is relevant and aggravating that she continued to post these tweets after she was served with a notice of hearing. She continued to post the exact same kind of tweets and in some cases reposted the tweets for months after, until her Twitter account was eventually suspended. This is an aggravating feature.

Mr. Schachter turned to charge five and submitted it is a serious offense not to attend the tribunal despite being repeatedly ordered to do so. Similar to the submissions on count one regarding PRS, the PSA tribunal is legislatively required to ensure that officers who allegedly commit misconduct are held accountable for their actions if found guilty. Officers hold an immense power through the use of force, investigative powers and arrest abilities. There are multiple checks and balances on these powers to ensure they are used as the law intended.

The tribunal exists to assure the public that if an officer abuses their power, or commits any type of misconduct, they will be held accountable. This is done in a transparent way to help ensure the public has trust in the police. The transparency is evident by this being an open tribunal to be attended both in person or by option virtually. He noted the number of people in attendance virtually, some of which were media. This is essential to ensuring the disciplinary process is transparent.

Mr. Schachter submitted officers cannot simply fail to attend to answer to the misconduct allegations in the tribunal. The tribunal, nor the Chief can be seen to condone refusal by officers to attend the tribunal. It is an aggravating feature that the officer repeatedly refused to attend, despite being ordered by superior officers, ordered by the hearing officer who was hearing this case prior to myself, as well as myself repeatedly asking and encouraging the officer to attend. Mr. Schachter stated he knows that Ms. Webb is going to make submissions in regard to the mental health of the officer. Her mental health was litigated on two prior occurrences by previous counsel and both motions were dismissed.

Mr. Schachter advised it is further aggravating that Constable Zarabi-Majd publicized her lack of attendance. She confirmed that she was served with the notice on Twitter and then tweeted about not attending. On the day Constable Zarabi-Majd was served with four counts of misconduct, she tweeted in part, "I will not be attending this" and then adds a feces emoji.

On page 65 of the decision, it was noted that she addressed this tweet to the Chief, the TPA, the Police Services Board, and the Mayor of Toronto. This is seen by over 5000 followers. As her account was public, it could be seen by anyone who comes across the tweet on their feed or by anyone who searched the other accounts she tagged. She is telling the public and her fellow officers that this tribunal is, to use her emoji, shit, and that she will not be

participating. To steal the words of the tribunal, she is raising the proverbial middle finger at the Chief, the Board, the Service, and the public as a whole who relies on the tribunal to ensure that the officers are held accountable for their conduct. This is undoubtedly a serious offense with many aggravating features.

Mr. Schachter advised charge six is similar to the other counts of insubordination where the officer is failing to or refusing to attend an interview. While all of his submissions about failing to attend at the PRS interview were serious, he submitted this was even more aggravating. The officer was served with a notice of hearing on July 7, 2021 that she was being brought before the tribunal on an allegation of misconduct for failure to attend two PRS interviews. She then refused to attend an interview on September 2, 2021. She was already ordered to attend, and was already before the tribunal on multiple counts of misconduct, and knowing all of this, she again refused to attend and publicized it for the world to see. It is clear from her action she will not follow any order in which she could be held accountable. This officer cannot be trusted to follow any order in the future, given the multiple counts of insubordination that she's already been found guilty of. She continued to be insubordinate and proudly advertised that she was being insubordinate.

The TPS organization is a command structure of over 7000 individuals, 5000 plus who are in uniform. It is crucial that the functioning of the TPS, and the protection of the public and its members, both civilian and uniform, follow the orders of those individuals of a higher rank. Failure to follow orders in some situations can compromise individual and public safety as well as compromise the organization on the whole. To repeat *Venables*, the officer's actions were, "So egregious that they raised insurmountable doubts about his future suitability as a police officer".

No police service can have an officer blatantly refusing to follow orders and publicizing that refusal. The TPS is among those services that cannot have this happen. This officer cannot be trusted to do her job – she is no longer of any use to this Service.

Mr. Schachter turned to count nine and advised it too is a very serious offense. The Chief of Police is the most senior ranking officer of the Service. His responsibilities are endless. The Chief is to be obeyed and never publicly disrespected. To do so would compromise the ongoing operation of the police service and undermine the Chief's ability. To do his job, as written on page 77 of the decision, "The public must have confidence that the Chief has the ability to maintain order and discipline within the Service, and that members conduct themselves in a respectful, courteous and professional manner." Mr. Schachter pointed to exhibit 55 where Constable Zarabi-Majd posted to her Chief, "You are a sexual predator enabling coward james. You are a thug. You are a woman abuser. You are a coward. You

are a disgrace. Fuck patriarchy. Fuck white supremacy. Fuck enablers to hell. We deserve better than you and so does your own daughter James”.

Mr. Schachter submitted Chief Ramer had over four decades of service as a law enforcement officer. He is sure the Chief has had terrible insults hurled at him before, but this is not about Chief Ramer. It is about the position that he held at the time, and the office of the Chief of Police, whoever may be sitting in that chair at the time.

The TPS endeavors to earn the trust of the community. In one tweet an active police officer who identifies as such, whose account has a picture of the TPS logo calls the most superior officer of the organization a sexual predator, a thug, a woman abuser, a coward, a disgrace and a white supremacist. The seriousness of that tweet and the dozens of tweets like it, some of which are exhibits before the tribunal, is staggering. The misconduct is deliberate, damaging and significant.

Mr. Schachter turned to charge eight and submitted it is the most serious due to its impact on members of the public and a specific member of the TPS. As seen in the transcript of the *Barreau* trial at tab 11, as well as the Superior Court and the Ontario Court of Appeal decisions, Constable Zarabi-Majd disclosed information to Mr. Barreau’s counsel, which then dragged Constable Rice into the trial as a proposed witness. Constable Rice did not want to nor could she testify at the trial. When Constable Rice was subpoenaed, she retained counsel to resist the requirement. She was ultimately excused by the Ontario Court of Justice after more than 18 months of litigation. On October 28, 2020 the *Barreau* matter was in the Ontario Court of Justice. It was adjourned because Mr. Butt and the TPS had brought an application in Superior Court to have the subpoena in relation to Constable Rice quashed. The Ontario Court adjourned the *Barreau* trial until the Superior Court application was dealt with. The excerpt of this transcript can be seen at tab 10 in the Book of Records.

Constable Zarabi-Majd was clearly not happy that Constable Rice did not attend to testify and was bringing an application to have the subpoena quashed. She traveled over three hours after court that day to Morrisburg to try and track down Constable Rice to convince her to testify, despite Constable Rice having had a lawyer in court that day making submissions to the court she was not able to testify. On its face, that is bad, however Constable Zarabi-Majd went much farther.

Constable Zarabi-Majd’s behaviour was that of a stalker. She went to the gym owned by Constable Rice’s family; she went to Constable Rice’s father’s home and then finally to Constable Rice’s mother’s home to find Julie Rice. Constable Rice is a police officer who had been off for over a year at that point as a result of medical issues which are described in the medical documentation provided by Dr. Collins. Luckily, Constable Rice’s father called

her mother, Sandra Rice, to warn them that Constable Zarabi-Majd was on her way over. Constable Rice fled the house to avoid her. She left her sleeping five-year old child upstairs in the care of her mother and fled to the house of Donna Casselman to hide out until she could return home.

When Constable Zarabi-Majd arrived at Sandra's home, Sandra repeatedly asked her to leave the property. Mr. Schachter pointed to page 75 of the decision where I wrote, "Constable Zarabi-Majd, being a trained police officer would have known her refusal to leave amounted to trespassing. The fact that the lawyers she was with backed away is in my view indicative that they understood they were not welcome. ... Despite Sandra warning her that she would call the police if she did not leave, Constable Zarabi-Majd refused and kept knocking on the door and ringing the bell. Her refusal to leave prompted Mrs. Rice to call 911".

Despite calling 911, Constable Zarabi-Majd still refused to stop. She can be heard on the 911 call ringing the bell. This is all despite being told that Julie was not home, did not want to see her, being repeatedly asked to leave and being told there was a sleeping child in the house.

Constable Zarabi-Majd was not acting in an official capacity as a police officer. She was not working as a police officer at that time. She was a private citizen holding herself out to be a police officer harassing a member of the public and trespassing on that public member's property in an attempt to pressure a vulnerable and sick member of the TPS to testify. This was all while the compellability of Constable Rice was being challenged in court and Constable Rice had retained counsel. To use the tribunal language at the bottom of page 75, "Constable Zarabi-Majd's behaviour at Mrs. Rice's house was inexcusable." The variety of aggravating features, primarily the members of the public that were affected, primarily Julie, Sandra, and Julie's daughter, the lack of respect for the law and for the privacy and security of Constable Rice and her family is shocking.

Mr. Schachter referenced Dr. Collins and said he has incredible expertise and experience. His report, which is marked tab 14, was prepared for the purpose of the application to have Constable Rice excused from testifying in *Barreau*. She was excused from testifying on the strength of the report and Dr. Collins' testimony. On page 3 of the report, which describes Constable Rice's medical issues, Dr. Collins wrote, "There was a previous attempt to serve her with the subpoena that left her feeling unsafe. Psychologically, she felt threatened that individuals went to her mother's residence to find out where she was. Constable Rice also feels betrayed that a former work colleague has commented and posted images of her on social media, which led to Mr. Barreau's lawyer trying to seek her out. She is also fearful that individuals she previously met with in her role as a law enforcement officer could



potentially travel to her community to harm her". The report goes on to say she does not feel safe in her own community, is hyper vigilant and has an increased startle response. Not only does Constable Zarabi-Majd's behaviour have a negative impact on TPS, but it had a profound impact on Constable Rice.

Mr. Butt brought an application to seek standing which was denied. Unfortunately, despite every attempt to have Constable Rice provide a victim impact statement, Mr. Butt provided she is currently in the hospital and not able to do so.

In her *Barreau* testimony in May 2021, Constable Zarabi-Majd acknowledged that Constable Rice suffers from PTSD and is not working due to the illness. Constable Zarabi-Majd routinely, through her counsel, attempted to use her own PTSD diagnosis to avoid taking responsibility for her actions. It is even more aggravating that Constable Zarabi-Majd, who suffers from PTSD, put a fellow officer and fellow PTSD sufferer through this exposure for her own gain to continue her vendetta against the TPS. This is the most serious of the misconducts Constable Zarabi-Majd is facing given the impact that it has had. The seriousness of this collectively, but also individually is aggravating and as such any sanction short of dismissal is unreasonable.

Mr. Schachter submitted the behaviour demonstrated by Constable Zarabi-Majd is a serious departure from what is expected of a police officer and must be treated on the most serious end of the spectrum. There is no doubt the relevant caselaw supports a finding that a series of events are to be treated more seriously than a single isolated compulsive act, because a series of events that were carried out over time cannot be considered single acts of human frailty. He submitted this is a significant aggravating consideration for disposition and added that the seriousness of the misconduct by Constable Zarabi-Majd makes any disposition other than dismissal neither possible, nor reasonable.

The next factor is the recognition of the seriousness of the misconduct. Mitigating the seriousness of the offense is the recognition of the seriousness of the misconduct. This factor is often referred to as remorse. This does not exist in this case. Constable Zarabi-Majd has never accepted responsibility for the misconduct, or the seriousness of it. She has attempted to frustrate this tribunal by seeking *sine die* adjournments and bringing an application that had been deemed as abuse of process by this tribunal. Even after being served with notices of hearing, she continued to engage in the same misconduct as before this tribunal. She has continued her vendetta against the TPS, undeterred and unbothered by who this affected and unable to acknowledge any of the damage she caused. She cannot get mitigation for the recognition of the seriousness of the misconduct.

Mr. Schachter advised employment history is an important disposition factor in all cases. Employment history as a mitigating or aggravating consideration closely relates to the disposition considerations of rehabilitation potential. Constable Zarabi-Majd joined the TPS in 2008 and became a sworn officer in May 2009. Along with her internal resume and performance appraisals, he included a positive documentation relating to the conduct of Constable Zarabi-Majd in 2017. He noted there are no prior conduct issues with her. Overall, he considered Constable Zarabi-Majd's employment history neutral. It is difficult to rely on the performance appraisals and one positive comment since so much misconduct has followed.

The next consideration is consistency of disposition. This represents one of the most basic principles of the discipline process and flows from the idea that similar misconduct should be treated in similar fashion. He pointed to *Schofield and Metropolitan Police Service*, 1994 CanLII 3101 (ONCPC) and said it speaks directly to the issue of consistency.

The facts before this tribunal show a pattern of behaviour by an officer who consistently and repeatedly has failed to follow the rules and obligations imposed on her. This is clearly relevant to a determination, particularly around the fitness to remain an officer. It has been repeatedly accepted that officers are held to a higher standard both in their professional and personal lives.

Permitting Constable Zarabi-Majd to maintain her employment with the TPS, when viewed in the context of all her misconduct would be an inconsistent finding of the standard of professionalism that is required and expected of her. Mr. Schachter advised he found it difficult to locate case law with similar facts to the one before this tribunal. The only one he could locate was *Manning*.

Constable Manning was found guilty of multiple counts of misconduct after a hearing in absentia. Unlike Constable Zarabi-Majd he never retained counsel, even for the penalty phase. Constable Manning's misconduct relates to his Twitter posts, many of which were the same nature of those of Constable Zarabi-Majd's. He repeatedly posted disgusting tweets about members of city council, the Hamilton Police Service and members of the public. Mr. Schachter said Constable Manning's behaviour had another aggravating feature which was that he disclosed restricted information via Twitter.

Not every case is the same. Each case is different in mitigating and aggravating features and even though this case does not have that aggravating feature, Mr. Schachter submitted it has many others. It is his position that *Manning* is the most factually similar case to this matter and it is precedent along with all the other cases that are going to be presented.

Mr. Schachter pointed to page 19 of *Manning* where the hearing officer states, “In some instances, the seriousness of misconduct can be so egregious as to cause irreparable harm to the police service if the officer were to remain employed.” The same argument can be made for this matter.

Page 25 of *Manning* demonstrates how similar the two cases are. “Misconduct that is repetitive, reasonably ought to be considered more serious than behaviour of an isolated nature. Constable Manning committed eight counts of misconduct between April 2019 and September 2019. It was deliberate behaviour that attacked the credibility of the public complainant and the integrity of the Hamilton Police Service. Constable Manning’s tweets were demeaning and came with consequence; they undermined public confidence in policing and in the police complaint system. The public complainant is a long-serving councillor in the City of Hamilton. I suspect Constable Manning’s assertion that Mr. Merulla was linked to members of organized crime also adversely affected his reputation in the community.” Mr. Schachter submitted that likewise all of the libelous and false tweets Constable Zarabi-Majd sent about the Chief, the Board, and the Mayor affected their reputations in the community.

Ultimately, for his behaviour Constable Manning was dismissed. On page 42, the hearing officer concluded, “Similarly, I’m not convinced Constable Manning is fit to be a police officer. Even when the few mitigating factors are considered the aggravating factors are so substantial, that when measured in conjunction with his lack of recognition and his inability to reform, the only conclusion is that Constable Manning has annulled his usefulness to his employer. The seriousness of misconduct is at the most serious end of this spectrum; Constable Manning has violated the public trust and knowing that he’s likely to repeat that behaviour, he is undeserving of the public’s trust in the future. Constable Manning’s misconduct severely damaged the reputation of his employer, but for him to continue as a police officer, would cause irreparable damage the reputation of the Hamilton Police Service and would be an affront to the expectation the public has of its police service. As a result, I find it necessary to sever the relationship between Constable Manning and the Hamilton Police Service.” Mr. Schachter believed Constable Zarabi-Majd fits all of the criteria that was discussed in the stated paragraph and the results should be the same.

Mr. Schachter submitted the next factor is specific and general deterrence. He pointed to paragraph 21 of *Andrew and Midland Police Service*, 2003 CanLII 75388 (ONCPC), where the Commission stated, “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.” With respect to the consideration of deterrence, it is submitted that general deterrence is particularly relevant to this matter. Officers of the TPS generally need to understand the higher standard of conduct in which they are held.

Police officers, like no other profession, must be held accountable and must understand the consequence of breaking the orders that they are duty bound to comply with. A strong message needs to be sent that when you repeatedly and publicly disobey orders there will be serious consequences, including, depending on the circumstances, dismissal.

With respect to specific deterrence, Mr. Schachter pointed to *Wildeboer and Toronto Police Service*, 2006 ONCPC 10 (CanLII). In this case, the respondent officer makes numerous CPIC queries on six occasions over the course of 10 months in the context of an acrimonious personal and business relationship. The hearing officer concluded that specific deterrence was necessary because the officer's inability to stabilize his personal circumstances affected his decision making and offended his Oath of Office and the public's trust.

Mr. Schachter submitted that dismissal is the most serious disposition an officer can receive. Dismissal of Constable Zarabi-Majd would demonstrate that the Service will not tolerate, or have use for officers who repeatedly, intentionally and publicly, commit acts of misconduct. All members must understand that the behaviour of this nature cannot and will not be tolerated. It will result in the most serious of consequences. As such general and specific deterrence is an aggravating penalty factor, which must be taken into consideration. If officers see that repeated misconduct of insubordination of an officer who intentionally and publicly refuses orders and the tribunal's response is a demotion, it will send a terrible message and encourage other officers to follow suit when they don't agree with orders. It will have the opposite effect of general deterrence. It will encourage and be a model for other officers to follow when they disagree with an order. They will know they are risking a pay decrease for a period of time, but their jobs and their careers will not be at risk.

The next factor to consider is that of disability and other relevant personal circumstances. In assessing this factor, the question to be asked is whether there was a nexus or a connection between the disability and the misconduct. The onus is on the employee to demonstrate proof of a disability and to demonstrate a nexus between the conduct in issue and the disability. Mr. Schachter pointed to *Moraru and Ottawa Police Service*, 2008 ONCPC 1 (CanLII) where the Commission wrote on page 13, "A disciplinary proceeding is not a trial; it is a hearing into an employment matter to determine whether misconduct occurred and if so, to assess the appropriate penalty. ... However, 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, a 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 the PTSD should be given as a mitigating factor in assessing penalty."

Mr. Schachter pointed to *Orser and Ontario Provincial Police, 2018 ONCPC 7 (CanLII)*. In this matter the Commission wrote, “The reasons make clear that the hearing officer took the PTSD issues 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 appellant suffered from PTSD but was not convinced that the appellant’s misconduct was in any way related to the PTSD diagnosis. His conclusions were reasonable and supported by the record. We owe them deference. We find he did not commit an error in principle and his treatment of the PTSD issue.” Mr. Schachter submitted that it is incumbent on the hearing officer to engage in the analysis of whether her misconduct was in any way related to the PTSD diagnosis.

Mr. Schachter advised he previously made submissions in regard to Constable Zarabi-Majd’s medical documentation presented and many of his submissions were adopted in the tribunal’s reasons to dismiss the motions. The medical documentation was either dated, for a different purpose or lacked specificity. It lacked an explanation to the bald assertions contained within the documentation. Mr. Schachter submitted there is no link between the disability and the misconduct. The disability no way justifies or excuses the behaviour of Constable Zarabi-Majd. It can be used as a mitigating factor; however, it does not excuse it and the mitigation should be limited. Further, the disability is no more important than any other of the factors on disposition, but one of among many to be considered.

Mr. Schachter submitted that while the disability may be a mitigating factor, what is aggravating is Constable Zarabi-Majd’s misconduct continued over a protracted period of time. Her misconduct included driving to Morrisburg in order to harass a fellow sufferer from the same disability.

Mr. Schachter advised he has included a relevant paper called *Misconduct and PTSD, Balancing the Public Trust and Accommodation*. He submitted it covers this factor fairly fully and is informative. On this point, he pointed to *Brewer and Toronto Police Service, July 29, 2021*. Constable Brewer pled guilty to misconduct. The facts of his misconduct are clearly distinguishable from Constable Zarabi-Majd. Brewer’s counsel actually argued that Constable Brewer’s PTSD diagnosis was a mitigating factor. The hearing officer at paragraph 199 stated, “[t]here is a nexus between PC Brewer’s personal circumstances and his misconduct that might support mitigation. There is considerable medical information submitted to substantiate disability issues.” Mr. Schachter advised that is already distinguishable because no nexus has been demonstrated here and there is a lack of medical information to substantiate any nexus. Further at paragraph 205, the hearing officer discussed there was information before the tribunal that Constable Brewer completed a residency program at Homewood and maintained his positive mental health since the treatment 16 months prior. Despite all of this, he was dismissed by the hearing officer. A

finding of PTSD with a nexus to the misconduct and proof of treatment and lack of further misconduct did not save Constable Brewer from dismissal.

Constable Zarabi-Majd has demonstrated none of this. Constable Brewer appealed and it was upheld. In paragraph 71, the Commission stated, “The hearing officer weighed the medical evidence along with the other factors relevant to the dismissal analysis. There is no basis to interfere with his conclusion that dismissal was an appropriate penalty as it falls within the range of possible acceptable outcomes that are defensible with respect to the law and the facts.”

