



## **TORONTO POLICE SERVICE DISCIPLINE HEARING**

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

IN THE MATTER OF THE THE TORONTO POLICE SERVICE  
AND POLICE CONSTABLE JASON BOAG (90594); (He/Him)

Charge: Discreditable Conduct (2 Counts)

### **DISPOSITION DECISION**

Hearing Officer: Superintendent Shane Branton; Toronto Police Service; (He/Him)

Prosecutor: Inspector Lisabet Benoit, Toronto Police Service; (She/Her) Defence

Counsel: Mr. S. Kherha; (He/Him)

Case Number: 42.2023

Hearing Dates: 2023.11.20

Decision Date: 2023.12.04

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

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

## **PART I: OVERVIEW**

### **Background**

1. Constable Jason Boag (90594) commenced his employment with the Toronto Police Service (TPS) in 2014. Constable Boag presently holds the classification of First Class Constable and is assigned to Organized Crime Enforcement.

### **Allegations of Misconduct**

2. Constable Jason Boag (90594), being a member of the Toronto Police Service, you are alleged to have committed misconduct in that you are guilty of a criminal offence that is an indictable offence or an offence punishable upon summary conviction, contrary to Section 2(1) (a) (ix) of the Schedule Code of Conduct of Ontario Regulation 268/10 and therefore, contrary to Section 80(1) (a) of the Police Services Act, R.S.O. 1990 as amended.

### **Plea**

3. On Monday, November 20<sup>th</sup>, 2023 Constable Jason Boag (90594), pleaded guilty to

an amended Notice of Hearing (Count 2) and was found guilty of Discreditable Conduct, contrary to the Police Services Act.

## **Decision**

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

For Discreditable Conduct in that Constable Boag is guilty of: a criminal offence that is an indictable offence or an offence punishable by summary conviction - a Demotion from First Class Constable to Second Class Constable for a period of 18 months, after which Constable Boag can be returned to his previous classification of First Class Constable.

And Constable Boag is further ordered under Section 85 (7) (b) of the Police Services Act (PSA), to attend in person within 30 days at Toronto Police Service – Wellness Unit, to Ms. Patricia Oliveira, or a person designated by the Wellness Unit, and seek treatment as recommend by Toronto Police Service – Wellness Unit.

Charge # 1, Discreditable Conduct, will be marked withdrawn at the request of the Prosecution.

## **PART II: THE HEARING**

## **Exhibits**

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

## **Representation**

6. In this matter, Mr. Kherha represented Constable Boag and Inspector Benoit represented the Toronto Police Service.

## **Agreed Statement of Facts**

The facts of this matter as amended are substantially agreed upon by the parties. The Agreed Statement of Facts, filed as Exhibit 3, state:

*On January 31, 2023, after his scheduled shift PC Boag operated a personal motor vehicle while he was impaired. He was involved in a single motor vehicle collision on Highway 400 north. As a result of that collision, he was arrested and charged criminally with impaired operation of a conveyance and refuse to provide breath sample.*

*PC Boag entered into a residential treatment program for alcohol abuse.*

*On April 20, 2023, PC Boag got permission to leave from the treatment facility for one day so he could deal with his Criminal charges. PC Boag appeared at the Ontario Court of Justice in Newmarket before Honourable Justice Cooper. He plead guilty to impaired operation of a conveyance; contrary to section 320.14 of the Criminal Code. The other charge was withdrawn by the Crown.*

*Justice Cooper imposed a \$2000.00 fine and a 12 month driving prohibition making him eligible for the stream A ignition interlock program.*

*PC Boag's actions on January 31 and his guilty plea has brought discredit to the reputation of the Toronto Police Service.*

By pleading guilty to a criminal offence, Constable Boag is guilty of discreditable conduct contrary to S.80 (1) (a) of the Police Services Act of Ontario.

### **Positions on Penalty**

7. The positions on penalty are in congruence. Defence and Prosecution agree by joint submissions in a demotion in rank from First Class Constable to Second Class Constable for a period of 18 months, after which Constable Boag can be returned to his previous classification of First Class Constable.

In addition the Prosecution requested that an order be made for treatment as recommend by Toronto Police Service – Wellness Unit.

A summary of Inspector Benoit's and Mr. Kherha's submissions, in support of this position, follows.

### **Witnesses**

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

### **Submissions**

## Prosecution Submissions

9. The Prosecutor – Inspector Benoit began her submissions by entering a Book of Records (Exhibit 4), and a Book of Authorities (Exhibit 5).
10. Inspector Benoit commenced her submissions by outlining the objectives of discipline, which are to: correct unacceptable behaviour, deter others from similar behaviour, and assure the public that the police are under control.
11. Inspector Benoit highlighted that there are fifteen considerations governing the determination of an appropriate disposition and they can be found in the Legal Aspects of Policing, Section 5.10 (e), by Mr. Paul Ceysens; these principals were submitted at Tab 1, in Exhibit 4. The Prosecution fully considered all of these principles and in the submissions to penalty, noted the following as particularly relevant in this matter.
12. Inspector Benoit submitted that no doubt Constable Boag's actions have *public interest* implications as it relates to the public trust. She reiterated the necessity for the public to be assured that the police are under control, and that Constable Boag had breached that trust. For this reason Constable Boag is being held accountable for his conduct and that is what society expects from its Police Service.

13. Inspector Benoit brought my attention to Exhibit 5, Tab B – Bright, Konkle and the Niagara Board of Inquiry, 1997 which speaks to the necessity of a police officer to be of good character. She referenced the following passage in support, “*Good character in a police officer is essential to both the public’s trust in the officer, and to a police service’s ability to utilize that officer. The public has the right to trust that its police officers are honest and truthful, and that, absent extenuating circumstances, they will not be officers any longer if they breach this trust.*” This is what the Service expects of our officers.

14. Inspector Benoit then referenced Exhibit 4, Tab 3, which contained the criteria for hiring a police officer in the Police Services Act. She highlighted that at section 43(1) (d) the mandated need for an officer to be, “*of good moral character and habits*”. Inspector Benoit submitted that the character in a police officer is essential to both the public’s trust in the officer and to a Police Service’s ability to utilize that officer. In regards to this matter, Constable Boag’s conduct does not meet the standard expected by either the Toronto Police Service or the Public.

15. The importance of public trust was further addressed by the Prosecutor with reference to Exhibit 4, Tab 6; of the submitted Book of Records. Herein, the Toronto Police Service Standards of Conduct was reviewed from the Chief and states, “*Toronto Police Service members are held to a higher standard of conduct than other citizens. This standard is not only an expectation from the community, it is an expectation we place upon ourselves. This higher standard of behaviour is necessary to preserve the integrity of the Service*”. The integrity of the Service is constantly under fire especially when we are found to be contravening the very laws we are to enforce. PC Boag’s finding of guilt impacts that integrity. His conduct is inexcusable and not only affects his own reputation, but the reputation of the Toronto Police Service.

16. The importance of public trust is further addressed by the Prosecutor with

reference to Exhibit 4; the submitted Book of Records, at Tab 2 – Oath of Office.

Herein, Inspector Benoit submitted Constable Boag's signed and sworn Oath to preserve the peace and prevent offences when he joined the Toronto Police Service. The Prosecutor submitted that Constable Boag, by violating the very law that he had taken an oath to uphold, had broken the public trust placed in him and violated his Oath of Office.

17. With regards to the *seriousness of misconduct*, Inspector Benoit added, that Constable Boag's conduct is no doubt serious misconduct. That anytime an officer is convicted of a criminal offence, it is serious. The Prosecutor also submitted a further aggravating factor, that this matter involved the use of alcohol and driving, placed the safety of the general public and PC Boag at risk. In this instance PC Boag was involved in an accident on a highway that injured him.