Mr. Schachter advised that during Constable Zarabi-Majd’s testimony in *Barreau*, she stated how she is proud of her tweets. She does not take the position this was done during intoxication or rage, or during a mental health episode, or as a result of her PTSD. She also discussed her trip to Morrisburg and none of that is found in her testimony. She states that she is proud of what she posted, and it is clear from the substance of her testimony that she supports what she has done to the reputation of the TPS and to Constable Rice and her family.

Next factor is potential to reform or rehabilitate. Mr. Schachter submitted Constable Zarabi-Majd’s conduct collectively is egregious and unmitigated. The TPS and the community have put investment into Constable Zarabi-Majd and that investment is no longer one worth supporting based on her continued and repeated misconduct. A police officer can demonstrate steps taken towards rehabilitation or successful treatment, but dismissal may still be appropriate for the serious misconduct. Other than confirmation that Constable Zarabi-Majd was seeing a doctor, there is no evidence before this tribunal about treatment plans or substantive next steps taken towards rehabilitation.

Mr. Schachter referred to paragraph 132 of *Karklins and Toronto Police Service, 2007 CanLII 87211 (ONCPC)*, where the Commission stated, “In terms of the potential for rehabilitation, singular errors in judgment are quite different from ongoing wrongdoing over an extended period of time. However, there still may be single incidents of conduct that strike at 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.” Constable Karklin was dismissed and the decision was upheld in the divisional court.

This is the case with Constable Zarabi-Majd. She has exhausted her usefulness to perform her key duties as a police officer. Constable Zarabi-Majd cannot receive mitigation for having committed an honest mistake or that her behaviour was out of character. There was no evidence that Constable Zarabi-Majd took inventory of her actions or made any effort to

correct them. Furthermore, it has been 18 months since the notices of hearing were initially laid, which gave her ample time to take positive steps that might have reassured this tribunal she has the ability to rehabilitate. The only reason there is no evidence before this tribunal that misconduct was committed on today's date is because Constable Zarabi-Majd's Twitter account was suspended.

Mr. Schachter advised there is nothing on the record to suggest there is any hope Constable Zarabi-Majd can rehabilitate herself as an officer and agree to follow the procedure in Standards of Conduct or chain of command. The only evidence we have is that there's every reason to believe she will continue to commit discreditable conduct and be insubordinate.

Mr. Schachter turned to the damage to the reputation of the Service factor. The damage is an aggravating feature. Misconduct that damages the reputation of a police service is one factor that calls for a higher penalty. There is no doubt that the misconduct of the officer has placed the Service and other officers in a bad light. Constable Zarabi-Majd repeatedly committed misconduct using social media, trying to make her misconduct as visible as possible and doing everything she could to ensure that she damaged the reputation of the TPS. It is obvious on the face of her tweets that her goal was to damage the Service's reputation. She attacked the Service as a whole, individual uniform officers, individual senior officers, the Chief, members of the Board, as well as the Board as a whole.

Mr. Schachter pointed to page 8 of *Hassan and Peel Regional Police Service*, 2006 ONCPC 7, where the Commission specifically quoted a 1995 Board of Inquiry decision: "[w]e 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 police force, and the extent to which that harm were to continue if an officer were to remain employed." Mr. Schachter submitted a reasonable person in the community would find misconduct of this nature can only serve to damage the reputation of the TPS in the eyes of the community members. The damage will only increase if Constable Zarabi-Majd is not held appropriately accountable for her actions and dismissed. The TPS must separate and distance itself from the behaviour of this officer.

Mr. Schachter advised there is only one justifiable penalty for Constable Zarabi-Majd and that is dismissal. The accumulative effect of the misconduct that the officer demonstrated over a lengthy period of time requires dismissal. In *Guenette and Ottawa-Carlton Regional Police Service*, 1998 CanLII 27136 (ONCPC), the Commission discussed the test of an officer's usefulness to the police service when determining if dismissal was an appropriate penalty. The test consisted of three areas: Nature and seriousness of the offense; the ability to reform the officer; and damage to the Service's reputation.

These occurrences constitute serious misconduct and involves both internal personnel and external members of the public. The prosecution submits that Constable Zarabi-Majd's actions fall in the spectrum where the nature and seriousness of the offenses are at the high end of the spectrum. The ability to reform the officer is nonexistent and the damage to the reputation of the Service would be very high should she remain an officer.

Mr. Schachter referred to paragraph 34 of *Nesbeth and Windsor Police Service*, 2015 ONCPC 23 (CanLII) which stands for the proposition that a one-off act of deceit or discreditable conduct can justify the dismissal of an officer. The fact that Constable Zarabi-Majd continued to engage in the same misconduct that led to the notices of hearing after being served the notices of hearing is further evidence that dismissal is appropriate.

Constable Zarabi-Majd, with less than 10 years of actively working as a police officer, now has multiple incidents of misconduct. She has severely damaged the reputation of the Service. She is at a point where she can no longer be a useful officer. Her behaviour illustrates a blatant disregard for the police disciplinary process and a contempt for the TPS. To continue to have her as an officer will degrade the Service and the position of an officer in the eyes of the public. She has spent her usefulness as a police officer and her misconduct removes any possibility of future suitability.

Quoting from page 39 of *Manning*, "Constable Manning no longer possesses the characteristics necessary to continue as a police officer. His initial misconduct followed by his post offense behaviour has exemplified his complete and utter lack of respect for his employer. His comments about the Hamilton Police Service and the disciplinary process effectively severed any chance for employment." All this rings true of Constable Zarabi-Majd. Her behaviour makes it impossible for her to continue as a police officer with the TPS. The organization has a command structure which only works if officers follow orders. She made it very clear to the TPS, as well as the public, she will not follow orders from senior officers, and she made that abundantly clear to the Chief.

If one were to place themselves in the position of an ordinary person in the community and ask if Constable Zarabi-Majd was to remain a police officer, would it cause further damage to the reputation of the Service and an erosion of public trust, the answer is inevitably yes. She would not be of any use in a criminal investigation since her McNeil report, in some situations, would be sufficient for the prosecution to withdraw the criminal charges.

Mr. Schachter referenced page 53 of *Bovell and Toronto Police Service*, October 5, 2011. In this case, the hearing officer found, "Taken in its entirety, Constable Bovell's overall pattern of misconduct is replete with evidence of his disregard for the Service's Governance, Priorities and Core Values as well as the Principles and Duties found in the *Police Services Act*. For over three years he exhibited a protracted and consistent indifference to his Oath



of Office and the Standards of Conduct expected of all police officers. Constable Bovell chose on numerous occasions to disregard his sworn duties as well as the rules of his profession and compromise the integrity and good name of the Toronto Police Service.” On page 58, the hearing officer went on to say, “In any event, while his medical condition may provide a partial explanation, it cannot be regarded as a cause and certainly not as an excuse for his misconduct ...”.

On page 59 of *Bovell*, the hearing officer stated, “Although there was no publicity regarding these incidents of misconduct the reputation of the Service suffered in the view of the involved parties and other witnesses, including coworkers who were interviewed. Without question, should the extent and nature of Constable Bovell’s misconduct be revealed to the general public it would cause significant damage to the reputation of the Toronto Police Service. Furthermore, were Constable Bovell be retained by the Service and deployed again in the community, it would cause irreparable damage to its reputation and be an affront to the expectations of the public regarding the conduct of its police.” Despite medical and mental health issues that were brought to light, and despite the officer entering a guilty plea, Constable Bovell was dismissed by the TPS.

Mr. Schachter submitted that whatever penalty is being requested by Constable Zarabi-Majd’s counsel, even if it were the next most serious penalty such as a lengthy demotion, it would not satisfy the three objectives of sentencing. It would not deter other officers from committing similar misconduct. It would not demonstrate to the public that officers are under control. And it would not correct unacceptable behaviour. The only penalty available here is dismissal.

As stated earlier, the 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. Constable Zarabi-Majd repeatedly demonstrated she is not going to change her behaviour. He submitted Constable Zarabi-Majd’s actions make it clear that she is no longer fit to remain an employee and must be dismissed.

#### Defence submissions

Ms. Webb began by highlighting the general principles that govern the determination of a disposition. Found in an excerpt from Ceysen’s *Legal Aspects of Policing*, there are five main principles to take into consideration. The first principle calls for being in compliance with the purposes of the police disciplinary process. The second principle is corrective dispositions should prevail where possible. Ceysens wrote, “The second principle – which flows from the evolution of the past two generations towards a more remedial and less punitive philosophy in the police complaint and discipline process – dictates that a corrective disposition should prevail where possible. The Marin Commission in its *Report*, found,

“While a remedial approach to discipline recognizes that sanctions may sometimes be necessary, it also recognizes that there are many situations in which punishment is not only inappropriate, but unfair. ... [l]ocal conditions, such as the shortage of adequate manpower and effective leadership and supervision or a protracted stress situation may give rise to problems of either conduct or performance. ... When discipline is necessary, an approach which seeks to correct and educate a member should precede one that seeks to assign blame and impose punishment.”

On page 5-337 of Legal Aspects, Ceyskens wrote, “The adjudicator adopted the approach of asking whether in the eyes of a reasonable person ‘dispassionate and fully apprised of the circumstances of the case’, the administration of justice would be brought into disrepute. ... [t]hat a reasonable person would see sanctions designed to educate and assist as condoning serious misconduct and would further diminish the reputation of the police force in the eyes of the public. Reasonable persons, ‘including other officers’, would see that course of action as bringing the administration of police discipline into disrepute.” That statement was made in reference to the circumstances of another case.

Ms. Webb submitted the third principle is the presumption of the least onerous disposition in the circumstances, which presumption would be displaced if the public interest or other specified considerations should prevail. The fourth principle is about proportionality. On page 5-339, it states, “Proportionality requires that the decision maker identify which disposition considerations are relevant to the matter in question; determine whether each relevant disposition consideration is *mitigating or aggravating or neutral* in the circumstances; and, appropriately balance or weigh the identified relevant disposition considerations in accordance with the factual background of the matter, and the competing interests.” And finally, the fifth principle states there is a higher standard applicable to the constabulary.

Ms. Webb advised that essentially Constable Zarabi-Majd’s conduct can be boiled down to three main issues and areas of concern. In general terms:

1. The Twitter account, which was established in September of 2018 and the tweets.
2. The trip taken by Constable Zarabi-Majd in the company of two defense lawyers in good standing, to locate Constable Rice for the purpose of an ongoing criminal proceeding.
3. The failure to obey orders and failing to attend interviews and the hearing.

Ms. Webb outlined some of the mitigating circumstances. Constable Zarabi-Majd joined TPS in 2008 and was sworn in as an officer in 2009. She went on leave in 2018. This amounts to nearly 10 years of service. In her nearly 10 years of service, she had no prior disciplinary

record and according to her employment record and her internal resume, she had an exemplary service record as a constable.

Turning to her internal resume, Constable Zarabi-Majd attended Police Foundations at Humber College and received a diploma. She has completed a number of training courses beginning in 2009 to December 2018 when it appears her status changed to leave with pay. She was positioned in T and E Community Policing in 2008 as a cadet-in-training, and then as a police constable, she moved to 51 Division, Primary Response. In 2011 she went to 51 Traffic and then returned to Primary Response. And in 2012, she served in Warrants and General Investigation and then back to 51 Division Primary Response.

Constable Zarabi-Majd has received a number of certificates for courses completed. While some courses may have been mandatory, others included Criminal Investigators, Domestic Violence Investigator, Use of Force, and Sexual Assault Criminal Investigation. Notably, she is fluent in Farsi and able to translate which is a valuable skill to the Service.

Constable Zarabi-Majd has a commendation on file where a member of the public wrote in about an incident that occurred on May 4, 2017. In part, the email stated, "Last Thursday May 4<sup>th</sup>, I was in some personal distress and elected to call 911. I informed the operator that EMS wasn't required, but I did need to meet to talk with a couple of officers in consideration of going to a hospital. At approximately 2200 hours officers Zarabi-Majd and Allister Blair arrived, we sat in the lobby of my building at 30 Gloucester State Street and decided it was a good idea for me to go to Mount Sinai Hospital. We arrived there soon after. Officer Zarabi-Majd sat with me in the hospital emergency waiting area for at least an hour. ... Sir, the compassion, professionalism, concern and kindness shown from these two outstanding officers was greatly appreciated. As I said, I was having a rough evening and these two tremendous people really, really helped in making a challenging time much better. Through this correspondence I send great thanks to both of them and to all the men and women of the Toronto police. I request letters placed on file for them as they deserve some positive recognition."

Ms. Webb referenced a number of Constable Zarabi-Majd's performance appraisals and development plans. In 2013 she received satisfactory marks on a number of Personal Qualities. She also received an 'exceeds' in the Core Competency of Valuing Diversity.

In 2014, there seems to be a marked improvement in Constable Zarabi-Majd's performance. She was assigned at that time to the 51 Division Primary Response Unit on C platoon. There is an outline of her development plans and goals, which included increasing her skills and presenting court testimony. In this performance appraisal, she scored 'superior' on a number of Personal Qualities and Technical Skills, including a commitment to the Service's Core

Values, Professionalism, Communication Skills, and Use of Technology/Equipment. In the Core Competency section, she also 'exceeded' expectations in a number of areas, including Problem Solving, Community and Customer Orientation, Listening, Understanding and Responding, Organizational Awareness, Teamwork and Valuing Diversity. Her supervisor described her as follows: "Constable Zarabi-Majd has spent most of this evaluation period as a permanent member of the Booking Hall Unit. The booking hall is one of the most important details on the shift as there is a high level of risk management that has to take place. She is a consistent and dependable officer in that capacity, where she utilizes her organizational talents, technological abilities and interpersonal skills to manage the division's prisoners." The supervisor goes on to describe a bit more about Constable Zarabi-Majd and concludes, "Effie is an intelligent and articulate officer who has the ability to see the big picture of an investigation. If she applies herself, I feel that she could achieve her goals."

The next level supervisor concurred with the assessment describing her as performing well in the booking hall and is always professional when performing that function. He wrote, "She is an amiable person and contributes to the harmony and well-being of the platoon." He concluded that if she applies herself, she is capable of excellent work and they will help Constable Zarabi-Majd achieve her goals. The Unit Commander added his comment, writing "Constable Zarabi-Majd is commended for her dedication, commitment and she has contributed greatly to the efficiency at the station. Constable Zarabi-Majd's significant marked improvement reflected very well on her supervisors."

In section 8 of the 2015 appraisal, her next level supervisor commented that while Constable Zarabi-Majd was scheduled to return to C platoon once she completed her assignment in the Warrant Office, the supervisor thought because she showed so much potential, she would benefit from a six-month assignment in CIB.

In regard to her 2016 appraisal, Constable Zarabi-Majd scored 'superior' in nearly every single category under Personal Qualities and Technical Skills, which again included Commitment to Service Core Values, Commitment to Learning, Professionalism, Legal and Policy Knowledge, Communication Skills, Driving Skills and Ability. She was noted to have 'exceeded' expectations in a number of Core Competencies, including Achievement, Motivation, Directness, Impact and Influence, Listening, Understanding and Responding, Teamwork and Valuing Diversity. The supervisor described her as follows: "Constable Zarabi-Majd wishes to work in an investigative capacity in the near future. She is interested in furthering her skills as an investigator based on her interaction with the public and her drive to investigate thoroughly at calls of service. I believe PC Zarabi-Majd would be a fine candidate in an investigative position."

The next level supervisor wrote, "She exercises good judgment when dealing with challenging situations and she has a positive impact on other officers. PC Zarabi-Majd has a very pleasant personality and a calm demeanour that often results in the de-escalation of potentially volatile situations. She also receives frequent compliments from members of the public. I strongly believe that PC Zarabi-Majd is ready to undertake the responsibilities and the challenges of a permanent investigative position and I will fully support her in that endeavour."

The next performance appraisal was September 2017. She scored 'superior' in every category under Personal Qualities and Technical Skills and 'met' the expectations in every category under Human Rights. She exceeded expectations in nearly every category under Core Competencies. Her sergeant commented that she, "[o]ften volunteered on a moment's notice to change her shift to assist with the day-to-day operational needs of the platoon and this attitude and her sense of teamwork is greatly valued. She has expressed an interest in working at the drug squad and I believe she has the personality, self-discipline and sense of team work to excel within the chaotic schedule, long hours and challenging situations faced by a drug squad officer. I appreciate PC Zarabi's consistent effort throughout the year. Good job Effie."

The next level supervisor wrote, "I fully concur with the comments of Sgt. Bagor. PC Zarabi is a valued member of the platoon who can always be relied to perform any task that is needed. She is trustworthy, dependable and eager to support her fellow members in the platoon. PC Zarabi-Majd is very polite and professional in her interactions with others and it is a pleasure working with her. I commend her in her work ethic and in her aspirations. I will support her in preparing herself for her goals by completing the necessary courses and taking advantage of any plainclothes work experiences that become available in the future."

Ms. Webb noted that at this point in Constable Zarabi-Majd's career, her goal was to apply for a position in an investigative unit. Indeed, it would appear that she was encouraged by her supervisors to do so. Ms. Webb submitted that against this backdrop is a promising young officer who not only had no prior disciplinary record, but someone who clearly exhibited great potential. She was described as being very polite and on multiple occasions as professional. Considering all the positive aspects of this officer in the past and the fact she suffers from PTSD, the tribunal must consider her misconduct in context.

Ms. Webb submitted that one might contemplate what led this officer with so much potential, who had received such glowing recommendations and evaluations, to this place. An officer of nearly 10 years with the Service, who had outlined definitive career goals and had showed undeniable promise, including the opinion of her supervisors, does not simply spontaneously wake up one day and out of the blue decide to open a Twitter account and wreak havoc. It is important in this tribunal to consider what led the officer to this place.

Ms. Webb turned to exhibit 67, the report by Dr. Haskell dated July of 2020. It would appear the purpose of this report originally was to provide an explanation for the delay in filing her human rights complaint. Dr. Haskell, who is a recognized expert on trauma, explains in very general terms the answer to question one, “What are the effects of serious sexual assault and harassment on victims?” She goes on to describe what is sexual harassment? And she goes on to describe what is PTSD?

Dr. Haskell explains PTSD is a diversity of emotional disturbances and symptoms that are associated with PTSD, causing clinically significant distress, or impairment in a person's social interactions, their ability to work or other important areas of functioning. Dr. Haskell goes on to write about psychological and physiological consequences of chronic stress and threat. On page 4 Dr. Haskell writes, “Over time repeated activation of the stress response takes a toll on the body. Research indicates that chronic psychological stress contributes to a range of physical health effects, which can include high blood pressure, digestive problems, headaches, heart disease and sleep problems. It also causes neurological changes that may contribute to anxiety, depression and addiction. In states of chronic threat because of an unsafe work environment such as one marred by sexual harassment people struggle with intensely stressed states and often may feel jumpy and have difficulty focusing and calming themselves. In this state life becomes a constant struggle that involves unbearable tension and ultimately emotional as well as physical exhaustion (hence the depression and physical health problems that so often occur with PTSD).”

Ms. Webb advised there is a lengthy passage on loss and grief and Dr. Haskell states the obvious, that sexual harassment also dramatically harms workplace relationships. She goes on to write, “This is especially so in a work environment where the sense of belonging and being part of a team is essential for fundamental trust in doing work that is considered high risk (for example, police work). The loss is more than just losing a sense of connection and camaraderie with colleagues. The loss of a sense of safety and trust in one's colleagues entails a fundamental vulnerability in carrying out the risks police officers face doing their work.”

Dr. Haskell outlines her findings from her interviews and assessment of Constable Zarabi-Majd on page 6. She found that Constable Zarabi-Majd's TSI (trauma symptom inventory) scores indicated a valid profile and revealed two clinically significant symptom scales. The clinically significant elevations were in the intrusive experience and defence avoidance scales representing a classic post traumatic presentation. This means that Constable Zarabi-Majd is experiencing both the intrusive and avoidance components of PTSD. Constable Zarabi-Majd has persistent trauma related intrusive thoughts. These unwelcome and distressing thoughts and memories can arise suddenly. Re-experiencing – having sudden and unwanted traumatic memories that intrude into or even seem to replace what's happening now – is a core symptom of PTSD.

At page 7, Dr. Haskell goes on to explain further consequence to Constable Zarabi-Majd's elevated score on the defensive avoidance scale. She writes, "These avoidance strategies represent an effort to withdraw from certain situations that bring about body level distress of trauma related symptoms. This is indicative of someone struggling to manage intense aftereffects of a traumatic experience."

Ms. Webb submitted that keeping in mind the report was written in July 2020, Dr. Haskell wrote, "In Ms. Zarabi's case, her hyper arousal symptoms have somewhat diminished in part because of her efforts to intentionally regulate her physiological and psychological states to active meditation and exercise. Ms. Zarabi's depression score is consistent with someone who has been successfully and actively working with a psychologist and psychiatrist to manage her depression."

At page 8, Dr. Haskell describes the psychological effects of workplace sexual harassment, racism and sexual assault. She writes, "Ms. Zarabi explained that initially when she was sexually harassed, she developed severe anxiety and fear for her safety for a protracted period of time when she was being harassed, and at the time of her disclosure, she had difficulties with sleep and nightly nightmares, causing sleep disruption. ... In 2018 until 2019 Ms. Zarabi described mentally struggling with depression, severe anxiety grief and anger. ... She developed a shift in mental attitude that helped her enormously. Ms. Zarabi decided to focus on helping other female police officers by pursuing a human rights complaint to make things better for her female colleagues. She has decided it is important to have a voice after feeling that she has been silenced and disregarded for 10 years."

Ms. Webb submitted that the next section of the report describes Constable Zarabi-Majd's experience as a police officer with the TPS. Dr. Haskell wrote, "Ms. Zarabi described her love and passion for police work. She was proud to be a police officer. She describes the erosion of her career and emotional well-being resulting from the years of sexual harassment and demeaning sexualized conversations her male colleagues had in her presence. Ms. Zarabi described that the inappropriate sexual comments and harassment were so routine that they became a "condition of her employment." This sexual harassment included her male colleagues making requests to have sex, commenting on her body, sending text messages asking for personal details of her anatomy to other male colleagues, exposing her to pornographic images, subjecting her to sexualized conversations, amongst other incidents. ... Ms. Zarabi explained that the sexual harassment was continuous for nearly a decade. ... She worried that if her male colleagues thought she crossed the line, she feared they would fail to protect her if she was in danger in the line of duty. ... Ms. Zarabi acknowledged that to work safely as a police officer it is essential that you trust your colleagues have your back. ... Every few years she would approach her supervisor and report the sexual harassment that she was experiencing. Ms. Zarabi explained that her

concerns were either dismissed or minimized. She was told that it was considered “just part of police culture,” and her supervisor explained, it was all in jest, it was just “joking around.”

Dr. Haskell wrote Constable Zarabi-Majd described an incident of sexual harassment that happened on parade. She reported it to her supervisor and apparently recorded her discussion with the supervisor. The supervisor warned her to be silent. She emphasized to the doctor, “He warned me to be silent in a very harmful environment.” Constable Zarabi-Majd realized that not even five minutes after her discussion with the supervisor, the other male officers were aware that she had made a complaint.

At page 10 of the report, Dr. Haskell wrote Constable Zarabi-Majd described feeling isolated and shunned. The officer explained, “I blamed myself, like, I could control it. I am nice and respectful person. I avoided certain people. My mental health is more important than trying to belong. ... Even with two officers, the same rank there is still a power imbalance. We are still outnumbered. We don't have an equal voice. This is a huge factor for women policing.”

Ms. Webb advised there is a description further on in the report of an incident involving two TPS officers, one which Constable Zarabi-Majd also described in her evidence at the *Barreau* trial. Here, she describes that she was afraid that one of these officers would rape her. She said that because she was with two male officers at 2 am, if she was raped, she would be blamed. Ms. Webb encouraged the tribunal to read this particular passage for context and background as to the officer's experience in the workplace. Dr. Haskell wrote, “Ms. Zarabi said the experience was horrifying. She realized the other male police officers never thought of her as their equal. ... Ms. Zarabi explained how preposterous it was to suggest she would lie about this event. This would mean risking her own career, personal safety and ruining a good guy's career. She said she still thinks of [this officer] every day. [This officer] eventually worked in human trafficking with very vulnerable women. She was incredulous. They kept him in human trafficking for two additional years; the same man that, “demanded he would fuck me unless I had sex with him.”

Ms. Webb advised the next portion of Dr. Haskell's report described the male police officers' chat room. Dr. Haskell wrote, “Ms. Zarabi was made aware by a fellow police officer of a group text chat that involved 14 male officers. In this chat group her fellow male police officers shared demeaning, sexist and racist comments. Some of the topics included discussions about Muslim people being terrorist and black people being bandits; jokes about slavery and Black children going to jail; pornography and pornographic video clips, including demeaning and sexualized comments. Belittling comments about Ms. Zarabi were explicitly made by [one officer] to other male officers. Upon learning of this group chat Ms. Zarabi had feelings of betrayal and she recognized that her fellow male colleagues felt contempt for women and racial minorities, and she was a “topic” in this sexist and racist discussion.”



The next portion of Dr. Haskell's report addressed the failure of the TPS to prevent, address or respond supportively to complaints of sexual harassment, which was described as institutional betrayal. On page 12, Dr. Haskell explains, "These betrayals and harms by her own male colleagues were then exacerbated by the institutional failure to take her report seriously, to investigate them, and to stop the harassment. This has been defined in the research literature as an *institutional betrayal*. ... It refers to wrongdoings perpetrated by an institution upon individuals dependent on that institution, including failure to prevent, or respond supportively to wrongdoings by individuals committed within the context of the institution.

At page 14 Dr. Haskell writes, "This is not an isolated incident nor was there only a single harasser. Rather, Ms. Zarabi describes a toxic environment of ongoing, demeaning and sexualized comments as well as exposure to pornographic images. ... Ms. Zarabi was thwarted in her attempts to get help or even have her experiences acknowledged from her supervisors in the TPS. The TPS failed to intervene and address the sexual harassment and added to the harm by invalidating her experiences by suggesting it was just joking by her colleagues. ... This was an institutional betrayal that contributed significantly to the psychological harms Ms. Zarabi suffered. The magnitude of the institutional betrayal and lack of protection left her depressed, anxious, diagnosed with PTSD, and it took all of her energy to focus on managing these harmful effects."

Ms. Webb pointed to page 15. Under the Conclusion of Psychological Opinion, Dr. Haskell writes, "Ms. Zarabi presents with intrusive and avoiding components of PTSD. These core features of PTSD are enormously emotionally and physically taxing. ... Ms. Zarabi reports living with daily fear, grief and loss. ... She works to maintain physical safety in her home environment by sleeping with a knife under a pillow and a bat near her door. The severity of Ms. Zarabi's symptoms is intensified as a result of several factors in her life. Primarily the loss of her career as a police officer, the loss of friends and colleagues who now shun her and the negative effects on her fiancé."

Ms. Webb submitted that while Dr. Haskell's report was completed in 2020, the tribunal also has two medical letters which were provided earlier in this hearing by the officer's prior counsel. One letter appears to be dated January 10, 2022 and the second, May 27, 2022. In the second letter the psychiatrist writes, "Constable Zarabi-Majd has experienced exacerbation of her mood and post traumatic symptoms as a result of hearings either virtually or in person. Attending a tribunal hearing either virtually or in person is different from her posting on social media. She has experienced an exacerbation of her mood and post traumatic symptoms as a result of hearings. Requests to attend tribunal hearings have contributed to the maintenance of her symptoms. Her postings on social media have not had a similar negative effect on her medical condition."

Ms. Webb appreciates that neither doctor was asked to testify in the course of the hearing, or in this course of the disposition hearing. She also appreciates that the notes have been given due consideration in the prior requests for an adjournment. Ms. Webb also notes that I accepted Constable Zarabi-Majd has PTSD.

Ms. Webb advised the officer has committed no criminal act. There are exceptional circumstances here. Constable Zarabi-Majd is a victim and survivor of serious sexual harassment and abuse in the workplace. It is alluded to in Dr. Haskell's report that she was a victim of an actual sexual assault – a different incident than she has already covered in her submissions.

To be clear, Ms. Webb submitted it is not simply that this officer has PTSD, or even that she has PTSD as a result of a specific incident with a member of the public such as something arising out of an arrest, or the general stress of being a police officer. Rather it appears to be a result of prolonged abuse, repeated accounts of what can only be described as a toxic and poisoned work environment.

Ms. Webb advised this is not a human rights tribunal hearing. It is apparent though from the evidence in the *Barreau* trial, the references to the group chat, the documentation of the group chat, the content of many of the tweets, offensive as they may be, that there is such a foundation for a claim. Constable Zarabi-Majd testified in *Barreau* at what was no doubt a great cost to her mental health, her traumatic encounter with two officers in which she thought she was going to be sexually assaulted. And what is worse, as this officer repeatedly explained, she would go to her supervisors not only once, but on multiple occasions and be dismissed and dissuaded from taking any further action.

Ms. Webb submitted that Constable Zarabi-Majd has not been accused of concocting false allegations of sexual assault or sexual harassment. There would seem to be corroboration to at least some of her claims. At no point during her cross-examination by counsel for Julie Rice or by the crown was it suggested that she was untruthful about her encounter with the officers in which she was afraid she would be sexually assaulted. Julie Rice's counsel did not appear to challenge her evidence on that nor did he challenge her on his client's experiences with that officer.

Ms. Webb advised counsel spent a lot of time cross-examining Constable Zarabi-Majd on areas that would seem to be more appropriate for a disciplinary hearing, such as her professionalism and her tweets. Counsel spent more time on the issue of whether the officer who was the subject of the *Barreau* matter used the 'n' word. Whether it was used one time or more, the crown did not suggest it was a lie. In any event, Constable Zarabi-Majd was questioned regarding the content of her Twitter feed during the trial, and indeed, she

acknowledged that the tweets were not professional. Ms. Webb submitted this shows the officer does have some sense of awareness of her actions. It is not as if this officer is completely ungovernable. Rather, it is her general belief that she is performing a service to the public. She sees herself as an advocate and whistleblower. Ms. Webb appreciated the profanity and language is not nice; Constable Zarabi-Majd said so herself. One does not have to like or approve of it or condone the matter of delivery. However, underneath these there is a message the officer was trying to convey to the public.

Ms. Webb advised that while she appreciated Mr. Schachter only put in a portion of the tweets, she suggested some of the information was already in the public domain prior to the tweets in 2021. For example, Constable Zarabi-Majd appeared on W5 which aired in February 2020 and is available online. In it, she appears calm, composed, articulate and professional. She also appeared in other media interviews, for example, in November 2020 in an interview with the CBC. How do we contrast this composed, professional, articulate young woman, with the individual who posted these tweets. Undeniably they were offensive, but clearly it can be inferred that there must have been some kind of trigger for this conduct. Ms. Webb cannot articulate exactly what that trigger was or if there was a single source, but she submitted it doesn't take an expert to draw that inference. Plainly put, the officer was pushed to her breaking point. She was in crisis. From her point of view, albeit perhaps a distorted point of view, she believed she was not being offered sufficient help.

Ms. Webb submitted the strain of the disciplinary process was exacerbating the situation, hence the string of tweets seen and the posting of the notices of hearing. Ms. Webb was not suggesting that anyone in the disciplinary process was intentionally trying to aggravate the situation. There has been an evolution over the recent years about concepts, such as PTSD trauma informed lawyering and trauma informed justice as triggers.

Ms. Webb advised it appeared Constable Zarabi-Majd testified in *Barreau* in a professional manner. She suggested the tweets can be seen as an outlet for her emotion and a manifestation of her PTSD and the trauma she experienced. Ms. Webb did not think one needs to be a forensic psychiatrist to see that and through the lens of experience, to draw a line to that.

Ms. Webb submitted Constable Zarabi-Majd suffered as a result of the experience in her workplace. Her suffering was not only detrimental to her mental health, but also financially. When one tolls up the legal bills and legal costs, there is no doubt it would cause great stress, even under normal circumstances.

Ms. Webb suggested Constable Zarabi-Majd would not have been brought to this place; would not have gone from the point where she was described as a pleasant, polite and

professional officer throughout her nearly 10 years of service, to the place where we see her tweeting these tweets; had it not been for the failure to appropriately handle the harassment and the abuse and the toxic work environment that she experienced.

Ms. Webb suggested that in many respects, one cannot lose sight of the forest for the trees. In part, this officer is being disciplined for exposing the very evil that was put upon her. This is not altogether dissimilar, although on a higher level as compared to another officer, Jessica McInnes, which was described in the news article at tab 27. Ms. Webb advised she is not suggesting Constable Zarabi-Majd get a pass for her conduct, but it is important to consider her actions in context.

Ms. Webb submitted what happened to Constable Zarabi-Majd was a tragedy. She went from being an officer with great promise, who had high hopes for her career, who genuinely wanted to be of service to the community, who clearly did nothing but devote herself to that notion. She was turned into someone filled with anger, bitterness, hostility and mistrust as a result of a trauma she experienced on the job.

Ms. Webb advised that as a side issue for the purpose of these submissions, one of the areas Constable Zarabi-Majd was cross-examined on by counsel for Julie Rice was her views on non-disclosure agreements. The timing of these events is interesting because there has been a greater understanding just over the course of the last six months of the pernicious harm caused by non-disclosure agreements, for example, the Hockey Canada scandal. While Constable Zarabi-Majd was criticized for her views on that she was essentially ahead of her time.

Ms. Webb pointed to the Workplace Well-Being, Harassment and Discrimination Review report prepared by Deloitte in March 2022. In the Executive Summary, Deloitte references a significant decision by the Human Rights Tribunal of Ontario (HRTO) with respect to sexual harassment. The decision involved Heather McWilliam, the TPS Board and Angela Costa. In section 1.13, Deloitte writes, “Uniform and civilian members, that participated in this review expressed a clear perception that harassment and discrimination occur at TPS. ... In a confidential survey issued to 7,818 members in September 2020, which found that 60% of the 908 respondents had experienced or witnessed harassment or discrimination within TPS in the past five years.”

Under section 1.3.1, Deloitte states that members who participated in the review expressed a perception that leadership throughout the organization have not been modeling TPS core values, nor leading by example. Several members shared stories about individuals in leadership positions engaging in harassment or discrimination, or failing to prevent, or call out such behaviour, which led them to believe that this behaviour is condoned by the

organization. On page 4 of the report, Deloitte wrote, “Participating members also felt that front line leadership do not receive adequate training or support to address issues like harassment, bullying, intimidation, or discrimination. As a result, members felt that there was inadequate resolution of issues within the unit and members experiencing this conduct felt they are forced to either file a formal complaint, or endure the behaviour.”

Ms. Webb advised there is a discussion of gender-based discrimination in section 1.3.3. Deloitte writes, “The severity of the issues described range from gender-based stereotypes and inappropriate jokes to sexual assault. This was corroborated through a review of reports of investigation and cases heard by the HRT0, which highlighted instances of sexual harassment and a general toxic working environment for female members.”

At section 1.3.4 Deloitte writes about the stigma around mental health: “Participating members in this review believe that a stigma with respect to mental health exists within TPS.”

At section 1.3.5 Deloitte writes, “Participating members expressed a general lack of trust in the internal complaints and investigations process, citing biased investigations and a perceived lack of accountability.” This is expanded upon at the bottom of page 5, where it says, “A consistent theme reported during stakeholder interviews was a fear of reprisal, which members attributed to a culture of protection. ... Participants perceived that the outcomes for uniform members for substantiated instances of harassment or discrimination were often too lenient, and inconsistent with the severity of the conduct.”

Ms. Webb advised the rest of the report goes on to detail a series of recommendations. In chart format on page 14 there is a result of a survey which indicates the majority of participants either somewhat disagreed, disagree, or strongly disagreed that their complaint was taken seriously and investigated and that they were supported by their platoon supervisor, that their complaint was kept confidential, the investigation was free from bias and they did not experience reprisal. So again, this is not a singular experience to Constable Zarabi-Majd. Rather there seems to be the majority of respondents who respond similarly to this anonymous survey.

On page 19 of the report, Ms. Webb noted that common issues which were alleged in two HRT0 cases were, “Pervasive and undiagnosed mental conditions, such as post-traumatic stress disorder.” Deloitte writes that in one of these two cases, several witnesses report a stigma at TPS regarding mental health issues, including PTSD.

Ms. Webb advised that fear of retaliation and lack of accountability was outlined in the Executive Summary, but also expanded upon on page 23. Deloitte writes, “Members who participated in this review perceive that despite the Service exhibiting a highly “punitive”

culture, the outcomes for uniform members for substantiated instances of harassment or discrimination were too lenient and inconsistent with the severity of the conduct.”

Ms. Webb pointed to the HRTO decision, *Heather McWilliam and Toronto Police Services Board and Angelo Costa and Toronto Police Association*. At paragraph 5 and 6, the HRTO describes that even joking, sexualized comments and actions can have a serious impact on individuals over the course of time as they did on the applicant. It states, “This is especially so in a context where the applicant was one of a small number of women in her workplace and when most of the individuals making and carrying out the harassing comments and actions were sergeants and staff sergeants who were in a position of power in relation to her.” At paragraph 427, the tribunal finds for the applicant who is a former police officer, that the poisoned work environment significantly contributed to her PTSD, which kept her off work for six years at the time the decision was written.

Ms. Webb pointed to the similar language found in paragraph 427, “I found above that the sexually harassing conduct to which she was subjected became conditions of her employment. She had to accept these conditions if she wanted to continue working as a police officer at 23 Division.”

Ms. Webb advised that at paragraph 437, it states, “The evidence in this case established that the Board has various policies and procedures that relate to human rights and disability discrimination. However, these policies and procedures did not prevent the occurrence of the poisoned work environment and the disability discrimination that I have found in this case. The board's policy and human rights requires the Chief of Police to create a Human Rights Strategy. It is unclear whether the Chief of Police has ever created such a strategy. Deputy Chief Coxon testified that she had never seen one and it is reasonable to believe that as a Deputy Chief she would be aware of a Human Rights Strategy if one existed.”

Ms. Webb submitted that at paragraph 441, the tribunal orders the Board to retain an expert on policing and human rights to conduct additional training. It states, “In my view, this training should be provided to all Divisions since I have no reason to believe that the officers at 23 Division are simply “bad apples” who conduct themselves any differently from officers and the rest of the Toronto Police Service. Indeed, many of the sergeants and staff sergeants who made and carried out the harassing comments and conduct described above had worked in other divisions before working in 23 Division.”

Ms. Webb submitted that when Constable Zarabi-Majd makes references in her tweets about not letting the TPS “kill her”, it is demonstrative of her state of mind. And while she knows the officer did not necessarily mean they were literally killing her; it should not be dismissed as a mere hyperbole. It should be read in context and with the report of Dr.

Haskell. These are serious and weighty issues that the tribunal must grapple with in determining the appropriate disposition for this officer.

Ms. Webb referenced Mr. Schachter's comments in regard to post offense conduct. She noted that since the Twitter account was suspended, she believes there have been no reports of any resumption of that activity, or any other objectional conduct apart from her not attending this hearing. This should give the tribunal some hope and reassurance that there will not be a reoccurrence and Constable Zarabi-Majd will work to channel her trauma in a healthier manner. This tribunal and the Service should be concerned with the health of this officer. Constable Zarabi-Majd is not a bad person.

Ms. Webb submitted that one can disapprove of the manner in which Constable Zarabi-Majd is delivering her message, but at the same time, based on the Deloitte report and other related decisions, there is some merit to her assertion that she is standing up for women. This is a very outspoken officer. One might fairly consider her an activist. Ms. Webb advised while it is not appropriate in the sense of the word, it does offer an explanation for her conduct. She describes during her *Barreau* testimony that she essentially sees it as her calling to bring this serious issue to the forefront.

Ms. Webb submitted that while it may not be appropriate, Constable Zarabi-Majd is not someone who assaults other people; she has never been accused of excessive force or abuse of a prisoner; driving under the influence endangering the public; or hitting an ex-partner and hitting a pregnant woman. All of these examples are cases that did not result in dismissal.

Ms. Webb advised Constable Zarabi-Majd holds valuable skills that would be of use to the Service when she is able to return to work. Her language skills for example and as a racialized female officer would support her remaining on the Service. She has never been found guilty or charged with deceit or any other similar offense. Similarly, she has never provided false information in an ITO (information to obtain). She never testified falsely under oath.

Ms. Webb pointed to Constable Zarabi-Majd's testimony in *Barreau* on May 12, 2021. In her description of 51 Division, she alleges there was a lot of systemic racism and a lot of discrimination. She also describes her relationship with Julie Rice. Constable Zarabi-Majd has nothing but positive things to say about the officer. Ms. Webb suggested the two female officers shared a good deal in common and they could both arguably be seen as victims. Ms. Webb submitted that fair reading of Constable Zarabi-Majd's testimony would suggest she was well intentioned – that she did not drive to Morrisburg with the intention of doing harm to Constable Rice. She was never charged with criminal harassment. She was in the

company of two defense lawyers in good standing. In fact, Constable Zarabi-Majd's demeanour in the video evidence suggests she was persistent, but certainly not ill intentioned. When someone reads her explanation for her conduct, one can find it was well-meaning. Perhaps she did not fully appreciate at the time the impact this would have on Constable Rice, and that is very unfortunate.

Ms. Webb pointed to Dr. Collins' letter with respect to Constable Rice and noted there was not a single signed statement from her. Ms. Webb had no explanation for this. Constable Zarabi-Majd described the close relationship she had with Constable Rice, someone she admired and respected. It was evident these two women were confidants. Based on Constable Zarabi-Majd's evidence, she was trying to help her and alleviate some of her concerns. At page 23 of her transcript, Constable Zarabi-Majd stated, "We wanted to prove there was systemic racism, systemic sexual violence in Toronto Police. ... We wanted to show systemic racism by including ourselves into each other's applications and show, show evidence of what's taking place." On page 24, she goes on to describe they wanted to help her. This was in reference to Constable Rice who did not have a lawyer and could not afford one. Constable Zarabi-Majd again asserts they wanted to prove there was systemic racism and sexual violence in Toronto Police and thought it was important to share each other's intentions, experiences and trauma.