18. There have been warnings, cautions and messages from the Chief specifically about offences around drinking and driving. A criminal conviction results in a one year driving prohibition that impacts the occupational requirements of a police officer. The Prosecutor submitted that the misconduct, which resulted in a Criminal Code conviction, will likely have an impact on the officer's credibility in future prosecutions. She further added that the criminal conviction which resulted in at least a one year driving prohibition has negatively impacted the occupational requirements of Constable Boag as a police officer and limited the Service's ability to deploy him as a sworn officer on their uniform strength.

19. On the principle of *recognition in the seriousness of misconduct*, the Prosecutor referred to Christian and Grbich and Aylmer, 2002, OCCPS (Exhibit 5, Tab C). The Prosecutor drew attention in the decision to the fact that, in Williams and the Ontario Provincial Police, 1995, OCCPS the Commission identified three key elements a Hearing Officer must take into account when imposing a penalty. These are: the *nature and seriousness of the misconduct*; the *ability to reform or rehabilitate* the



officer, and the *damage to the reputation of the Police Force that could occur if the officer remained on the Force.*

20. Inspector Benoit highlighted from the same decision that the Commission has also instructed that there are other factors to be considered in light of a particular misconduct, which include the *recognition of the seriousness of the misconduct*, the *employment record*, the *public interest* in the administration of justice, general and specific deterrence, and the need for consistency.
21. Inspector Benoit, in assessing Constable Boag's *recognition in the seriousness* of misconduct, asked that I consider Constable Boag's post-incident conduct. In particular, his early guilty plea both in Criminal Court and in this Tribunal. With his guilty plea. Constable Boag has demonstrated that he has accepted responsibility for his misconduct, and he has demonstrated that he is willing to face the consequences to continue to be a productive member of the Service.
22. PC Boag pled guilty to Impaired Driving in criminal court on April 20<sup>th</sup> of 2023 before Justice Cooper. He received a \$2000 fine and a one year driving prohibition. He has also sought treatment for his addiction. He entered a guilty plea in this Tribunal today at the first opportunity. A guilty plea has long been regarded as an acceptance of responsibility and acknowledgement of remorse. In the case of Carson and the Pembroke Police, located at Tab E, Exhibit 4, which states '*we have no doubt that a guilty plea should be recognized as a mitigating factor and taken into account along with other factors in determining the appropriate penalty*' PC Boag's guilty plea demonstrates that he has accepted responsibility for his actions and demonstrates that he is willing to face the consequences and wishes to continue to be a productive member of the Service.
23. In support of the above submission of positive *employment history*, Inspector Benoit pointed at Exhibit 4, Tab 11, in the Book of Records. Here, Inspector Benoit outlined Constable Boag's complementary activities and awards. She reviewed

these accolades, and the officer has a number of positive documentations. There are no negative conduct issues.

24. Further, Inspector Benoit submitted that included at Tab 12 of Exhibit 4, are performance appraisals for Constable Boag. A review of his performance appraisals that speak of a '*dedicated and professional officer*'. The Prosecutor submitted that this officer's employment history is mitigating and suggests that he will remain a productive officer demonstrating usefulness to the Service.

25. Inspector Benoit also submitted that the 2017 Ontario PSA by Ceysens and Childs guide us on how to assess an officer's employment history in association with recognition of the seriousness of the misconduct and potential to rehabilitate. Inspector Benoit focused on Factor 7 - Employment History, wherein the commentary cites several Commission cases and in summary makes the following determinations with respect to this factor. "*Employment history is an important disposition in all cases. Employment history as a mitigating or aggravating consideration closely relates to the disposition consideration of rehabilitation potential.*" With that, she considered Constable Boag's excellent employment history mitigating, giving the potential to reform or rehabilitate the officer.

26. Inspector Benoit further added in regards to the *potential to reform or rehabilitate* by drawing attention to Exhibit 5, Tab C where the Commission noted in Christian and Grbich and Aylmer, 2002, OCCPS that, "*every attempt should be made to consider whether or not rehabilitation is possible. A police service and the community in which it is situated makes a significant investment in each police officer. Unless the offence is egregious and unmitigated, the opportunity to reform must be a key consideration*".