Ms. Webb submitted that evidenced in her testimony, Constable Zarabi-Majd acknowledges that some of her tweets come across as unprofessional. At page 43, she said, "... So what you're seeing was my Twitter. I understand that it comes across as angry and unprofessional, but what I find even more unprofessional is how a senior management can sit in the human rights tribunal and lie about what's happened to women and continuing to pretend like we're okay, and nothing's going on while women are being abused, silenced, losing their careers, getting sick." Whether it was true or not, this was her perception of what was happening, rightly or wrongly.

Ms. Webb pointed to page 44 where Constable Zarabi-Majd explained the language in a particular tweet. She stated, "That language is coming from a place of post-traumatic stress disorder, coming from a place of anxiety, depression, loss of my career. I am angry. I'm angry that I, that I lost my career. That, that this is happening to women. That officers like [Chris Hoeller] are being protected. That, you know, that I don't have anybody supporting me when I'm going through sexual violence, systemic racism at Toronto Police. And Julie Rice was going through it and nobody helped her, and Jessica McInnes was going through it and Heather McWilliams. But, yeah, that language may not be professional, but if somebody who's looking at the bigger picture and understanding that women are being destroyed, that's all the language I had at the time. That's all I had."



Ms. Webb pointed to pages 46 and 47 of the transcript where Constable Zarabi-Majd responds to a question about the Core Values in relation to her profane language. She responded, "I'm not going to sit here and say this is professional. But neither is what they're doing to women and racial Black, indigenous officers. ... I had gone to my supervisors, and I told them, I reported this, but they didn't help. ... So then I went on Twitter and this is how I'm releasing myself. This is how I'm telling the public what's going on and this is how you make change by bringing these issues forward. It may not be the most professional or nice way of doing it, but this is how I managed to bring these issues forward, and I was able to connect with other people – victims that were able to speak out about what's happening to them. So this is my way of reaching out."

When Constable Zarabi-Majd was asked if she made a conscious decision to disregard the Core Values she responded on page 47, "Conscience is very – it's a broad term you're using. ... When you have PTSD and you've been in a systemic sexual violence environment for as long as we are and we have, this affects your mental health. This affects your mind. So, this isn't like I'm out here trying to disrespect people or swear for no reason or break the rules of my, you know, the rules of policing or policies. This is because there's lives being destroyed. Officers are killing themselves. People are not getting the support they need. That, to me is far more important than a simple professional language that – that's just sitting writing down on a paper that nobody's even [following]."

Ms. Webb submitted that Constable Zarabi-Majd contends in her evidence that she does have respect for the court and respect for the judges. She believes clearly that the entire thrust of her evidence is there are systemic issues to do with racism and sexual harassment, but she's certainly not making a blanket suggestion that everything is corrupt to the core. She is not trying to make those extreme statements in her evidence. In fact, on page 59 she related to the court, "My friend committed suicide last year, and that was another issue that, you know, that's falling on deaf ears and we're not getting support for. Mental health issues are huge, so that's why I speak the way I do. I am – I'm affected really badly because this [indiscernible] Toronto Police, and how they treat women. So that's where this is. Where I'm coming from. That's why I Tweet this way." Constable Zarabi-Majd acknowledges her tweets are not nice – they are not professional. But she believes that she has a duty to protect women, to protect the public and to protect herself.

Ms. Webb pointed to page 67 where Constable Zarabi-Majd explained driving down to see Constable Rice in Morrisburg. She indicated that they got to her father's house and spoke with her dad. Her dad called her and she and Constable Rice spoke briefly. "She agreed to come and see me at her dad's house, but she was very scared. She was telling me that I was there with two lawyers, and she was telling me that you had told her that these were bad people and for her not to talk to them." Ms. Webb advised it doesn't appear that she

was significantly challenged on this evidence by either counsel for Constable Rice or the prosecutor.

Ms. Webb submitted Constable Zarabi-Majd explained why she did not give a statement to the Toronto Police investigators. Found on page 90, the thrust of her evidence is that she felt that this would be harmful to her. She felt that they could start an investigation and go from there. This may have been a misunderstanding of the process, but she explains that she had discussed this with her doctor and they collectively believed it was more important for her to look out for her mental health well-being than to go in and repeat a statement that they've already seen.

Ms. Webb pointed to page 74 where Constable Zarabi-Majd stated, "That is the reason why I continue. Not to just speak about Julie Rice or Jessica McKinnon. To me those women, they have left their mark in my heart. They have left their mark in my life. Their career meant something. Their career still means something. What happened to them is happening to other women currently." Ms. Webb advised it is fair to say Constable Zarabi-Majd made an error in judgment, but the thrust of her evidence shows she was coming from a place of good intention. Perhaps she just truly did not appreciate the kind of impact it would have on this officer.

Ms. Webb turned to her Book of Authorities which included a number of decisions from different levels of court, the Commission, as well as some from Alberta and the Law Society.

In *Galassi v Hamilton Police Service*, 2005 CanLII 20789 (ONSCDC) the officer was originally charged with three counts of discreditable conduct. His misconduct included showing a scrotum ring to a female employee. For that he received a forfeiture of 16 hours pay. In another count, he placed a dead cat on another officer's truck. For that he also received a forfeiture of 16 hours pay. The appeal to Divisional Court was dismissed.

In the case of *Aguiar v Toronto Police Service*, 2015 ONSCS (CanLII), the officer was convicted of discreditable conduct and insubordination. This particular officer had a disturbing disciplinary record. Prior to these offenses, he was convicted of six PSA offenses involving disrespectful, defiant and insubordinate behaviour towards his supervisors and failure to adhere to the Service Governance. In 1996, just the very next year, he was convicted of another five PSA offenses involving similar misconduct. He was allowed to keep his job even after those first offenses. The Court found, "Because the appellant engaged in the same type of behaviour that he had previously been disciplined for and because his behaviour was serious, committed in a planned and deliberate manner and contained elements of deceit, the appellant had not actually been rehabilitated in spite of the passage of time." Despite his prior record, the officer still received a disposition of demotion for one year.

In regard to *Bargh v Ottawa Police Service*, 2011 ONCPC 3 (CanLII), this case involves an officer disobeying lawful orders pertaining to the use of CPIC and RMS. His responses to questions put to him were found to be wilfully false, misleading or inaccurate, and intended to deceive. This officer had accessed CPIC and RMS over 200 times. He received a demotion for one year. His appeal was dismissed.

In regard to *Correa v Toronto Police Service*, 2009 ONCPC 2 (CanLII), this officer was facing charges as part of the drug squad investigation. Constable Correa was quoted in a newspaper maintaining his innocence of wrongdoing. There were a number of derogatory comments in the article toward the Service which were directly attributed to him. The hearing officer found he repeatedly failed to obey four written orders and one verbal order to contact Professional Standards. The decision noted Correa's lack of recognition and remorse and that he portrayed the disturbing impression of an officer who was readily amenable to define management's lawful orders. He received a forfeiture of seven days.

The *Costa v Toronto Police Service*, 2017 ONCPC 14(CanLII) case is a matter where the homicide squad wanted to speak to Constable Costa about his brother who was a person of interest in a murder investigation. Constable Costa assisted his brother by buying him a one-way ticket to Rome. The officer gave a sworn KGB statement and was asked six times over the course of an hour if he knew the whereabouts of his brother, to which he said no. The officer later admitted to having purchased a ticket and driving him to the airport. He was dismissed but reinstated upon appeal. The Commission varied his disposition to a two-year demotion, a forfeiture of nine days and a 30-day suspension without pay. The case referenced other cases of serious misconduct which included a sergeant falsifying a report and directing subordinates to falsify their notes, cheating on a promotional exam and issuing provincial offense notices to vulnerable persons. Sanction in these matters resulted in a loss of 64 hours, 15 and 10 days concurrently and a demotion.

In *Cudney v St. Thomas Police Service*, 2007 ONCPC (CanLII), the officer was charged criminally with assault following a physical and verbal altercation with his ex-wife. The matter attracted the scrutiny of local and national media outlets which certainly obviously brings discredit to the profession. In this matter, other cases were referenced including two where officers assaulted and threatened their spouses and brought their firearm home. The officers all received demotions for their misconduct.

In *D'Souza v Toronto Police Service and George Burger*, 2007 CanLII, other cases were cited, one where the officer was verbally abusive using profanity, yelling at employees in a store, resisting a security officer and striking a female customer in the head. He received a penalty of five days. In another case an officer failed to file a proper report and made a false statement. His original penalty was varied on appeal to a forfeiture of five days' pay. And

another matter where an officer received a penalty of three days for cursing and swearing at a motorist in a threatening manner. D'Sousa's original sanction for discreditable conduct was varied from a forfeiture of five days to three days.

The case of *Herridge v St. Thomas Police Service*, 2007 ONCPC 5 (CanLII) involved sexual relations between a sergeant and a civilian employee; using the police internal system for sexually explicit communications with that female; and, neglect of duty for leaving his assigned duties to attend the home of that individual. Upon appeal, the officer's sanction was varied to a demotion in rank for 12 months and forfeiture of 40 hours.

In *Howard v Ontario Provincial Police*, 2016 CanLII 53057 (ONCPC) the officer declined a ride home after consuming alcohol. He drove home, struck his house then grabbed his daughter's wrist when she called 911. Sergeant Howard was demoted to first class constable for a period of 20 months.

In *Joubert v Ontario Provincial Police*, 2021 ONCPC 8 (CanLII) there was a litany of allegations. They included the utilization of a police issued cell phone to fabricate and send inappropriate and unwanted personal text messages, fabricated conversations, refusal to answer questions in his duty interview and less than forthcoming on issues including frequently creating sources as confidential informants to mislead an investigation. He was demoted to fourth class constable for 18 months.

In *Lewin v Toronto Police Service*, 2001 CanLII 56739 (ONCPC) the sergeant made offensive comments about women in the presence of a female probationary officer who had only been working for 10 weeks on the job. He showed no remorse and he repeatedly denied making the remarks. He received a sanction of 15 days. Ms. Webb pointed to three cases cited in Lewin; one where three officers who watched indecent acts at a stag party lost 10 days; one where a staff sergeant made unwelcome sexual comments and advances, including touching two female civilian employees – he was demoted to constable; and one where an officer made a racist comment about a citizen to another officer. He was penalized 15 days.

In *McPhee v Brantford Police Service*, 2012 ONCPC 12 (CanLII) the officer was dismissed for conducting numerous improper CPIC and PIP checks, and improperly leaving his patrol area. Notable about this case is that the officer already had a prior record – having received informal discipline for misconduct, some of which was similar to the 2012 matter.

In the case *Mulholland v Peel Regional Police Service*, 2014 ONCPC 19 (CanLII) there was a variety of offenses that included lying to a supervisor saying he needed to be with his grandfather who was on life support, which was untrue, driving under the influence, coming to work with alcohol on his breath, and identifying himself to witnesses as a police officer

after being in a collision having alcohol on his breath. The officer raised the issue of PTSD but failed to back it up with documentation. He was subsequently demoted for six months.

*Pinto v Toronto Police Service*, 2011 ONCPC 6 (CanLII) involves an officer who reprimanded his 4-year-old child. In the course of this, the child's face struck the door which resulted in injuries. The officer was charged and pled guilty to criminal charges. He was charged with seven counts of misconduct for this and other conduct. He was demoted to second class constable for one year.

*Precious v Hamilton Police Service*, 2002 CanLII 63881 (ONCPC) involves a case where the officer was arrested and charged but acquitted for perjury concerning his testimony in a criminal trial. He was charged with misconduct for failing to conduct a proper investigation into a domestic that resulted in a stabbing. The Commission varied his one-year demotion sanction to a reduction of 24 hours.

The *Tapp v Ontario Provincial Police*, 2018 ONCPC 16 (CanLII) case involved an officer who referred to his former detachment commander as a racist in front of a number of witnesses. He was sanctioned 12 hours.

The matter of *Wildeboer and Toronto Police Service*, 2006 ONCPC 10 (CanLII) involved improper CPIC queries on various individuals over the course of several months. The officer had two prior disciplinary incidents, one where he drove under the influence and the second, improper storage of his firearm. The officer was sanctioned 18 days for his improper use of CPIC.

In *A v Edmonton (Police Service)*, 2018 ABLERB 3 (CanLII) the officer, in an attempt to protect the identity of an informant, put incorrect information on an ITO. Once the accused was charged, the officer disclosed her misdeed to the prosecutor. Her dismissal was reduced to an 80-hour suspension without pay, a three-step reduction in rank for three years and training on ethics upon appeal.

In *MacDonald v Camrose (Police Service)*, 2014 ABLERB 55 (CanLII) the officer was charged with a multitude of offenses including lying to his supervisor, misuse of a company car, signing a misleading statement, failing to attend the seminary but receiving pay for it, and being compensated for work not entitled to. His dismissal was reduced to a three-year demotion and an 80-hour suspension without pay.

In *McCulloch v Mugford*, 2011 CanLII 102079 (ABLERB) the officer received a reprimand for driving under the influence and conducting improper CPIC checks on his spouse. The penalty imposed took into consideration the extraordinary delay in bringing the matter forth.

In *Phillips v Lethbridge (Police Service)*, 2022 ABLERB 004 (CanLII) the officers faced allegations involving the targeting of individuals, including an elected member of the legislative assembly, and minister of the crown and making misleading statements in the course of a professional standards investigation. Both officers were demoted in rank for a substantial period.

*Law Society of Ontario v David*, 2023 ONLSTH 25 (CanLII) is a case where the lawyer was found guilty of professional misconduct. The Law Society had initiated four investigations into Mr. David's conduct relating to his online postings alleging a sexual assault by a member of the judiciary on Facebook and his law firm's website. He refused to take down the posting and refused to answer the Law Society's investigative questions. The tribunal placed the lawyer on an indefinite suspension.

Ms. Webb pointed to two newspaper clippings she included in her Book of Record. The first is in regard to Sergeant McInnis who was sanctioned eight hours for participating in inappropriate group chats and failing to report them sooner. The second article is in regard to Constable Ryan Kotzer who was demoted for six months for tasing a compliant handcuffed prisoner.

Ms. Webb turned to Mr. Schachter's Book of Authorities and submitted she did not believe the cases he filed were comparable to this matter. She submitted *Manning* was distinguishable for some fairly obvious reasons. One being Constable Zarabi-Majd has clearly suffered for a prolonged period of time, and that needs to be taken into consideration as the source – the reason for her PTSD. Ms. Webb submitted there are exceptional circumstances here which calls out for an exceptional disposition. She submitted an appropriate disposition other than dismissal is warranted.

#### Prosecutor's reply

Mr. Schachter advised he is not suggesting Constable Zarabi-Majd never had any utility as an officer. His point is she does not have any utility to the Service now, given her behaviour. She was a fit officer. She no longer is. Further in regard to the one letter of commendation in 10 years and the positive performance appraisals, Mr. Schachter submitted he can be an upstanding citizen his whole life and then one day he does something violent and it does not matter if he was a good employee. He is still responsible for his actions regardless of his past behaviour. Based on this, he believes Constable Zarabi-Majd's employment history is neutral.

Mr. Schachter submitted this tribunal is based on evidence. There was a significant amount of speculation and conjecture by Ms. Webb, providing evidence in her submission. There are a number of examples where there is no evidence before this tribunal and therefore, none of it is relevant. Ms. Webb and Ms. Wilson and the officer had every opportunity to

introduce evidence they felt was relevant. The hearing officer cannot rely on speculation and conjecture.

Mr. Schachter pointed to Dr. Haskell's report dated July 27, 2020. The earliest instance of misconduct that is before this tribunal is October 20, 2020. All the trauma Dr. Haskell writes about that was allegedly suffered by Constable Zarabi-Majd comes from the officer's perspective which Dr. Haskell is simply regurgitating. This is not evidence that anything happened to Constable Zarabi-Majd. The officer had extensive opportunity and time to get further documentation, get further medical reports and bring evidence to this tribunal other than conjecture by counsel.

Mr. Schachter submitted that on page 7 of Dr. Haskell's report, Ms. Webb brought to our attention "avoidance strategies represent an effort to withdraw from certain situations that bring about body-level distress of trauma-related symptoms." This was a theme in the motions that were brought by the officer's counsel. We have seen the officer's behaviour and it has been anything but avoidance strategy. The only avoidance strategy she utilizes is the avoidance of this tribunal. Continuously, Constable Zarabi-Majd has thrown herself into a situation where she has discussed the employment related trauma that she alleged occurred. We are not here to determine whether or not that trauma occurred. That was for PRS to decide. The point is the avoidance strategies as outlined in Dr. Haskell's report is not consistent with the behaviour of the officer.

Mr. Schachter pointed to where Dr. Haskell states that her symptoms have somewhat diminished because of her efforts to intentionally regulate her psychological and physiological states through active meditation and exercise. She was improving. It undermines Ms. Webb's position as to the behaviour that came as a result from October 2020 forward that is now the subject before this tribunal.

Mr. Schachter pointed to the next section of the report in regard to Sexual Harassment, Racism and Sexual Assault. He submitted that again there is no evidence before the tribunal. They are simply bold assertions such as the one that she would not be protected by her fellow officers. Even if this all did occur and everything that Constable Zarabi-Majd said was true, there is a process in place to deal with these allegations. That is directly reporting it to PRS, PRS investigating it, and if substantiated, it is brought before this tribunal.

D/Sgt. Adams ordered Constable Zarabi-Majd in February 2021 to come in to provide evidence to PRS as to the harassment, racism and sexual assault. She was initially ordered as a witness officer. She refused to attend. Not only is PRS an avenue, but there are other avenues available, ones in which Constable Zarabi-Majd has pursued such as the HRT0 and civil suits. She is not before this tribunal because she tried to hold the officers who

committed misconduct accountable. She is here because of her own misconduct. You cannot point the finger at other allegations, for which there is no evidence, and say that because they didn't receive any discipline, she can do whatever she wants. She has been found guilty of multiple counts of misconduct and the fact that other officers may have committed misconduct is not a mitigating circumstance. It is not an option while you are an officer to publicly destroy the reputation of the Service and the reputation of other officers and be insubordinate.

Mr. Schachter pointed to page 15 of the report where Dr. Haskell states Constable Zarabi-Majd presents with intrusive and avoidance components of PTSD. Even if that was the case in July 2020, it's no longer the case after October 28, 2020. Dr. Haskell states, "The severity of Constable Zarabi-Majd's symptoms is intensified as a result of several factors in her life. Primarily the loss of her career as a police officer." According to Dr. Haskell in July 2020, the officer acknowledges her career is gone. She then engages in extensive misconduct because she has nothing to lose because she has already come to the conclusion her career is done. She engages in extensive misconduct; refuses to attend the tribunal and she has counsel argue that she should keep her job as a police officer.

Mr. Schachter turned to Dr. Nwachukwu's letters and said they are very dated. There is no indication of his credentials or CV. They are unsigned and completely devoid of any information. In the tribunal's May 24 decision it was found, "The applicant's medical condition appears to be an enabling excuse to avoid being held accountable for her own conduct. I make this finding based on her testimony in the *Barreau* matter, where she acknowledges she has no medical restriction to testify, and yet she has explicitly refused to comply with the orders of Professional Standards to answer to her alleged misconduct."

Mr. Schachter pointed to the second motion dated September 24, 2022 where it was stated, "While I acknowledge a person's medical condition can change, this new piece of information lacks supporting factual information, explaining how Dr. Nwachukwu came to this particular determination. The gap is too wide to draw an inference. Therefore, in my view the information, if I were to accept it at face value is meaningless. Overall, I find the note deficient confusing and groundless. It fails to produce any new information which would influence my earlier decision. Rather it confirms in my mind that it was the correct decision to make at the time. For these reasons I give no weight to the note, nor can I accept the applicant's argument that it gives rise to new factual circumstances."

Mr. Schachter submitted that the officer had plenty of time to update these medical notes, but there is nothing in front of us. In regard to the medical notes based on her visits on May 27, 2022 and October 5, 2021, the information provided is contrary to the officer's behaviour. The doctor changed his opinion, but there is no foundation as to how he came to that



conclusion. He said her postings on social media have not had a similar negative impact on her medical condition but this is completely devoid of any information that's going to help this tribunal.

Mr. Schachter referenced Ms. Webb's submission that Constable Zarabi-Majd did not commit a criminal act. He submitted that is not entirely true. All that is known is there were no charges laid – but that does not mean no criminal act was committed. This is an employment tribunal and this employee committed serious misconduct.

In regard to Ms. Webb's comment that there is an exceptional circumstance in that Constable Zarabi-Majd is a victim of an "actual sexual assault", there is no foundation for this whatsoever. It is improper and irresponsible to make an assertion like this during submissions with no factual evidentiary basis.

Mr. Schachter pointed to Ms. Webb's submission where she said Constable Zarabi-Majd's testimony in *Barreau* was of "no doubt, a great cost to her mental health". There is no foundation to this assertion. Constable Zarabi-Majd volunteered – she was not subpoenaed or compelled to testify.

Specific to the testimony in *Barreau*, Ms. Webb stated there is no allegation that Constable Zarabi-Majd concocted her evidence. Mr. Schachter reminded the tribunal that the testimony she gave in the cross examination was not about Constable Zarabi-Majd's allegations of misconduct, but about allegations of misconduct committed by other members of the Service. So it was not contested. Justice Silverstein found in paragraph 17 and 18, "PC Zarabi-Majd was vigorously cross-examined by Mr. Butt. This cross-examination made it clear that PC Zarabi-Majd is on a mission to publicly air the vicious sexual and racist treatment she says she suffered at the hands of her police colleagues over the years. In pursuit of that goal, she surreptitiously tape recorded the mediation proceedings even though she was contractually bound not to. She assumes that PC Rice wants her story told and is sharing PC Rice's story, even though she's been told PC Rice does not want to go public with her allegations. She's deeply suspicious of government in the judicial system as [it] concerns its treatment of allegations of racism and sexism. She thinks nothing of signing contracts without any intention of abiding by her obligations under the agreement. I would be reluctant to rely on her uncorroborated testimony. Yet the salient aspect of her story – that PC Rice told of DC Hoeller's racist comments is corroborated by the draft statement of claim in PC Rice's name and in the email exchanges between PC Rice, PC Zarabi-Majd and the third complainant." Mr. Schachter submitted this is anything but a glowing conclusion by a Justice of the Ontario Court of Justice.

In regard to Ms. Webb's submission that the officer is not ungovernable, and in her mind she was performing a public service and in her own way trying to convey this message to the public, Mr. Schachter submitted her way was misconduct. It is not up to Constable Zarabi-Majd to make her own rules to attempt to justify her behaviour as a public service. In regard to Ms. Webb's claim that it was the disciplinary process that caused Constable Zarabi-Majd to change from an upstanding citizen to one who commits misconduct, Mr. Schachter submitted that her misconduct predates the disciplinary process.

Mr. Schachter pointed to the parallels Ms. Webb drew between this and the *McWilliam* decision and the experiences of the officers. He submitted we are not here to determine whether Constable Zarabi-Majd's human rights were violated. That is for the HRTO. There is no evidence of this and is therefore irrelevant to the sentencing of this officer.

Mr. Schachter referenced the comment that going forward, Constable Zarabi-Majd will channel her trauma in a healthier manner. He submitted there is no evidence of this and there is no evidence of rehabilitation.

Mr. Schachter submitted that he believed Constable Rice would strongly disagree with the comment that Constable Zarabi-Majd was standing up for women. On pages 72 and 73 of *Barreau's* transcript, Constable Zarabi-Majd said in response to the suggestion she was going to tell Julie Rice's story whether she wants it told or not, "When I speak about Julie, I don't necessarily speak about her as Julie as a person. I speak about her Julie within a system and what happened to her. ... She has never told me not to talk about her. She has never asked me to say nothing. In fact, up to January she was telling me that she wanted – she wanted this to come to, to light."

Mr. Butt responded to this asking " ... So if I tell you right now as her lawyer she has no interest in testifying because its destructive to her health are you going to take that to heart and are you gonna say, I won't impose on my friend that way? Or are you going to continue to try to tell her story?" ... Constable Zarabi-Majd replied, "I believe you are wrong. Julie does want her story to live on. ..."

In regard to the trip to Morrisburg and submission that it was well intentioned and Constable Zarabi-Majd meant no harm, Mr. Schachter submitted her behaviour had very real and serious consequences, something she has never accepted responsibility for. There is no evidence of 'good intention'. What is before this tribunal is Constable Zarabi-Majd is on a vendetta. She was using Julie Rice as a pawn and Julie wasn't playing along. So Constable Zarabi-Majd drove to Morrisburg in an attempt to locate Constable Rice and committed misconduct in the process. Her behaviour was unacceptable and inexcusable.

Mr. Schachter referenced Ms. Webb's comment about Constable Zarabi-Majd being accompanied by two defense lawyers in "good standing". He assured the tribunal that at least one of them is not.

In regard to Constable Zarabi-Majd's acknowledgement in *Barreau* that her tweets were unprofessional, Mr. Schachter submitted she went on to justify them. There is no contrition. On page 35, she stated, "So I am very proud of my Twitter." On page 47 she acknowledges she breaks the rules but goes on to justify it.

In regard to Constable Zarabi-Majd believing she has a duty to protect women, Mr. Schachter submitted she also has obligations of a police officer, and she violated those obligations. She has a responsibility; she signed an Oath and she violated her Oath.

In regard to Constable Zarabi-Majd testifying that she and her doctor thought it best not to go to PRS, Mr. Schachter submitted she should have brought that evidence to the tribunal. That is the type of thing that could be found mitigating, but there is no such evidence. PRS would have appreciated a well-documented medical report. This could have gone a different way, but instead of going in that direction she went to Twitter and called this process shit.

Mr. Schachter submitted the defence's case law is of no use to this proceeding. Ms. Webb quoted the Deloitte report which acknowledged there is an issue with the severity of penalties that are coming as a result of the misconduct process. All she did was produce examples to illustrate this. The decision that is on point is *Manning* although not completely comparable. There are aggravating features that exist in *Manning* but not here, and there are aggravating features here that do not exist in *Manning*. For example, Constable Zarabi-Majd's post offense conduct.

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

#### Summary of misconduct

Constable Zarabi-Majd's misconduct amounted to incidents of insubordination and discreditable conduct over a span of approximately 18 months, October 2020 to April 2022. She defied lawful orders to attend the PRS for interviews; she failed to attend the tribunal when ordered; and she posted on Twitter the names of TPS officers after being ordered not to. In the context of her discreditable conduct, she posted on Twitter confidential police information and offensive and racist material, and tweeted inappropriate, libelous, vulgar, degrading comments complete with obscenities toward the Chief, the Police Services Board (the Board) and others. Lastly, she sought out the location of another officer and refused to leave the said officer's mother's property, despite numerous requests to do so, causing the mother to eventually call 911.

Following a two-day hearing in absentia, the facts of the misconduct were settled and I found Constable Zarabi-Majd guilty of eight counts of misconduct; four counts of insubordination and four counts of discreditable conduct. Since count 11 – discreditable conduct – has been stayed, an appropriate sanction on the remaining seven counts needs to be determined.

The proposals for sanction in my view are not far apart, one being dismissal and the other anything less than dismissal. This brings me to the key question – has Constable Zarabi-Majd’s usefulness to the TPS been annulled? If so, then dismissal should follow. If not, then something in the range of a demotion would likely be appropriate.

While dismissal brings significant consequences, it is not intended to be viewed in the evil sense of the word as Mr. Schachter put it. In *Trumbley* the court confirmed a police disciplinary matter is purely an administrative process between an employee and employer. It goes on to describe dismissal in this context:

The basic object of dismissing an employee is not to punish him or her in the usual sense of the word (to deter or to reform or possibly to exact some form of modern retribution), but rather to rid the employer of the burden of an employee who has shown that he or she is not fit to remain an employee.<sup>2</sup>

If I find Constable Zarabi-Majd is still fit to remain an employee with the TPS and she is capable of bringing value to the community she serves in the capacity of a police officer, it is incumbent upon me to impose the least onerous corrective sanction possible. If I find otherwise, then dismissal is appropriate.

It is widely accepted the goals of the police discipline process are to:

- Correct errant behaviour or misconduct
- Deter misconduct, and
- Reassure the community

In attaining these goals, I must adhere to the foundational principles that govern crafting an appropriate disposition. Outlined in *Legal Aspects of Policing*<sup>3</sup>, they are:

1. There must be a balance between the high expectations of the community, the needs of the Service to maintain discipline in the workplace, and the rights of the respondent officer to be treated fairly.

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<sup>2</sup> 63: Tab A: *Trumbley and Metro Police Service*, 1986 CanII 146 (ON CA), pgs 34/35 (pdf)

<sup>3</sup> 65: Tab 1: Ceyssens, Paul. *Legal Aspects of Policing*, Toronto, Earlsourt Legal Press Inc. 2002, (looseleaf updated June 2022), pgs 5-332 5-343

2. Corrective dispositions prevail over punitive action, unless public confidence and or the administration of discipline is undermined.
3. It is presumed the least onerous disposition will prevail.
4. There must be consideration of all the disposition considerations and a fair weighing to determine if they are mitigating, aggravating or neutral.
5. A police officer's conduct is held to a higher standard than the public he/she serves.

To assist me in assessing the most appropriate sanction, I will turn my mind to the commonly held disposition factors considered in most every police related disciplinary decision.

### Public interest

At the heart of all police disciplinary matters is the consideration for public interest. I rely on the Declaration of Principles in the PSA<sup>4</sup> and *OCCPS v. Browne*<sup>5</sup> to find that the general purpose of the PSA, amongst other things, is to protect the people and property of Ontario and be sensitive to its multiracial character. These principles neatly dovetail into the objective of the police discipline process, which is to ensure the public's confidence is maintained.

The legislation and courts clearly recognize the need for the public to have trust and confidence in those chosen to protect and serve them, and without this, a free, lawful and democratic society would not exist. It is therefore paramount that a police officer's on-duty and off-duty behaviour be above reproach at all times. When their conduct falls short of this, the public's confidence, which at best is fragile, is eroded and the officer must be held accountable.

In the fully annotated Ontario PSA, three situations are listed where public interest can arise:

1. Where the misconduct has offended or undermined the public interest or public confidence; or would do so
2. where the misconduct has generated a demonstrable risk; and,
3. where there is a need to demonstrate confidence in the police force or its discipline process.<sup>6</sup>

I find all three are applicable in this matter.

Constable Zarabi-Majd created and utilized her Twitter platform as a tool to communicate with the public. She identified herself in her Twitter bio as a serving TPS officer and this was

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<sup>4</sup> Ontario *Police Services Act*, Fully Annotated, section 1

<sup>5</sup> AB: Tab1. *Browne v Ontario*, (Ontario Commission on Police Services), [2001] OJ No. 4573. Para 67 (Motion A May 24, 2022)

<sup>6</sup> Ceyssens & Childs, *Ontario Police Services Act*, Fully Annotated, 2017 edition, pg 319

accompanied by her image – a headshot of her sporting a TPS toque. The word POLICE can be depicted at the bottom of the TPS insignia attached to the toque. Her image accompanied every single tweet she posted. If there was any doubt she was a police officer, she eliminated this by her repeated pronouncements in her posts that TPS was her employer.

Constable Zarabi-Majd created her social media account on October 12, 2019 and until it was suspended by Twitter in August 2022, she had posted over an estimated 25,000 tweets. Her account was unrestricted meaning anyone on the Twitter platform could view her posts. It is known that she had over 6000<sup>7</sup> dedicated followers, and while it is unknown how many actually viewed her tweets, the potential existed that all 6000 plus had viewed them. This would be over and above the followers and searchers of other Twitter account holders whom she tagged in her posts. For example, when she tagged former Chief Ramer and former Mayor Tory, anyone searching or following one or both could potentially see her posts due to the tag. I note it was not uncommon for Constable Zarabi-Majd to tag numerous persons and groups when tweeting.

I lay this out to demonstrate the massive audience that existed which potentially viewed every tweet Constable Zarabi-Majd posted. In many respects, I find the likely number of viewers privy to her slanderous tweets against her employer and others quite staggering.

During the course of this proceeding, I scrutinized only a sampling of the thousands of tweets posted by Constable Zarabi-Majd. Based on what I viewed, it is fair to say the majority of tweets amounted to an unrelentless and vicious attack on her employer as a whole, senior members of the TPS, the Board and members thereof, and the Toronto Police Association (TPA). Packed with vulgar and obscene language, I found Constable Zarabi-Majd's tweets harmful, hurtful, scandalous and libelous. Owing to the high standard of conduct the public expects of their police, I am confident they would find her conduct in posting these tweets reprehensible.

Constable Zarabi-Majd's conduct amounted to a situation where she offended the public interest and confidence. Clearly identifiable as a TPS police officer, she blatantly defied lawful orders to participate in an internal investigation in regard to allegations of sexual harassment in the workplace. She then refused to participate in an internal investigation where she was identified as the subject officer. This refusal to cooperate in an internal investigation regardless of whether she was a witness or subject officer of alleged misconduct sends a clear message that she has no regard for the high standard of conduct expected of her and her colleagues. How could the public have confidence in a police officer who refused to help expose or be held accountable for alleged serious misconduct, in

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<sup>7</sup> 13, Tab 3, Appendix 2

particular with sexual overtones within their respective Service? I find they could not. To maintain trust and confidence, the public must see that Constable Zarabi-Majd's conduct is not the norm. In order to restore the public's lost confidence in the TPS's discipline process, they need to hold Constable Zarabi-Majd accountable.

I find Constable Zarabi-Majd's misconduct generated a demonstrable risk to the public and other police officers. In my decision dated December 19, 2022, I found that she posted confidential law enforcement material meant only for the eyes of TPS employees. Some of the material included pictures of a man who officers were trying to identify, another of a man subject to a curfew and flagged as armed and dangerous, and a picture of a booklet titled Project POST – 51 Division Sic Thugz Gang Members<sup>8</sup>. Constable Zarabi-Majd violated her Oath of Secrecy<sup>9</sup> which she swore/affirmed to on December 18, 2008. On that day, she committed to not disclose information obtained by her in the course of her employment. Yet, on February 11, 2021 she disclosed confidential police information on a social media platform for thousands to see. In doing so she alerted the viewers to persons of police interest thus compromising their safety and that of her colleagues. Constable Zarabi-Majd's conduct offended the standard expected of police officers in her blatant disregard for others safety. The public's confidence and trust in Constable Zarabi-Majd's interest to keep all persons safe and secure was grossly offended.

Constable Zarabi-Majd publicly defied an order to stop posting tweets about Constable Rice and Sergeant McInnis by posting the order which named the said officers on Twitter days later. After being charged with insubordination, she continued to post tweets about Constable Rice. She stubbornly refused to leave Constable Rice's residence despite numerous requests to do so and in doing so she broke the law by trespassing. This was particularly concerning in light of the fact she knew in advance her presence was unwelcome. Her behaviour resulted in a 911 call and consequence dispatch of the Ontario Provincial Police (OPP) to attend and investigate. Constable Zarabi-Majd's conduct was unwanted and alarmingly unprofessional, and in the latter instance warranted police intervention. The TPS needs to assure the public there is a high degree of discipline within its organization and it is unacceptable for police officers within to conduct themselves above the law.

Constable Zarabi-Majd publicly defied lawful orders to participate in PRS interviews and refused to attend the tribunal. She based her refusal on the pandemic and her PTSD. On pages 59 to 62 inclusive of my December decision, I analyzed at length whether her illness provided a reasonable excuse for her non-participation in the discipline process. I concluded it did not:

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<sup>8</sup> 24

<sup>9</sup> 62, Tab 4

To summarize, my analysis in the motions led me to conclude that Constable Zarabi-Majd's PTSD was not a reasonable excuse for not attending the hearing. That determination remains applicable to this decision. I do not consider her PTSD a lawful excuse for not attending the PRS interviews as ordered. Nor do I accept her PTSD is a reasonable excuse to not attend the tribunal. To this end, I am satisfied no lawful excuse existed.

My finding remains unchanged and is applicable to this proceeding. Through the voice of her lawyers, Constable Zarabi-Majd has consistently claimed throughout these proceedings that her PTSD has prevented her from attending the tribunal. She has had significant opportunity to garner and present evidence to satisfy this tribunal that this is true. She has had the benefit of knowing why I found her earlier medical documentation deficient – which presented an opportunity to rectify the situation and produce sufficient documentation. Despite all of this, no evidence has been produced to satisfy me that her condition prevents her from attending the tribunal, leaving me to find there is no basis to her claim. This finding is reinforced with the knowledge she again testified in the *Barreau* matter as recent as December 6, 2022. I concur with Mr. Schachter that she has not been truthful. She simply wants to avoid being held accountable.

The public generally trust police because they are honest and have the moral fortitude to be held accountable in the face of adversity. Because Constable Zarabi-Majd has demonstrated she is lacking in these traits, she would seriously undermine the public's trust and confidence should she continue to be employed.

Constable Zarabi-Majd's misconduct undeniably placed the public's confidence and trust in their Chief of Police, the Mayor and members of her Board, to name a few, on shaky ground. She accomplished this by levelling slanderous accusations of patriarchy, discrimination, racism, and homophobia. She implicated they covered up sexual assaults, protected perpetrators and silenced women and in doing so, destroyed their mental health and careers. In my view, being a woman and wearing a police uniform lent credibility to her critique of her employer and her serious allegations. Constable Zarabi-Majd compromised the community's trust in their police leadership. She caused irreparable damage to the Service as a whole and to those who lead it. This cannot be tolerated.

Taking all into account, I find the public interest in this matter a persuasive and weighty aggravating factor in the determination of a disposition. Constable Zarabi-Majd's behaviour was so far removed from the high standard held out for police, it undermines the public's trust and confidence that she has the ability to carry out her duties professionally and with integrity. I am not convinced she could ever regain what has been lost.

#### Nature and seriousness of misconduct



It is reasonable to find that repeated acts of misconduct over a period of time increases the seriousness of the behaviour. In this matter, Constable Zarabi-Majd's misconduct spanned a period of approximately 18 months. She defied lawful orders to attend PRS for interviews on several occasions, she publicly defied an order not to tweet about two TPS officers and she repeatedly defied the numerous orders to attend the tribunal. She repeatedly posted inappropriate vicious slanderous tweets. In addition to the hundreds I saw, D/Sgt. Bangild said he personally viewed over 50 unprofessional, vulgar, abusive and insulting tweets aimed just alone at Chief Ramer. In *Kobayashi, Vongkhamphou and Green and Waterloo Regional Police*, 2015 ONCPC 1 (The BBM Group), the Commission found:

Repeated misconduct over time is aggravating and there was no error in principle or misapprehension of evidence in the Hearing Officer treating the multiple acts of misconduct as such.<sup>10</sup>

Evidenced in her *Barreau* testimony, Constable Zarabi-Majd's misconduct was deliberate and intentional. When questioned about her tweets, she said, "I'm warning the public of the issues that's behind closed doors so that to me is part of my job."<sup>11</sup> In response to being ordered to attend PRS for an interview, Constable Zarabi-Majd tweeted in part, "reprisal/retaliation ... I'm not playing".<sup>12</sup> She intentionally defied the order to stop tweeting about Constable Rice and Sergeant McInnis by telling Superintendent Branton, "Don't think you have the right to tell me how to speak about my trauma and my lives (sic) experiences of abuse at work."<sup>13</sup> She then posted his order which named the officers she was ordered not to tweet about.

Further evidence that she acted deliberately and intentionally is found in a July 7, 2021 tweet, the same day Constable Zarabi-Majd was served her first notice of hearing. She wrote: "I WILL NOT BE ATTENDING THIS [feces emoji]".<sup>14</sup> And the day after she was ordered to attend PRS for an interview in regard to her failure to appear before the tribunal, she tweeted, "Yesterday again I was served to go to Professional Standards for an interview on Sept 2. @ jamesramertps I'M [hand clapping emoji] SICK [hand clapping emoji] ASSHOLE".<sup>15</sup>

Logically, misconduct that is found to be deliberate and intentional is considered more aggravating than that which could be found as a momentary lapse of judgement. When it repeatedly occurs over a prolonged period of time, it stands to reason it will attract a significant sanction up to and including dismissal.

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<sup>10</sup> C4, Tab 8: *Kobayashi, Vongkhamphou and Green and Waterloo Regional Police*, 2015 ONCPC 1 (The BBM Group), para 44, Motion February 14, 2023

<sup>11</sup> Exhibit 62, Tab 11: Transcript of *Barreau* proceedings on Application May 12, 2021, pg 59

<sup>12</sup> 17

<sup>13</sup> 13, Tab 2 Appendix C

<sup>14</sup> 45

<sup>15</sup> 48

Constable Zarabi-Majd demonstrated utter disrespect towards senior officers. Aggravating this feature was the fact she publicly displayed her contempt using a range of obscenities, vulgarities and accusations. She repeatedly violated the Code of Conduct by being insubordinate by word and act.<sup>16</sup> Police services are para-military organizations and given the nature of the work, police officers must be respectful toward ranking officers and unfailingly follow lawful orders. It is this type of discipline that serves to enhance the public's confidence and trust in their police. Constable Zarabi-Majd's conduct was a marked departure from this. The seriousness of her misconduct is exacerbated by her relentless attack on her Board and members therein.

On January 29, 2021 Constable Zarabi-Majd telephoned D/Sgt. Adam after receiving a notice to attend the PRS for a witness interview. She said she would not be attending the interview and yelled using a variety of obscenities for approximately eight minutes before hanging up. In an email on February 23, 2021 Constable Zarabi-Majd wrote to Acting Superintendent Branton after he served her notice to stop tweeting about Constable Rice and Sergeant McInnis:

Don't email me. I'm sick with PTSD. You didn't give a fuck when Julie and Jessica were being abused. This is why I am sick. Years of seeing my colleagues go through sexual violence and racism. You give a fuck about those women and their families? Is that why TPS gave them peanuts and a non disclosure agreement? Don't think you have the right to tell me how to speak about my trauma and my lives (sic) experiences of abuse at work. Don't ever email me again. IM FUCKING SICK! Get it.<sup>17</sup>

On February 11, 2021 she replied to Mayor Tory's tweet stating:

You would shit your fkn pants if the mic was handed to policewomen! You would fucking melt in your seat like a little bitch john. You are a complicit sexual predator enabler. You are a danger to women/BIPOC. Stop forcing NDAs on victims @TPS Board .. resign.