27. Further, in regards to the *potential to reform or rehabilitate the officer*, the Prosecutor drew attention to Exhibit 5, Tab A where the Commission noted in

Andrews and Midland Police Service, 2002, OCCPS, “*The Commission believes that rehabilitation is a key factor to be taken into consideration when a penalty is imposed, especially, when the offender has a prior unblemished employment record. Unless the officer is beyond rehabilitation (in which case he would be a candidate for dismissal) the door should be kept open for the officer to be rehabilitated. The penalty should be tailored to provide him with the opportunity to do so.*”

28. Constable Boag had dealt with his criminal charges at the earliest opportunity and has dealt with his charges in the Tribunal by way of a guilty plea. Constable Boag has taken the positive steps towards rehabilitation as defined by the above noted OCCPS precedent. The Prosecutor submitted that she believes that Constable Boag can reform and continue to be a productive member of the Service.

29. In terms of *consistency of disposition*, Inspector Benoit cited from Exhibit 5, Tab B, in Buckle and Ontario Provincial Police, 2005, OCCPS the principle as found in Schofield and the Metropolitan Toronto Police, where it was stated, “*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.*”

30. The Prosecutor then offered two decisions with regards to the Service’s position on sentencing. At Tab H, in Exhibit 5, in Sievers and Toronto Police Service, 2012, where it states, “*The opportunity to reform should be a significant consideration. I have listened to the evidence of the character references, reviewed every case, routine order and communique provided and Sgt Sievers’ evaluations and award recommendations. Demotion in rank is a strong consideration when the officer has little or no value at the current rank to the police service or the community and rehabilitation within the rank is not a consideration. It is also a strong consideration when the facts of the case warrant demotion based on the actions of the officer*”.

And at Tab I, the same Exhibit, in Kingdon and Toronto Police Service, 2015, where it states, *“Despite all of the efforts to eradicate drinking and driving among police service members we continue to see officers arrested and brought before the Tribunal. In the case of Sievers, the Hearing Officer stated we are at a crossroads with respect to the disposition of drinking and driving cases. Recent cases show that we are at the top of the continuum for penalty and yet officers continue to repeat the misconduct. We have to question if the recent sentencing history of 20 days has achieved the goal of general deterrence”*. The Prosecution submits that both these decisions were prior to Constable Boag’s misconduct and the outcomes of such misconduct should have been known to him.

31. Inspector Benoit also cited that earlier case law decisions contained in Exhibit 5, at (Tab F) Smith and Toronto Police Service, 2009, (Tab G) Allard and Toronto Police Service, 2012, (Tab J) Ford and Toronto Police Service, 2016, (Tab k) Ladurantaye and Toronto Police Service, 2021, (Tab L) Murray and Toronto Police Service, 2014, (Tab M), Priebe and Toronto Police Service, 2022, (Tab N) Little and Toronto Police Service, 2022 and (Tab O) Canning and Toronto Police Service, 2022 which showed an appropriate range of penalty.

32. The Prosecution highlighted the case of Ladurantaye and Toronto Police Service from 2021. In this matter Constable Ladurantaye was off duty and became involved in a motor vehicle collision causing extensive damage to both vehicles. Constable Ladurantaye attempted to leave the scene with his vehicle. The vehicle was heavily damaged and forced him to stop. Officers attended and arrested Constable Ladurantaye for Impaired Driving. He provided two breath samples; 194 and 186 mgs. The officer pled guilty in court and received a fine of \$2250 and a one-year driving prohibition. Constable Ladurantaye pled guilty to discreditable conduct was given a disposition of a 15 month demotion.

33. The Prosecution highlighted the case of Canning and Toronto Police Service from

2022. In this case Constable Canning was involved in an off-duty collision in his own motor vehicle. He was convicted of Impaired Driving. Constable Canning pled guilty to discreditable conduct was given a disposition of a 15 month demotion.