In a February 14, 2022 tweet Constable Zarabi-Majd responded to Chief Ramer's tweet, writing in part, "Stop hiding behind you own daughter avoiding your duties. You are a dangerous enabling coward."<sup>18</sup>

On April 20, 2022 she posted:

Hey @jamesramertps @TPSBoard stop fucking wasting taxpayers money on your back pocket lawyers. You fucking thugs are crying about police

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<sup>16</sup> Ontario Regulation 268/10, Code of Conduct, ss 2(b)(i)

<sup>17</sup> 13: Tab 2, Appendix C

<sup>18</sup> 51

budget but have no problem flushing money down the toilet fighting Women and our complaints of sexual violence. Stop being complicit.<sup>19</sup>

And on April 25, 2022 she replied to Chief Ramer's tweet, writing:

You are a sexual predator enabling coward james.  
You are a thug.  
You are a woman abuser.  
You are a coward.  
You are a disgrace.  
Fuck patriarchy.  
Fuck white supremacy.  
Fuck enablers.  
We deserve better than you and so does your own daughter james.  
#MeToo #NDA #StopNDA (Copied as it appeared in post)<sup>20</sup>

Cumulatively, the nature of Constable Zarabi-Majd's posts, packed full of words that demonstrate complete contempt and disrespect for senior officers and members of the Board, kicks the seriousness of her misconduct far down the field. A strong message needs to be sent that there is no place for an officer who demonstrates such utter disregard and contempt towards their police leaders and Board.

I find Constable Zarabi-Majd's conduct toward Constable Rice gives rise to very serious misconduct. While I agree with Ms. Webb that Constable Zarabi-Majd had nothing but positive things to say about Constable Rice, I do not agree her trip to Morrisburg was well-intentioned. To the contrary. Constable Zarabi-Majd travelled to Morrisburg with Mr. Barreau's lawyers after the *Barreau* matter had adjourned for the day. She did so with the intent of convincing Constable Rice to testify in the *Barreau* case despite the fact it was known to the parties that Rice's lawyer had initiated an application to quash the subpoena. In my view it is not acceptable for a police officer to attempt to subvert a legal process underway and before the courts with the goal of achieving another outcome.

I agree only in part with Ms. Webb on this: Maybe Constable Zarabi-Majd did not drive to Morrisburg with the intent of deliberately harming Constable Rice. This certainly changed however once she attended Constable Rice's mother's home, knowing full well, based on a telephone call minutes earlier, that she was not welcome. I find it unbelievable that Constable Zarabi-Majd would have been so blind to not have known the harm she was causing Constable Rice and her family. Evidenced by witness Donna Casselman, Constable Zarabi-Majd's conduct left Constable Rice trembling<sup>21</sup>, a visible indicator of the emotional stress she caused Constable Rice.

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<sup>19</sup> 54

<sup>20</sup> 55

<sup>21</sup> 62, Tab 15, Audio recording of Donna Casselman dated October 31, 2020

The seriousness of Constable Zarabi-Majd's conduct peaked when she refused to leave Mrs. Rice's property after being told numerous times to do so. In my decision I found at page 75, "A reasonable person with any awareness would know that at this point they were no longer lawfully permitted to stay. Short of this, Constable Zarabi-Majd, being a trained police officer, would have known her refusal to leave amounted to trespassing." Regardless of the fact no charges followed, she committed an unlawful act and by doing so, she violated her Oath of Office<sup>22</sup>. A police officer who breaks the very law they are expected to uphold creates the notion there exists a double standard. Constable Zarabi-Majd's actions give rise to very serious misconduct that points to the end of the spectrum.

Constable Zarabi-Majd breached numerous policies and procedures designed to ensure the safety and security of the public is maintained and delivered with a high degree of professionalism. While all breaches are considered serious, I find the one that had the potential to evoke the worst repercussions was her reposting of racist and offensive material. This was in violation of section 1.11 of TPS's Standards of Conduct, which in part states, "[m]embers shall not post, re-post, circulate, or redirect any material that may be considered offensive or sensitive in nature on the internet or intranet." In violation of this policy, Constable Zarabi-Majd posted on February 11, 2021:

- an image of a Black man with a superimposed Conducted Energy Weapon (taser) pointing at him;
- a group chat between two platoon members where one texted "All star Peter Roberts is giving a nice tour of the mcu to all the regent kids. Probably a good idea", to which the other replied, "Shouldn't he just stop at the cells.... And let them know most wont make it past there?"; and,
- an image of a woman holding a Black baby in her palms close to her ear, with the caption, "if you hold a black baby to your ear, you can hear the police sirens."<sup>23</sup>

While I do not suggest Constable Zarabi-Majd participated in the origin of the material, I find she caused incredible harm to the public and reputation of the TPS by reposting what I can only describe as horrifically harmful racist and offensive material. I acknowledge she exposed the misconduct of other TPS members, but any deserving credit for this is overshadowed when she decided to repost the evidence of such. As a mature sworn police officer, she would have known or ought to have known the appropriate course of action was to report the matter through the chain of command. Rather she chose to publicly shame the TPS. This demonstrates her lack of sensitivity to the diverse multiracial and multicultural

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<sup>22</sup> 62, Tab 5

<sup>23</sup> 24

Province in which she serves. I find her conduct inexcusable and it drives the seriousness of her misconduct to the far end of the spectrum.

Other policies and procedures breached by Constable Zarabi-Majd in the course of her misconduct included the 17-10 Internet policy. In contravention, she utilized her image displaying the TPS uniform for her Twitter profile. She posted confidential information including a picture of man flagged as armed and dangerous along with his curfew hours. She posted images of men her platoon mates were trying to identify. She posted the cover of a project book which identified 51 Division's focus on the Sic Thugz Gang Members. In doing so she compromised the safety of the public as well as her fellow officers. In her mission to ruin the reputation of the TPS, I find it unacceptable that Constable Zarabi-Majd put at risk the very people she swore to protect.

Constable Zarabi-Majd also breached policy 17-13 Social Media. Before she went on sick leave, this policy underwent two revisions, one in 2014<sup>24</sup> and the second in 2018<sup>25</sup>. I found in my December decision on page 69 that police officers are expected to be familiar with their Service's policies and procedures. The stated rationale behind the Social Media policy in part is, "Social media also allows the Service to improve upon its engagement with members and the community in its effort to problem solve, maintain an open relationship and improve public trust." Under the header, Personal Use of Social Media, the procedure goes on to state:

While Service Members are entitled to use social media and maintain personal web pages in their private lives, their status as a member of the Service requires that the content of those postings not jeopardize the integrity and reputation of the Service, or the reputation or safety of other persons.<sup>26</sup>

Constable Zarabi-Majd's behaviour was completely contrary to this policy. She jeopardized the integrity and reputation of the Service and she jeopardized the reputation and safety of other persons.

Ms. Webb's position that Constable Zarabi-Majd's conduct was intended to help women falls short in light of Constable Zarabi-Majd's post misconduct. In my view, she was using women to further what appears to be her own personal vendetta against the TPS and members therein. On February 25, 2021 two days after being served a cease-and-desist order from Superintendent Branton to not identify Constable Rice or Sergeant McInnis in her tweets

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<sup>24</sup> 68

<sup>25</sup> 69

<sup>26</sup> 69

because of their harassing nature which impacted their well-being, Constable Zarabi-Majd posted the order which identified the respective officers.

In July 2021, she was formally charged with insubordination for defying Superintendent Branton's order. Despite this and despite knowing full well the impact her tweets were having on Constable Rice's well-being, Constable Zarabi-Majd continued to tweet about her:

On September 17, 2021, she tweeted:

Imagine thinking women have to sit silent while these cops get to sexually assault us. If you cared about Julie rice and her babies, you wouldn't have gave her peanuts and a gag order to not talk about her violent abuse by Chris Hoeller. So yes, this is public interest. Fuck abusers.<sup>27</sup>

On January 12, 2022 she tweeted:

Hey TPSBOARD you might want to rethink opening up @jamesramertps expired PRS shit. The court has decided that Julie rice testimony is important. You fkn cowards know nothing about courage/service. Fuck white supremacy. These sexual predators will be held accountable.<sup>28</sup>

On February 2, 2022 in a reply to several handles, she tweeted:

Tell howard police women are not garbage&we are not disposable. Tell Howard he won't get away with silencing Policewomen with NDAs. Tell Howard that Constable Julie rice is going to testify about the violence she endured&there's nothing he can do about it. Fuck abusers.<sup>29</sup>

Based on this, I do not accept the proposition that Constable Zarabi-Majd intended to help women. Quite the opposite. She deliberately used Constable Rice to further her own agenda and in doing so demonstrated complete disregard for any harm she may cause her. She knowingly and intentionally revictimized someone who she called a 'friend'. A police officer conducting herself with the knowledge that her behaviour was harmful to another in my view is disgraceful. Aggravating the seriousness of her misconduct, she continued to tweet about Constable Rice after being formally charged with insubordination for doing so.

In view of the above, I find the collective nature and seriousness of Constable Zarabi-Majd's misconduct over the 18-month period reaches the far end of the spectrum. It is weighty and extremely aggravating and in my view places the disposition of dismissal well-within range.

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<sup>27</sup> 23

<sup>28</sup> 22

<sup>29</sup> 22

### Recognition of the nature and seriousness of misconduct

Recognition of the seriousness of the misconduct is often termed “remorse” or “contrition”. The Alberta Court of Appeal has concisely described this disposition factor as “insight, acceptance of responsibility and remorse”.<sup>30</sup> As evidenced, none of this existed in this matter.

Ms. Webb pointed to areas in Constable Zarabi-Majd’s testimony during the *Barreau* trial where she acknowledged her tweets were unprofessional. At page 43 of the transcript, she said, “... So what you're seeing was my Twitter. I understand that it comes across as angry and unprofessional ... .” And at page 47, she said, “I’m not going to sit here and say this is professional.” To her detriment however, she defended her action. She said her language came from a place of PTSD, coming from a place of anxiety, depression, and loss of career. She excused her behaviour suggesting that others too acted unprofessionally in their failure to protect “women and racial Black indigenous officers.”<sup>31</sup> Further on she said, “I’m warning the public of the, of the issues that’s behind closed doors so that to me is part of my job. How I’m delivering it might not be palatable to you but this, this is just how, you know, I tweet it.”<sup>32</sup> And earlier on in her testimony she expressed pride, “... So I’m very proud of my Twitter. I believe I have every right under the Freedom of Speech to say what I have to say. ...”<sup>33</sup>

Constable Zarabi-Majd acknowledged she refused to attend PRS for her compelled interviews, but as with her tweets, she justified this too. According to her testimony, she relied on a variety of excuses – such as TPS already had a copy of her HRTO application, so no need for her to come in and repeat herself. That and she did not trust the investigation would be fair.<sup>34</sup> I agree with Mr. Schachter in that she basically was making up her own rules and errantly saw nothing wrong with this approach.

The evidence before me is indicative of an individual who acknowledged her conduct, but failed to appreciate it constituted wrong-doing. She demonstrated absolutely no remorse, but rather defended her actions and offered excuses for it. In my view, there is little to no chance of rehabilitation for an individual who has no remorse for their conduct.

Absent her recognition and remorse, Constable Zarabi-Majd cannot receive mitigation for this disposition factor.

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

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<sup>30</sup> Ceyssens & Childs, Ontario Police Services Act, Fully Annotated 2017 edition, pg 334

<sup>31</sup> 62, Tab 13, pg 46

<sup>32</sup> 62, Tab 13, pg 59

<sup>33</sup> 62, Tab 13, pg 35

<sup>34</sup> 62, Tab 13, pgs 91 & 91

Albeit temporary, the loss of income as a result of a demotion is detrimental to a police officer's state of financial affairs. On the other hand, the loss of employment carries a long lasting emotional and financial impact.

I have not been made aware of family that may be dependent on Constable Zarabi-Majd, but regardless of whether there is or not, it does not lighten the burden of loss of income. Although Constable Zarabi-Majd needs to shoulder responsibility for her misconduct, I remain sensitive to the significant financial impact a dismissal will bring. For this, I grant full weight to this factor as a particularly weighty mitigating consideration.

### Disability

For a disability to weigh in as a mitigating factor, a nexus must be drawn from the disability to the misconduct. The responsibility of adducing evidence to demonstrate such a link exists rests with the respondent officer. The medical evidence must establish a "clear" connection between the disability (or the personal circumstances) and the misconduct in question.<sup>35</sup>

In this case, Constable Zarabi-Majd relies on the same medical documentation previously tendered as exhibits during her applications for adjournment. While I found the documentation failed to convince me an adjournment was necessary, I admittedly did not address whether it explained or gave insight into why Constable Zarabi-Majd committed misconduct. In view of Ms. Webb's submissions, I have reviewed the documentation, this time through a different lens, to determine if it supports the notion of a nexus.

The Haskell report: This report, dated July 27, 2020 predates Constable Zarabi-Majd's misconduct. Completed by Dr. Lori Haskell, a clinical psychologist, the purpose of the report was to "explain the effects of serious sexual assault and harassment" and why a victim may not bring forward a HRTO application within the one-year limitation period. It was not prepared for the purpose of drawing a nexus between Constable Zarabi-Majd's PTSD and her misconduct. More than half of Dr. Haskell's 17-page report is dedicated to providing an academic overview of sexual harassment and PTSD, the psychological and physiological consequences of chronic stress and threat, loss and grief, effects of sexual harassment on sense of self, institutional betrayal, contextual and psychological factors that help explain why a victim of sexual harassment might not bring a claim right away, disclosure as a process, and the expectation of making a timely HRTO complaint when managing PTSD. Above this, several pages are dedicated to her introduction, list of credentials, her concluding psychological opinion and list of references.

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<sup>35</sup> Ceyssens & Childs, Ontario Police Services Act, Fully Annotated 2017 edition, pg 342 & 343



Owing to the said purpose of the report, it stands to reason why Dr. Haskell provided the detailed clinical information she did. That said, I did not find it helpful in regard to demonstrating a link between Constable Zarabi-Majd's PTSD and misconduct. This is understandable since the report predates the misconduct.

The remainder of Dr. Haskell's report is dedicated to her findings following her 3.5-hour interview and assessment of Constable Zarabi-Majd. I note that several pages of this simply contain a reiteration of the officer's description of her work experiences and therefore not helpful to this issue.

As a result of her assessment, Dr. Haskell reported on page 6 that Constable Zarabi-Majd presented components and symptoms of PTSD. On page 14, she went on to write, "The magnitude of the institutional betrayal and lack of protection left her depressed, anxious, diagnosed with PTSD, and it took all of her energy to focus on managing these harmful effects". Based on this I accepted Constable Zarabi-Majd suffered from PTSD. This was noted in my decision on the application for adjournment dated June 14, 2022. I have no reason to deviate from this. However, finding she has PTSD, does not on its own demonstrate a causation / link to the officer's misconduct.

In the June 2022 motion decision, I stated on page 20, "Simply, it [Dr. Haskell's report] does nothing to advance the applicant's request for an adjournment. In fact, if the report was not so dated, I would find it detrimental to the applicant's motion to adjourn since Dr. Haskell's finding promotes the applicant to take her complaint to a tribunal, in this instance HRTO." For different reasons, I conclude the report also undermines the notion there is a casual link between Constable Zarabi-Majd's PTSD and misconduct.

I point to page 7 of the report where Dr. Haskell writes,

Individuals who are overwhelmed with unwelcomed and distressing thoughts and memories often rely on avoidance-based thought regulation strategies. This is consistent with Ms. Zarabi's elevated score on the defensive avoidance scale.

These avoidance strategies represent an effort to withdraw from certain situations that bring about body level distress of trauma related symptoms. This is indicative of someone struggling to manage intense aftereffects of a traumatic experience.

Avoidance behaviours occur in an attempt to avoid:

- Distressing memories, thoughts, or feelings about or closely associated with traumatic event(s)

- External reminders (i.e. people, places conversations, activities, objects, situations) that arouse distressing memories, thoughts, or feelings, or feelings about, or that are closely associated with, the traumatic event(s)

Ms. Zarabi endorsed these items under the defensive avoidance scale:

- Trying to forget about a bad time in your life
- Stopping yourself from thinking about the past
- Pushing painful memories out of your mind
- Staying away from certain people or places because they reminded you of something
- Trying to block out certain memories

A fair read of Dr. Haskell's clinical finding is Constable Zarabi-Majd's PTSD causes her to avoid people, places and anything else that reminds her of unpleasant experiences. As evidenced by her testimony in *Barreau*, her trip to Morrisburg and thousands and thousands of tweets, Constable Zarabi-Majd's misconduct illustrated everything but avoidance.

Finally, three months before her first brush with misconduct, Dr. Haskell determined that Constable Zarabi-Majd's PTSD symptoms were diminishing. On page 7 she wrote:

People who struggle with PTSD find themselves experiencing symptoms that continues to cause them significant distress. Although it is common for people to experience emotional challenges after trauma, their symptoms can lessen in intensity over time as they continue to heal. In Ms. Zarabi's case, her hyperarousal symptoms have somewhat diminished in part because of her efforts to intentionally regulate her physiological and psychological states through active meditation and exercise.<sup>36</sup>

I appreciate that changes in one's mental health can be fluid due to the many unpredictable influences. It is always possible Constable Zarabi-Majd took a turn for the worst shortly after the report was written. In the same vein, it is possible her PTSD symptoms continued to diminish after Dr. Haskell's assessment. Both of these situations however are purely conjecture on my part, and not based on evidence. It would be wrong to speculate in either direction. What I can say with certainty is Dr. Haskell's report and findings therein fail to provide a causal link between Constable Zarabi-Majd's PTSD and her misconduct. There is simply no evidence of a nexus between the two.

I find I arrive at the same determination when considering the medical notes completed by psychiatrist, Dr. Nwachukwu. During the pre-hearing motions for adjournment, three

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<sup>36</sup> Exhibit 67, Dr. Haskell's report, pg 7

medical notes were tendered as evidence. They were brief in nature and contained near identical information. In the first note dated October 5, 2021, Dr. Nwachukwu responded to four questions:

1. Is Constable Zarabi able to attend a hearing, whether in person or virtual, in her current state?

*No*

2. There has been some question raised as to why Miss Zarabi could attend a criminal court proceeding dealing with different subject matter, but not able to attend matters dealing with her personnel employment situation. Can you please provide clarity and identify specific triggers to Constable Zarabi's mental health decline?

*Ms. Zarabi is not currently able to attend a hearing whether in person or virtual in my opinion. This is predicated on the significant exacerbation of her symptoms which occurs when exposed to reminders of her work experiences. Exposure to reminders of her work experiences will contribute to the exacerbation of her mood and posttraumatic stress disorder symptoms. The exacerbation of her symptoms is significantly stronger when these reminders relate to her particular work experiences as opposed to another person's experience.*

3. In your medical opinion, is continuing to require Constable Zarabi to attend disciplinary proceedings by providing her with notices worsening her mental health and impeding her ability to recover?

*Yes. As indicated above Ms. Zarabi's medical condition is exacerbated by reminders of her work experiences. Requests for meetings relating to her work experiences will likely result in an exacerbation of her medical condition. This will impede her recovery.*

4. I understand Constable Zarabi remains in your care. Can you please confirm that you will advise me when Constable Zarabi is able to attend a disciplinary hearing [whether virtual or in person]?

*I can confirm that Ms. Zarabi attends my outpatient clinic. I will certainly be able to advise you when she has recovered sufficiently to enable her to attend a disciplinary hearing in any form.<sup>37</sup>*

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<sup>37</sup> A3, Medical letters and related correspondence (applicant), E.2. Dr. Nwachukwu (Motion May24, 2022)

Dr. Nwachukwu provided a second medical note, wherein he wrote he saw the applicant on January 7, 2022. He said based on her presentation at that time, he was still of the opinion she was unable to attend the tribunal in person or virtually. He then regurgitated his prognosis from the October 5<sup>th</sup> note writing, “*Ms. Firouzeh Zarabi-Majd experiences a significant exacerbation of her symptoms when exposed to reminders of her particular work experiences. This has contributed to the maintenance of her symptoms and impeded her recovery*”<sup>38</sup>.

In his third note, dated May 27, 2022 he responded to three questions:

1. Is Constable Zarabi able to participate in a hearing before the disciplinary hearings tribunal either in person or virtually?

*No*

2. I understand that your doctor spoke to Dr. Michael Schwiegert from the TPS and at that time agreed that you could appear before the Tribunal. Why is that no longer true?

*I have subsequently reviewed the impact of attending a Tribunal either virtually or in person with Constable Zarabi-Majd. Constable Zarabi-Majd has experienced an exacerbation of her mood and posttraumatic symptoms as a result of hearings either virtually or in person.*

3. Why is Constable Zarabi-Majd able to post on social media but unable to attend before the Tribunal? Can you speak [to] the reason why these activities have a different impact on your recovery?