34. The Prosecution submitted the Toronto Police Service continues to struggle with new cases of misconduct involving Service members who are drinking and driving. The risk to the reputation of the Service, the risk to public safety, and to our members, should this trend not be addressed cannot be overstated. The Tribunal needs to send a clear message to all members that this type of misconduct will receive meaningful periods of demotion. We have increased the disposition to 18 months for PC Boag and hopefully this will be a clear message to our membership that the penalties for this type of misconduct are increasing as needed as a general deterrence.

35. In the area of *specific and general deterrence* I take notice that the correlation between penalty and deterrents, both general and specific from Exhibit 5, Tab A, in Andrews and Midland Police Service, 2002, OCCPS, where the Commission stated, *“He was also correct that the penalties imposed for misconduct must be strong enough to send a clear message to other officers that such conduct or any conduct of this nature will not be tolerated”* and further that, *“sufficient to punish and to deter while not causing undo or excessive hardship while demonstrating that reoccurrence will not be tolerated.”*

36. Inspector Benoit added on the issue of *general deterrence*, that the penalty, when published on the Service’s Intranet, in this case, should also send a clear message to all officers in the Service, and consistent with the repeated corporate messaging, that this type of misconduct is not acceptable and will not be tolerated.

37. The Prosecutor submits that this is serious misconduct and added the penalty

proposed sends a strong message to Constable Boag, Service members, and the community, that the Service will not tolerate this behaviour and that it does not offend the Office of the Chief of Police or the organizational goal of impressing upon the membership the importance of eradicating drinking and driving infractions.

38. The Prosecutor, in addressing the *damage to the reputation of the Service*, submitted that the Service's reputation suffers every time one of our officers breaches the Oath of Office. Any member of the Ontario Provincial Police, Fire Department, Prosecutor, Judge, and Court Staff who were involved in, or were aware of the circumstances of his arrest, would not see it in a positive light.

39. The Prosecutor submitted that the efforts that PC Boag has made to address his addiction and mental health issues is commendable and deserving of note.

40. As such, the Prosecutor submitted that the appropriate disposition was a demotion from First Class Constable to Second Class Constable for a period of 18 months and under Section 85 (7) (b) to seek treatment as recommend by Toronto Police Service – Wellness Unit.

### **Defence Counsel Submissions**

41. Mr. Kherha commenced his submissions by stating unfortunately, he has been before the tribunal several times on similar type matters. As a result, counsel did not comment on the law surrounding the misconduct or the factors that are to be considered. Defence submissions will focused PC Boag the individual.

42. Defence Counsel submitted that when he met PC Boag, he was a different person than he is now, both physically and emotionally. After completing a treatment program, he became a different person with a different mindset. This incident was the perfect storm for a number of bad things taking place in PC Boag's life. A

personal life that is related to his work life.

43. PC Boag was hired as a court officer in 2014 by the Toronto Police Service. He was sworn in as a Police Constable in 2016 and assigned to 51 Division. His career was progressing well. In 2018, unfortunate events outside PC Boag's control took place. PC Boag was dispatched to a domestic call where he was provided the wrong address. He attended and made an arrest in good faith. The Special Investigations Unit invoked and wrongfully charged PC Boag based on the word of an individual that had mental health issues. PC Boag was found not guilty. Defence submitted that some would say justice was served as the officer was found not guilty. Others may comment that an officer was taken off the road, suspended, put into a desk job, not allowed to do what he loves, and had to live under the everyday stress of not knowing what might happen to him. Unless you have been in those shoes of being charged criminally, awaiting your disposition, knowing your future is in the hands of a judge or jury, you cannot imagine what it would be like. It's the unknown, it's the anxiety. That is what PC Boag was living with every day.