*Constable Zarabi-Majd attending a Tribunal hearing either virtually or in person is different from her posting on social media. She has experienced an exacerbation of her mood and posttraumatic symptoms as a result of hearings. Requests to attend Tribunal hearings have contributed to the maintenance of her symptoms. Her postings on social media have not had a similar negative impact on her medical condition.*<sup>39</sup>

As evidenced in the notes, they were presented to serve one purpose and that was to convince the tribunal an adjournment was necessary based on Constable Zarabi-Majd’s PTSD. They did not draw a causal link between her condition and her misconduct. In fact, to the contrary, Dr. Nwachukwu went as far as to suggest something entirely different when he said, “Her postings on social media have not had a similar negative impact on her medical condition.”

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<sup>38</sup> A3, Medical letters and related correspondence (applicant), E.3. Dr. Nwachukwu (Motion may 24, 2022)

<sup>39</sup> B3, Affidavit of Francesca Fernandes, re May 27, 2022 medical note from Dr. Nwachukwu (applicant), Motion Sep 24, 2022

Subject to my analysis, I find Constable Zarabi-Majd has failed to demonstrate that a nexus exists between her disability and misconduct.

That said, I have no reason to believe she was not suffering from PTSD at the time of her misconduct. It is fair to believe she may have contracted the condition while serving as a police officer. This on its own is incredibly unfortunate and deserving of some mitigation. I therefore grant limited mitigation to this factor.

#### Procedural Fairness Considerations

Counsel did not raise concern in regard to this factor. Since my delegation, there have been three pre-hearing motions, two of which were initiated by Constable Zarabi-Majd for the purpose of an adjournment. The last one was in regard to Constable Rice seeking intervenor status. Constable Zarabi-Majd was provided fair opportunity to raise her applications to adjourn and be heard. She was also provided the opportunity to respond to Constable Rice's application.

Constable Zarabi-Majd has yet to make any appearance at this tribunal. While I rejected the notion that her PTSD prevented her participation based on her insufficient and deficient medical information against other significant evidence, offers to discuss her accommodation needs were made at every opportunity. She chose not to engage with the tribunal in such discussion.

In light of no evidence to the contrary, I am satisfied Constable Zarabi-Majd received the full extent of procedural fairness.

#### Potential to Reform or Rehabilitate

In general terms, this factor speaks to the likelihood of recurrence and is closely connected to remorse and employment history.<sup>40</sup>

Constable Zarabi-Majd's misconduct spanned an 18-month period. On multiple times she disobeyed lawful orders. She yelled obscenities at senior officers using the crudest of terms verbally and electronically. She publicly broadcasted on Twitter her defiance. She publicly accused the TPS, senior officers and her Board of appalling conduct, including silencing women, enabling sexual predators, racism and sexism. And she victimized the very people she said she was protecting, such as Constable Rice.

Despite the abundance of evidence before me, no evidence has been presented to suggest even a hint of remorse. To the contrary, Constable Zarabi-Majd is proud of what she has

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<sup>40</sup> Ceyssens & Childs, Ontario Police Services Act, Fully Annotated 2017 edition, pg 355

done. In fact, as Ms. Webb pointed out, she sees it as her calling, something Constable Zarabi-Majd alluded to several times during her *Barreau* testimony. Some examples include:

- ... I'm serving the public. I'm protecting the public. I'm bringing systemic issues publicly so people are aware of what's going on. So, no, I'm very much still a police officer and I'm doing this because these officers are doing this not only to their colleagues, they are doing it to the public. So to me that's far more important than, than anything else. Its serving the public. I'm still a police officer.<sup>41</sup>
- You're – the way you say "entitled" – yes, I am entitled. I'm entitled because I am a police officer. I am serving the public. I'm also seeing what's happening to my colleagues. To prevent these happening to the public, to myself, to my colleagues, we must fight back. We must stand up. And we must speak against these crimes.<sup>42</sup>
- I have a duty to protect women, to protect the public, and protect myself.<sup>43</sup>
- I'm warning the public of the, of the issues that's behind closed doors so that to me is part of my job.<sup>44</sup>

On balance, it is difficult to have any confidence there is potential for Constable Zarabi-Majd's rehabilitation. This is in light of the fact she firmly believes she was duty bound – as a police officer – to act in the manner in which she did.

Putting aside the lack of remorse, I note no evidence has been led to suggest Constable Zarabi-Majd has attempted to rehabilitate. Diagnosed with PTSD, she has been on medical leave for the past four years. The last time I am aware she saw her psychiatrist, Dr. Nwachukwu, was in late May 2022. I agree with Mr. Schachter, there is no evidence she has taken steps to turn her situation around.

Ms. Webb pointed out that since Constable Zarabi-Majd's Twitter account has been suspended there has been no evidence to suggest a resumption of her misconduct. She submitted this should give the tribunal some hope there will not be a recurrence. While Ms. Webb is correct in that I am not aware of misconduct post the Twitter account suspension, I do not share in her optimism.

On February 25, 2021, just days after she was issued an order to cease and desist referring to Constable Rice and Sergeant McInnis on Twitter, she posted the order which contained

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<sup>41</sup> 62, Tab 11, pg 48

<sup>42</sup> 62, Tab 11, pg 66

<sup>43</sup> 62, Tab 9, pg 67

<sup>44</sup> 62, Tab 11, pg 59

their names. On May 12, 2021 when she was told by Constable Rice's lawyer that Rice did not want her story told, Constable Zarabi-Majd responded:

... That is the reason why I continue. Not just not to just speak about Julie Rice or Jessica McKinnon. To me those women, they have left their mark in my heart. They have left their mark in my life. Their career meant something. Their career still means something. What happened to them is happening to other women currently.<sup>45</sup>

Constable Zarabi-Majd's misconduct continued even after she was formally served notice of her insubordination charge in July 2021 for disobeying the order to stop posting about the officers. Specifically, she tweeted about Constable Rice on September 17, 2021, January 12, 2022 and February 2, 2022. The fact that Constable Zarabi-Majd knew intimate details of Constable Rice's mental health – the fact that Rice had once disclosed to her she was having suicidal thoughts<sup>46</sup> drives her post-misconduct to the end of the continuum.

Constable Zarabi-Majd's post misconduct was not limited to tweeting about Constable Rice. She continued to post in vulgar terms, libelous, degrading comments about the TPS senior officers, the Board, and members of the municipal government after she was served notice of discreditable conduct for doing just that. A sampling of these include her post on September 17, 2021:

Do what you want assholes, I have ask you over and over again @jamesramertps to stop this shit while I'm off with PTSD fighting for my fucking life. I know you want me to kill myself james but I refuse to let you fucking kill me. Now fuck off james you abusive coward. #MeToo<sup>47</sup>

On the same day, Constable Zarabi-Majd tweeted:

Hey @FrancesNunziata @MichaelFordTO @JohnTory @jamesramertps @TPSREid don't exclude the public so they can see how you cover up for systemic sexual violence&white supremacy! Let the public watch. I want transparency.Also where is my legal representation?Pay for my lawyer @ #MeToo<sup>48</sup>

Attached to this particular tweet was a copy of her notice of the "Charge 5 Delay Application." The notice specifically directed her to keep the matter private and confidential until such time as the Board made a decision with respect to the exclusion of the public.

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<sup>45</sup> 62, Tab 11, pg 74

<sup>46</sup> 62, Tab 11, pg 74, line 29

<sup>47</sup> 36

<sup>48</sup> 35

On September 18, 2021, she replied to Chief Ramer's tweet by stating:

This SOB is fucking destroying women's careers, mental health and future but is out here talking about fkn cookies. It's not too late to help end systemic sexual violence james. You have been hiding behind your daughter retaliating against victims DO YOUR FKN JOB! #MeToo #MeToo<sup>49</sup>

And on March 4, 2022 Constable Zarabi-Majd tweeted:

Hey @TPAReid @jamesramertps @FrancesNunziata @johnTory @TPSBoard looks like you aren't the only ones who dismiss sexual violence against victims&throw peanuts at their heads to silence them!White supremacy/patriarchy is the same shit everywhere in policing. Fuck abusers #MeToo<sup>50</sup>

Constable Zarabi-Majd's repeated post misconduct weighs heavily in this disposition factor. In *Nesbeth and Windsor Police Service*, 2015 ONCPC 23 (CanLII), the Commission found:

The Appellant argued that the Hearing Officer unreasonably concluded that her "post-event conduct" negated her potential for rehabilitation and outweighed important mitigating factors such as letters of good character, employment history, progressive discipline and the effect on her and her family. We disagree. In the circumstances of this case, the post-event conduct was precisely what made this a case of serious misconduct that warranted dismissal.<sup>51</sup>

No evidence has been placed before me other than conjecture on the part of counsel to suggest Constable Zarabi-Majd can be or has the potential to rehabilitate. I agree with Mr. Schachter, there is simply nothing here. To this end, I find this a heavily weighted aggravating factor. In *Karklins and Toronto Police Service*, 2007 CanLII 87211 (ONCPC) at paragraph 131 and 132 the Commission stated:

...The ultimate sanction for misconduct under the Act is dismissal. That penalty 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.

In terms of the potential for rehabilitation singular errors in judgment are quite different from ongoing wrongdoing over an extended period of time. However, there may well be the singular act of misconduct that strike to the heart of the

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<sup>49</sup> 37

<sup>50</sup> 52

<sup>51</sup> 63B, Tab Q: *Nesbeth and Windsor Police Service*, 2015 ONCPC 23 (CanLII), pg 6



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.<sup>52</sup>

### Employment History

Constable Zarabi-Majd has been a member of the TPS since December 18, 2008 and served as a cadet-in-training until she was sworn in as a police officer in May 2009. Until the time she went on medical leave in December 2018, she had accumulated just under 10 years of active service. She has been attached to 51 Division since hire. Other than temporary assignments to Warrants, General Investigations and Traffic, she has served the majority of her career in Primary Response.

I have reviewed the five performance appraisals ending in the years 2013, 2014, 2015, 2016 and 2017. All reviews reflect positive performance, save and except in the years 2013 and 2014, where she is encouraged to do more because her supervisors found her productivity lagging behind others.

In the years 2015, 2016 and 2017, Constable Zarabi-Majd's performance seems to have turned the corner and she drew high praise from her superiors. Notably, years 2016 and 2017 net ratings of "meets", "exceeds" and "superior". Words used to describe her performance include "team player, trustworthy, dependable" and "volunteers to change shifts to meet the needs". As a former detachment commander, it is terms like these that speak volumes about an officer.

There is one accolade on file and it was received just before Constable Zarabi-Majd went on leave. It was an email from an individual who met Constable Zarabi-Majd when he was experiencing an emotional episode. He had high praise for the compassion she exhibited.

Mr. Schachter submitted Constable Zarabi-Majd's employment history draws a neutral finding. Keeping this in mind, I find it difficult not to give credit where credit is due. She clearly stepped up her game in the final three years before going on medical leave. While it would be unfair to cast a shadow on the lack of recent performance appraisals due to her sick leave, absenteeism from the workplace for a period of four years following a three-year period of high-performance places the tribunal in a bit of a quandary. Simply put, the void leaves a gap in making a true assessment. To this end, I find her employment history unremarkable, but positive and therefore it attracts limited mitigation.

### Systemic Failure and Organizational / Institutional Context and Provocation

I have considered these two factors jointly given their similarity.

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<sup>52</sup> 63B, Tab N: *Karklins and Toronto Police Service*, 2007 CanLII 87211 (ONCPC)

Generally, both factors require a trier-of-fact to consider whether the employer's actions or inactions contributed to the misconduct, and if so, to what extent it would draw mitigation.

Some historical examples where it was found to be a mitigating feature include the Hamilton-Wentworth Regional Police case. There the tribunal reduced the imposed sanction because it found police managers applied an inconsistent approach to workplace harassment. In another case the Commission found the OPP failed to give adequate support and supervision to the lead investigator of a complex multi-fatal motor vehicle collision. And perhaps the most well-known case of this kind is the one where the OPP officer pointed his gun at a fellow officer after the officer waved his baton in a sword like fashion in the vicinity of the respondent officer's head. In that case the Commission determined the hearing officer failed to give proper weight to the provocation and OPP's failure to properly address the historical workplace bullying.

In this case, Ms. Webb tendered *McWilliam v Toronto Police Service and Angela Costa and TPA*, 2020 HRTO 574 (CanLII), a report from Deloitte, and some newspaper articles.

I turn first to *McWilliam*. Constable McWilliam alleged she worked in a poisoned environment and channelled her complaint to the HRTO. Following testimony from numerous witnesses, the adjudicator ruled on a balance of probabilities the officer had experienced a poisoned work environment and sexual harassment, including a forced kiss from a sergeant. The decision was delivered in 2020, nearly six years after it was first filed.

There are parallels between Constable McWilliam's story and Constable Zarabi-Majd's story. That being, it would be improper for me to arbitrarily apply the findings of *McWilliam* and make a determination without hearing relevant foundational evidence concerning Constable Zarabi-Majd. In *McWilliam*, 34 witnesses testified, including Constable McWilliam, her mother, her psychiatrist and her psychologist. Constable McWilliam also called an expert to give opinion evidence, as well as the manager of the TPS's Diversity Management Unit. Other than Dr. Haskell's report where she simply retold the story reported by Constable Zarabi-Majd none of this evidence has been presented. Further, the standard of proof in *McWilliam* and this matter differ.

I turn to the Deloitte report. Nine months before the release of the *McWilliam* decision, the Board commissioned Deloitte to conduct a workplace well-being, harassment and discrimination review of the TPS. Deloitte's review included interviews with employees and stakeholders, focus group sessions, a survey, and a review of policies, procedures and a handful of HRTO – TPS related cases. A percentage of employees who participated in the review expressed a clear perception and belief that harassment and discrimination occurred in TPS. (underline added)

For the purposes of this tribunal, I do not find the Deloitte report particularly helpful. While I appreciate the importance of perceptions and beliefs and how they shape and influence change management, the review fails to provide direct evidence that TPS, as Constable Zarabi-Majd's employer, contributed to her misconduct.

In the same vein, I do not find the news articles offer evidence that TPS's actions or inactions contributed to Constable Zarabi-Majd's misconduct. That said, I acknowledge there is an emerging trend of women in policing speaking out against sexual harassment in the workplace. After personally spending nearly 40 years in the profession, I had hoped by now this subject was just a chapter in our history book. I believe we have come a long way, but clearly there is still work to do. Nonetheless, workplace harassment does not entitle nor excuse a victim to commit misconduct. There are appropriate avenues to report such unwanted behaviour – and posting tweets on social media damaging the reputation of the police service and others is not an option.

Despite not finding evidence in the *McWilliam* case, Deloitte report and news articles, I cannot ignore other evidence before me. Specifically, I am referring to the platoon group text where officers discussed an intimate part of Constable Zarabi-Majd's body. Despite the brevity of the text and unknown date it was exchanged, it was unquestionably demeaning and offensive. On balance, it could be seen as provocation and quite reasonably could attract significant mitigation. Under these circumstances however I do not find it does. First, it does not explain Constable Zarabi-Majd's wide-spread protracted Twitter attack on persons other than those in the text exchange. And second, TPS actually attempted to investigate the allegation of sexual harassment, but she refused to assist in the investigation.

In overview, I find insufficient evidence exists to establish a Systemic Failure and Organizational /Institutional Context. I do however find evidence of Provocation. Based on the circumstances, I give it limited mitigation.

#### Effect of Publicity and Damage to the Reputation of the Police Force

I find a direct link between the effect of publicity and the likelihood of damage to TPS's reputation.

Throughout the span of Constable Zarabi-Majd's misconduct, she held herself out to be a TPS officer. She had over 6000 Twitter followers and posted over 25,000 tweets. It is difficult to estimate how many people actually viewed them, but I believe it is fair to say her tweets were most likely far reaching. And while her account has since been suspended, her tweets will live in perpetuity in other feeds. Further, Constable Zarabi-Majd appeared on W5 in February 2020. Although I did not see it, I know W5 is an extremely popular Canadian

documentary / investigative reporting series with a huge viewership similar to that of 60 Minutes. Further, she participated in a CBC interview in November 2020.

In the public eye, Constable Zarabi-Majd intentionally committed a litany of serious infractions. She refused to obey lawful orders and then flouted her disobedience on Twitter. She posted highly offensive and racist material on Twitter. She tweeted confidential material meant only for the eyes of police personnel and in doing so she comprised the personal safety of the public and other police officers. She repeatedly contravened numerous TPS policies and procedures. She brought emotional harm to a fellow PTSD sufferer and unlawfully trespassed on another's property. By doing so, she literally stomped all over her Oath of Office and Oath of Secrecy. An officer who demonstrates total disregard for their Oaths is not worthy of holding office in the constabulary and possess the extraordinary powers and authorities incumbent of their position.

In my December decision I found Constable Zarabi-Majd's tweets were on course to not only damage, but to destroy the reputation of the TPS as a whole, its senior members, and the Board. This was deliberate. In her own words, she was proud of her tweets. Her overall conduct was reprehensible and reflective of someone who did not care what she said, or how she said it, or who she hurt, and what she damaged on the way.

In her 18-month smear campaign against the TPS and Board, Constable Zarabi-Majd undoubtedly caused irreparable damage to her employer's reputation and other parties that came within her cross hairs. To anyone looking on, it appeared TPS's senior command had no control over their employee, something so essential when tasked with keeping people and property safe and secure.

To this end, further damage to the Service's reputation would likely occur should Constable Zarabi-Majd retain her employment. A police officer cannot expect the public to have confidence in a police service that employs someone so adverse to following orders and demonstrates such lack of respect and professionalism.

I find this disposition factor heavily weighted by the numerous aggravating features.

### Deterrence

This factor includes specific and general deterrence and both are relevant to this disposition.

Constable Zarabi-Majd has demonstrated a blatant disregard for the disciplinary process. She publicly denounced the Chief and other senior command, the Board, the Mayor and others in the worst imaginable terms with the worst imaginable accusations. She compromised public and officer safety in the reposting of confidential material. A strong

message needs to be sent to Constable Zarabi-Majd that her conduct was inexcusable. She cannot behave in this disgraceful manner and at the end of the day expect to continue in her employment with the TPS. In my view, she severed the employer employee relationship long before this proceeding commenced.

In keeping with *Andrew and Midland Police Service* the sanction imposed for Constable Zarabi-Majd's misconduct must send a clear message to others that displaying utter contempt and disobedience will not be tolerated. Officers who mirror the kind of behaviour demonstrated by Constable Zarabi-Majd will place their future as a police officer in serious jeopardy. Police services are para-military organizations and structured in a command-and-control fashion. Orders are issued and must be followed provided they are lawful to ensure the maintenance of public and officer safety and prevent the Service's integrity from being undermined. It is not an option. As a safeguard the use of social media must be done in compliance with the internal policy.

The expected standard of conduct of a police officer is high considering the special status officers hold in society. Anything short of this will shake the public's confidence and trust and therefore reasonably attract significant disciplinary measures.

For these reasons, I find deterrence a necessary and weighty aggravating feature in this disposition.

#### Consistency in Penalty

In *Schofield* the Commission found:

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.<sup>53</sup>

I appreciate the many case authorities filed by Ms. Webb and Mr. Schachter. That being, I found only a few cases to be on or close to on point with this matter. As such, and in keeping with *Schofield*, I will rely on only a handful for guidance. Further, it should be noted that following the hearing, I asked counsel to weigh in on another case I was familiar with – *Mulligan v Ontario Provincial Police*, 2018 ONCPC and both provided insightful responses.

The cases I found instructive include:

*Correa v Toronto Police Service*<sup>54</sup>

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<sup>53</sup> 63, Tab D: *Schofield and Metropolitan Police Service*, 1994 CanLII 3101 (ONCPC), para 9

<sup>54</sup> 65, Tab 5: *Correa v Toronto Police Service*, 2009 ONCPC 2 (CanLII)

Constable Correa was one of several TPS officers facing serious misconduct charges including deceit, corrupt practice, discreditable conduct and insubordination following an investigation into the Drug Unit. After being charged, an article appeared in the Toronto Sun whereby Constable Correa was quoted maintaining his innocence as well as making derogatory comments toward the TPS. His comments consisted of his view of the police tribunal calling it a “Kangaroo court”.

PRS commenced an investigation the same day the article appeared and ordered Constable Correa to attend for an interview. This order was followed by four more orders to attend PRS and each one was disobeyed by the officer. Constable Correa was subsequently charged with one count of insubordination for disobeying five orders. He was found guilty and sanctioned seven days. By the time his tribunal had concluded, he still had not complied with the orders. The Commission upheld the finding of guilty and sanction.