44. Although PC Boag put on a good front and worked his assignment at 51 Division, deep down, he was struggling. He was struggling with the anxiety and the stress of not knowing what was going to happen to him. PC Boag looked for assistance and found it by the use of alcohol. He was a social drinker growing up. But when it came to the anxiety, instead of dealing with it in other facets, he chose to deal with it with alcohol. This continued for a few years, until he was found not guilty in 2021. PC Boag continued working and was transferred to the Major Crime Unit and the Drug Squad.

45. In January of 2023, it came crashing down again. PC Boag conveyed that when he returned to full duty, there was always a feeling in the pit of his stomach that said: 'what if someone puts in another complaint?' 'What if something goes wrong again? And I have to go back through what I lived through the last time?' That

anxiety caused constant pressure that lead PC Boag to continue to rely on alcohol for his anxiety. The tipping point was January, his spouse had gone away and PC Boag was caring for his child. He didn't drink while taking care of his child. The moment his spouse returned, he reached to alcohol to deal with the anxiety.

46. Defence relayed that there was another case where a judge, in their view, felt PC Boag wasn't creditable. PC Boag was cleared. But, once again, this triggered anxiety. This all came forward in January when he was arrested for impaired driving. This may have been the best thing that happened to him. He didn't get seriously hurt and neither did anyone else. These events were an eye opener for PC Boag. PC Boag reached out and sought professional help. PC Boag completed the in-house program that provided him the assistance that he needed.

47. PC Boag contacted counsel while receiving treatment and indicated he wanted to plead guilty. In April 2023, PC Boag requested and was granted time to leave the treatment facility and to attend court. He attended with the support of his family, and came before a judge, and took responsibility for his actions. PC Boag continues to attend Alcoholics Anonymous meetings. Again, PC Boag requested counsel to assist him in pleading guilty in the Tribunal. He wanted to accept responsibility, as long as he was treated fairly.

48. Mr. Kherha commented that Justice Cooper in the Criminal Court made the following comments when PC Boag pled guilty: 'In imposing the sentence, I consider that because there may be some that want to say, "Wow, we have to make an example of him." That is not what denunciation means. Denunciation means for this Court to acknowledge for the community and to convey to you that your conduct was wrong. One day does not define an individual's life. So what else do I hear in this sentence? What I hear first, there is an early resolution. Early resolutions can come because people say "Wait. There's a program available and I can get my licence back in a certain way as quickly as possible" And maybe some people will think that. I do not and I want to explain publicly why I do not think that



this is the case here. Because what this is about, and what is more important that driving or anything, is your own health, and your recognition that you have an issue. It takes a tremendous amount of strength to recognize that, and the community should know that. They should know that people in our community working hard, are generally law-abiding, but each of us has our own stressors and depending on the type of job you have, you may often and sometimes every day see things that are very traumatic and very trying. I know that myself being the criminal justice system for 33 years, I have seen it have an effect on many. It is not an easy profession but I am always impressed by those who recognize when it gets too much and it can affect them, that they stand up. It is that they stand up and they look to what they can do in the future.'

49. Defense Counsel concluded by stating that he joins the Prosecutor – Inspector Benoit, in recommending a demotion of 18 months and the Prosecution’s request for treatment as recommend by Toronto Police Service – Wellness Unit.

50. Defence Counsel submitted a book of records containing Constable Boag’s personnel file (Exhibit 6). Counsel also submitted a Case book (Exhibit # 7) which contained five cases for reference. Counsel referred to the personnel file as evidence of Constable Boag’s positive work history and made no submissions regarding the case book.

#### **Opportunity to address the Tribunal for Constable Boag:**

51. Constable Boag was provided the opportunity to address the Tribunal and chose to address the Tribunal. Constable Boag made the following noteworthy comments: I would like to take this opportunity to apologize for my actions to the Toronto Police Service and the citizens of Toronto. I would also like to apologize for thinking that I was able deal with my struggles on my own. Sometimes it takes

going through something like this to realize that you need professional help and it gave me the opportunity to get the help that I desperately needed. I have to work on that every day moving forward, but every day since this incident has been a step in the right direction.