Despite some similarities, Constable Correa’s matter differs from Constable Zarabi-Majd’s in other respects. His refusal to comply with the orders was at issue in his hearing, not his derogatory remarks towards his employer. Comparably, Constable Zarabi-Majd’s disobedience and remarks were at issue, along with her conduct at Constable Rice’s mother’s home. According to the hearing officer, Constable Correa led an “enviable” career which resulted in a complimentary employment history and favourable character references. Comparably, I found Constable Zarabi-Majd’s employment history, while void of blemishes, unremarkable. Notably, the hearing officer stated that had it not been for Constable Correa’s positive employment record and references, he would have considered imposing a reduction in rank.

#### *Law Society of Ontario v David*<sup>65</sup>

In this matter, lawyer Vivek David faced four separate investigations. One for posting on Facebook, as well as his law firm’s website, an allegation of sexual assault by a Justice of the Peace (JP). He refused to take it down claiming he was protecting women and daughters from appearing before the JP. I am not clear if he made just one post or several. The other investigations included two complaints from the Ontario Legal Aid and the last was an investigation in regard to a client’s retainer. Mr. David had a history of discipline. The Law Society sought a revocation of Mr. David’s licence.

The proceeding was held virtually and Mr. David represented himself. During the hearing, Mr. David informed the panel he would comply with their requests if they so directed. The panel found because of this, Mr. David in their view was still governable. Rather than revoking his licence to practice, the panel opted to suspend Mr. David’s licence indefinitely

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<sup>65</sup> 65, Tab 23: *Law Society of Ontario v David*, 2023 ONLSTH 25 (CanLII)

until he complied with the orders to cooperate with the investigation. They also imposed a monetary sanction for cost.

There are some similarities with this matter and that of Constable Zarabi-Majd's. Both utilized social media as their vehicle to post libelous commentary. Both refused to cooperate with investigations launched to look into their conduct. The sanction imposed on Mr. David was sharp in that he could not practice his livelihood until he met a number of stipulations. The most obvious difference between the two cases is the Law Society is not Mr. David's employer, but rather the regulatory body for his licence to practice law. This means Mr. David could still retain his employment with his law firm, he just could not practice law. Here the TPS is seeking to sever their existing employer – employee relationship with Constable Zarabi-Majd. Regardless of this difference, I find the sanction imposed against Mr. David extremely severe.

#### *Mulligan v Ontario Provincial Police*

I am familiar with this case since I was the hearing officer. Sergeant Mulligan faced two counts of misconduct, insubordination and breach of confidence. The backdrop to his charges related to the OPP's decision to relocate their Sudbury based helicopter to Orillia, where their other helicopter was housed. As a pilot, Sergeant Mulligan opposed the relocation, citing it disadvantaged the northern communities due to slower response time and unpredictable weather conditions. He wrote to the editor of the local Sudbury newspaper, identified himself as an OPP helicopter pilot and publicly expressed his views – openly criticizing his employer's decision – claiming it would cost lives. The North Bay Nugget picked up the story and reprinted excerpts of Sergeant Mulligan's letter.

Similar to this matter, *Mulligan* was the subject of three pre-hearing motions, albeit for different reasons. Sergeant Mulligan defended his conduct claiming he wrote his letter out of his genuine concern for the OPP's ability to respond to missing persons in a timely manner. This is similar to Constable Zarabi-Majd who believed it was her duty to inform the public what was happening inside the TPS.

Ultimately, Sergeant Mulligan was found guilty of breach of confidence for communicating with the media on a matter in relation to the OPP without authorization, and discreditable conduct for publicly discrediting the OPP's reputation by criticizing its decision to relocate the helicopter. Despite being a 33-year veteran with an unblemished employment history, he was demoted to constable for a period of 12 months. The Commission upheld the decision.

*Mulligan* illustrates how serious misconduct is viewed when a police service's reputation is likely brought into disrepute. This was communicated in the severity of sanction imposed. A

demotion is only one step away from dismissal. Different from *Mulligan*, Constable Zarabi-Majd repeatedly discredited the TPS over a protracted period of time. Her tweets consisted of a relentless and vicious attack on her employer and Board. Her accusations and vulgarity comparably surpassed the seriousness of the one letter Sergeant Mulligan wrote. Although Sergeant Mulligan's misconduct was indeed serious, I find it pales in comparison to Constable Zarabi-Majd's behaviour. It is for this reason I find dismissal is within range.

*Manning and Hamilton Police Service*<sup>56</sup>

Manning is a recently decided case that bears remarkable resemblance to this case. Since it is unreported, I am not held to it. I nonetheless find it provides meaningful guidance.

On medical leave for the past nine years, Constable Manning was a 17-year veteran of the Hamilton Police Service. His misconduct, which spanned a 6-month period related to postings on his social media account where he made disparaging remarks about a member of the public and his Service. Like Constable Zarabi-Majd, he had a significant following on Twitter. Both officers held themselves out to be police officers in their tweets. Both disobeyed orders to attend their compelled interviews and then tweeted their defiance. Constable Manning held himself out to be a martyr; Constable Zarabi-Majd viewed herself as performing a public duty. Both used vulgar language and levelled inflammatory accusations against others. Neither attended their tribunal. Despite having in common a blemish free positive employment history, both officers breached their Oath of Office and Oath of Secrecy along with numerous policies and procedures during their spree of misconduct. Both committed post-offense misconduct.

There are some subtle differences in the matters as pointed out by Mr. Schachter. Of the eight counts of discreditable conduct Constable Manning was found guilty of, three were in relation to his dissemination of Third-Party rule documents. Cautious not to diminish the important high-level classification attached to Third-Party Rule documents, I find it inconsequential that the confidential information posted by Constable Zarabi-Majd lacked the same classification. By posting the information, she alerted the public and subjects therein, of TPS's special interest in certain citizens. By doing so, she compromised the safety of the public and police. Additionally, she reposted offensive and racist material and trespassed on private property causing a citizen to call 911.

The hearing officer in *Manning* found no evidence that the officer was capable of rehabilitation, and he was ultimately dismissed.

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<sup>56</sup> 63, Tab E: *Manning and Hamilton Police Service*, January 31, 2022 (unreported)



Evident in the above case authorities, the sanction for similar misconduct is broad, ranging from loss of days up to and including dismissal. The most serious sanction levelled, that being in *Manning*, took into account the degree of seriousness of the misconduct, the officer's ability to reform and the damage to the Hamilton Police Service's reputation. As I said at the onset, I find this matter remarkably close in fact to that of *Manning*.

#### Is Constable Zarabi-Majd Fit to Continue Her Employment with the TPS?

Mr. Schachter has put on record from the onset that the TPS is seeking the dismissal of Constable Zarabi-Majd. As her employer, the TPS met its statutory obligation and notified her pursuant to section 85(4) of the PSA, it was seeking a penalty of demotion or dismissal if she was found guilty. I am satisfied such notice was served upon her – at minimum, at least four times – since it was attached to each notice of hearing<sup>57</sup>.

Mr. Schachter pointed to *Venables and York Regional Police, 2008 ONCPC 8 (CanLII)*<sup>58</sup>, a case often cited when 'egregious' misconduct outweighs a number of mitigating factors. In *Venables* the hearing officer considered whether the seriousness of Constable Venables' misconduct and damage to the Service outweighed the officer's noteworthy remorse, potential to reform and positive, albeit brief, employment record. In the end, the hearing officer concluded that the unprovoked assault accompanied with the racial overtone, "You fucking drunk Russian" on a passive, handcuffed prisoner, coupled with the damage to the Service should he remain employed, outweighed the mitigating factors. Constable Venables was dismissed.

Unlike *Venables*, I have not found that one single act committed by Constable Zarabi-Majd gives rise to what I would term "egregious". What I have determined however is her behaviour collectively amounts to extremely serious misconduct and lands at the end of the continuum, due to the nature of it, the deliberateness of it, the protracted period of time it occurred and repetitiveness of it.

*Venables* referenced *Williams and Ontario Provincial Police, (1995), 2 OPR 1047 (OCCPS)*<sup>59</sup>, a decision which continues to remain extremely relevant to today's police disciplinary dispositions. Often relied upon as a means to determine a disposition, it considers the nature and seriousness of the misconduct; the ability to reform the officer; and the damage to the reputation of the Service. I considered each of these factors and accordingly assigned weight.

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<sup>57</sup> 62, Tab 9

<sup>58</sup> 63, Tab B: *Venables and York Regional Police, 2008 ONCPC 8 (CanLII)*

<sup>59</sup> 63, Tab M: *Williams and Ontario Provincial Police, 1995 CanLII 15417 (ONCPC)*

I have found the nature and seriousness of Constable Zarabi-Majd's misconduct weighty and extremely aggravating. Over an extended period of time, she levelled libelous, slanderous vulgar tweets against the TPS and parties therein. Her tweets were untrue. She accused the TPS and others of silencing women, and yet she refused to participate in interviews with the PRS investigators. She reposted racist and offensive material on Twitter. She put in harm's way fellow officers and the very people she swore to protect by posting confidential police information. In doing so, she violated numerous policies and procedures including the Standards of Conduct, Internet and Social Media. She broke the law by trespassing on private property and caused emotional stress to a fellow PTSD sufferer. She literally stomped all over her Oath of Office and Oath of Secrecy. When a police officer demonstrates they lack the fortitude to live by their oaths, they have annulled their usefulness to society and their police service.

I couple this with my findings under the Potential to Reform or Rehabilitate factor. There I found no evidence to suggest Constable Zarabi-Majd is remorseful or capable of rehabilitation. In fact, her blatant public refusal towards lawful orders, yelling and swearing at senior command, both verbally and electronically, her relentless unrestrained disdain for her employer, Chief and Board and others points to an individual who is filled with so much contempt and anger she is ungovernable. This is a fatal character flaw for an individual in a profession that demands self-restraint, order, obedience, respect and overall, a high standard of conduct at all times.

Ms. Webb submitted Constable Zarabi-Majd was not completely ungovernable. I find different. In *David*, the panel utilized the *Shifman* test to determine whether Mr. David was governable. Very similar to police disposition factors, it applied these two questions:

1. Is the nature, duration and repetitive character of the licensee's present and past misconduct sufficiently serious that it suggests an unwillingness or inability to be governed by the Law Society, notwithstanding progressively increased penalties for repeated incidents of misconduct?
2. If so, in light of the all the circumstances is revocation appropriate? This involves balancing the nature of the misconduct and disciplinary history against mitigating factors including:
  - a) any character evidence;
  - b) the existence of remorse and a recognition and understanding of the seriousness of the misconduct;
  - c) evidence that the licensee is willing to be governed by the Society;
  - d) medical or other evidence that explains (although does not excuse) the misconduct;

- e) the likelihood of future misconduct, having regard to any treatment or other remedial efforts undertaken;
- f) the licensee's ongoing co-operation with the Society in addressing the outstanding matters that are the subject of the misconduct and other regulatory matter.<sup>60</sup>

In Mr. David's case, he indicated a willingness to work with the Society and respond to their investigations if so directed by the panel. For that reason, because he satisfied the first part of the test, the panel found he was still governable.

While the tribunal is not bound to the same test, it is a helpful guide in determining the prospect of Constable Zarabi-Majd's governability. Unlike Mr. David, she has indicated no willingness to work with the TPS to address or resolve her misconduct. There lacks any character evidence, no sign of remorse or recognition of the seriousness of her misconduct; no evidence she can be governed by the TPS (in fact all evidence points in the other direction); no sign of treatment plans or remedial efforts undertaken; and, no evidence of working with TPS to be held accountable. To this end, all indications are Constable Zarabi-Majd is ungovernable.

My analysis led me to determine Constable Zarabi-Majd's lack of potential to rehabilitate was a weighty aggravating factor.

In keeping with *Williams*, I also considered both branches of the damage to the reputation of the TPS; the likely damage her spree of misconduct caused, and the likely damage should she retain her employment. I found the disposition factor heavily weighted with aggravating features. It would bring irreparable damage to the TPS should they continue their employer/employee relationship with Constable Zarabi-Majd. Given their unique position in society, police officers possess significant powers. With this comes great responsibility and even greater accountability. In *Trumbley* the court stated:

The practice of the profession is a privilege. The law grants to certain groups a monopoly to carry on certain well-defined activities and imposes upon the members of those groups an obligation to prevent abuse and to ensure that the monopoly will be exercised for public good. It is normal that those who enjoy these privileges should be subjected to a more rigorous discipline than that which applies to ordinary citizens.<sup>61</sup>

In conjunction with the above three disposition factors, I found the public interest in the administration of justice and need for deterrence particularly weighty and aggravating. They

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<sup>60</sup> 65: Tab 23: *Law Society of Ontario v David*, 2023 ONLSTH 25 (CanLII), pgs 6 & 7

<sup>61</sup> 63: Tab A: *Trumbley and Metro Police Service*, 1986 CanLII 146 (ON CA), pg 35

tipped the already unbalanced scale further over to Constable Zarabi-Majd's disadvantage, when added to the seriousness, potential to rehabilitate and the damage to the reputation factors. Combined they far outweighed the limited mitigating facts found in her employment history, provocation, effect on police officer and disability. This brings me to the determination that Constable Zarabi-Majd's usefulness as a police officer with the TPS is spent.

Respectfully, despite the attempt to soften the term "dismissal" in *Trumbley*, it nonetheless bares the harsh reality of loss of employment. In police disciplinary matters it is not taken lightly. It is reserved for only those very rare cases where a police officer is found no longer fit to conduct themselves in the expected high standard of conduct, ensuring the public trust and confidence. I find this holds true in Constable Zarabi-Majd's case. Her dismissal from employment, should she not resign within seven days, meets the goals of discipline based on the foundational principles that govern crafting an appropriate disposition.

#### **PART IV: DISPOSITION**

On December 19, 2022, Constable Zarabi-Majd was found guilty of eight counts of misconduct based on clear and convincing evidence. Following the stay of one count, counsel made submissions and tendered related exhibits. I have carefully considered all evidence presented and find dismissal a fitting disposition. It strikes the balance between the public's high expectation, fairness to Constable Zarabi-Majd and meets the needs of the TPS.

Pursuant to section 85(1)(b) of the PSA, I order Constable Zarabi-Majd dismissed from the TPS in seven days unless she resigns before that time.



Deputy Chief (retired) Robin D. McElary-Downer  
Hearing Officer

Date: May 2, 2023

## Appendix A

Exhibit 1 to 58 listed in December 19, 2022 decision

Exhibit 59: Hearing officer's delegation

Exhibit 60: Prosecutor's designation (Mr. Schachter)

Exhibit 61: Prosecutor's designation (Insp. Benoit)

Exhibit 62: Book of Records (prosecutor)

Tab 1: Ceyskens and Childs, Principles of Discipline

Tab 2: *Police Services Act*, Legislation and Commentary

Tab 3: Toronto Police Service – Standards of Conduct, Introduction

Tab 4: Affirmation / Oath of Secrecy

Tab 5: Affirmation / Oath of Office

Tab 6: Routine Order, July 2, 2020 – Social Media Reminder

Tab 7: Internal Resume

Tab 8: Awards, Recommendations, Performance Appraisals

Tab 9: Affidavits of Service for 12/2021, 20/2021, 17/2022 and 42/2022

Tab 10: Transcript of *Barreau* proceedings, October 28, 2020

Tab 11: Transcript of *Barreau* proceedings, May 12, 2021

Tab 12: Transcript of Excerpt of *Barreau* proceedings, December 6, 2022

Tab 13: Email from Ms. Wilson to Ms. Long, January 18, 2023

Tab 14: Report of Dr. Collins, April 27, 2021

Tab 15: Audio recording of Donna Casselman on October 31, 2020

Exhibit 63: Book of Authorities – Volume 1 & 2 (prosecutor)

Tab A: *Trumbley and Metro Police Service*, 1986 CanLII 146 (ON CA)

Tab B: *Venables and York Regional Police*, 2008 ONCPC 8 (CanLII)

Tab C: *Bright, Konkle and Niagara Board of Inquiry*, March 14, 1997

Tab D: *Schofield and Metropolitan Police Service*, 1994 CanLII 3101 (ONCPC)

Tab E: *Manning and Hamilton Police Service*, January 31, 2022 (unreported)

Tab F: *Andrew and Midland Police Service*, 2003 CanLII 75388 (ONCPC)

Tab G: *Wildeboer and Toronto Police Service*, 2006 ONCPC 10 (CanLII)

Tab H: *Moraru and Ottawa Police Service*, 2008 ONCPC 1 (CanLII)

Tab I: *Orser and Ontario Provincial Police*, 2018 ONCPC 7 (CanLII)

Tab J: Misconduct and PTSD – Balancing the Public Trust and Accommodation

Tab K: *Brewer and Toronto Police Service*, July 29, 2021, TPS decision

Tab L: *Brewer and Toronto Police Service*, 2022 ONCPC 09

Tab M: *Williams and Ontario Provincial Police*, 1995 CanLII 15417 (ONCPC)

Tab N: *Karklins and Toronto Police Service*, 2007 CanLII 87211 (ONCPC)

Tab O: *Hassan and Peel Regional Police Service*, 2006 ONCPC 7

Tab P: *Guenette and Ottawa-Carlton Regional Police Service*, 1998 CanLII 27136 (ONCPC)

- Tab Q: *Nesbeth and Windsor Police Service*, 2015 ONCPC 23 (CanLII)
- Tab R: *Bovell and Toronto Police Service*, October 5, 2011, TPS decision
- Exhibit 64: Mr. Butt's email, February 28, 2023
- Exhibit 65: Book of Authorities (defence)
- Tab 1: Ceyskens, Paul. *Legal Aspects of Policing*, Toronto, EarlsCourt Legal Press Inc. 2002, (looseleaf updated June 2022), pgs 5-332 5-343
- Tab 2: *Galassi v Hamilton Police Service*, 2005 CanLII 20789 (ON SCDC)
- Tab 3: *Aguiar v Toronto Police Service*, 2015 ONSCS (CanLII)
- Tab 4: *Bargh v Ottawa Police Service*, 2011 ONCPC 3 (CanLII)
- Tab 5: *Correa v Toronto Police Service*, 2009 ONCPC 2 (CanLII)
- Tab 6: *Costa v Toronto Police Service*, 2017 ONCPC 14(CanLII)
- Tab 7: *Cudney v St. Thomas Police Service*, 2007 ONCPC (CanLII)
- Tab 8: *D'Souza v Toronto Police Service and George Berger*, 2007 (CanLII)
- Tab 9: *Herridge v St. Thomas Police Service*, 2007 ONCPC 5 (CanLII)
- Tab 10: *Howard v Ontario Provincial Police*, 2016 CanLII 53057 (ONCPC)
- Tab 11: *Joubert v Ontario Provincial Police*, 2021 ONCPC 8 (CanLII)
- Tab 12: *Lewin v Toronto Police Service*, 2001 CanLII 56739 (ONCPC)
- Tab 13: *McPhee v Brantford Police Service*, 2012 ONCPC 12(CanLII)
- Tab 14: *Mulholland v Peel Regional Police Service*, 2014 ONCPC 19 (CanLII)
- Tab 15: *Pinto v Toronto Police Service*, 2011 ONCPC 6 (CanLII)
- Tab 16: *Precious v Hamilton Police Service*, 2002 CanLII 63881 (ONCPC)
- Tab 17: *Tapp v Ontario Provincial Police*, 2018 ONCPC 16 (CanLII)
- Tab 18: *Wildeboer and Toronto Police Service*, 2006 ONCPC 10 (CanLII)
- Tab 19: *A v Edmonton (Police Service)*, 2018 ABLERB 3 (CanLII)
- Tab 20: *MacDonald v Camrose (Police Service)*, 2014 ABLERB 55 (CanLII)
- Tab 21: *McCulloch v Mugford*, 2011 CanLII 102079 (ABLERB)
- Tab 22: *Phillips v Lethbridge (Police Service)*, 2022 ABLERB 004 (CanLII)
- Tab 23: *Law Society of Ontario v David*, 2023 ONLSTH 25 (CanLII)
- Tab 24: Workplace Well-Being, Harassment and Discrimination Review, Report prepared for the Toronto Police Services Board and Toronto Police Service, April 1, 2022
- Tab 25: *McWilliam v Toronto Police Service and Angela Costa and TPA*, 2020 HRT0 574 (CanLII)
- Tab 26: Toronto Star: "Policing has a Sexual Violence Problem", dated February 11, 2023
- Tab 27: Toronto Star: "Toronto police officer disciplined for texts she says prove harassment", January 31, 2018
- Tab 28: Toronto Star: "Toronto cop who tasered handcuffed man demoted for "unwarranted use of force", August 27, 2019
- Exhibit 66: Chart in relation to case authorities

- Exhibit 67: Dr. Haskell's report, July 27, 2020
- Exhibit 68: Procedure 17-13, Social Media (2014)
- Exhibit 69: Procedure 17-13, Social Media (2018)
- Exhibit 70: *R v Barreau*, Justice J. Silverstein's Ruling re Subpoena to Constable Rice
- Exhibit 71: *Mulligan v Ontario Provincial Police*, January 10, 2017, amended January 20, 2017 (decision)
- Exhibit 72: *Mulligan v Ontario Provincial Police*, 2017 ONCPC 10, December 27, 2017
- Exhibit 73: *Mulligan v Ontario Provincial Police*, February 1, 2017, (disposition)
- Exhibit 74: Final Mulligan (No 2) submissions - email