**Prosecution Reply:**

52. Nil.

**Analysis and Decision:**

53. In Williams and the Ontario Provincial Police, 1995, OCCPS the Commission identified three key elements a Hearing Officer must take into account when imposing a penalty. These are: the nature and seriousness of the misconduct; the ability to reform or rehabilitate the officer, and the damage to the reputation of the Police Force that could occur if the officer remained on the Force.

54. The Commission has also instructed that there are other factors to be considered, in light of particular misconduct, which includes the recognition of the seriousness of the misconduct, the employment record, the public interest in the administration of justice, general and specific deterrence and the need for consistency. Exhibit 4, Tab 3 - the *PSA*, s 43(1) (d) notes, “(a police officer) is of good moral character and habits”.

55. In this case, Constable Boag violated the public trust by committing the criminal offence of Impaired Driving. He failed to meet the standard of conduct expected of him and even though the misconduct occurred while he was off-duty, there is a clear occupational requirement for police officers; to prevent criminal driving offences, involving the consumption of alcohol, and not to commit them.

56. Members of the Ontario Provincial Police responded to a call for Service of a vehicle collision. Constable Boag had struck a median and a dump truck causing damage to both vehicles. Luckily, Constable Boag only suffered minor physical injuries.
57. The public must have confidence in the ability of the Service to deal with any misconduct on the part of its members and as such, the public also has an interest in ensuring that Constable Boag is held accountable for his actions.
58. There is no doubt that the misconduct was serious as evident by the circumstances leading to Constable Boag's arrest and criminal conviction. Constable Boag operated a motor vehicle after having consumed an amount of alcohol, and became involved in a collision on a 400 series Highway.
59. I do take note, at Exhibit 3, the Agreed Statement of Facts – that Constable Boag exercised his option to plead guilty to the criminal offence he was charged with, at the earliest opportunity and also in this Tribunal. The transcript of the PC Boag's guilty plea and sentencing in criminal court located at Exhibit 4 Tab 9, provides insight into the position of Justice Cooper. Justice Cooper's comments are an objective view of stress experienced by members working as First Responders. I agree with Justice Cooper in that the actions of PC Boag not only acknowledging, but seeking out professional help to assist him in dealing with issues.
60. Defence Counsel provided background information regarding the underlying reason or cause, for the anxiety of PC Boag. I find that there is a link between his anxiety and self medicating this anxiety with alcohol. The actions of PC Boag driving impaired was a choice. A choice that has consequences. PC Boag has acknowledged his anxiety and alcohol use and is accepting of the consequences of his actions. He should be commended for this acceptance of consequences. Although PC Boag was unable to adhere to all of the Toronto Police Service Core Values, located at Exhibit 4, Tab 5, surrounding the misconduct, his post incident

conduct falls squarely in line with the Core Value of Reflect and Grow.

61. Previous Hearings which described the circumstances and penalties assessed against members who committed drinking and driving offences have also been provided to the entire Service membership, to indicate that this behaviour will not be tolerated and to inform members of the penalties. PC Boag had the opportunity to know the consequences of his actions.
62. As noted in Carson and Pembroke Police Service, OCCPS, 2001 a guilty plea should be recognized as a mitigating factor. Constable Boag has not tried to blame others for his actions and has accepted responsibility for them. This step he has taken, demonstrates that he has recognized the seriousness of the misconduct and is willing to accept the consequences.
63. This event no doubt will have an effect on Constable Boag. His finding of guilt under the *PSA* will remain with him for a lengthy period of time. He has likely lost and will continue to miss out on professional opportunities until this matter is well behind him, and he has restored his reputation. He will have to report this misconduct when he is called upon to testify in court. His driving prohibition will impact the way in which the Service is able to operationally deploy PC Boag. All of those effects are as a result of the actions of Constable Boag, for which he must bear the responsibility.
64. Though I have not been made aware of any media attention, this event has caused some damage to the reputation of the Service. Any member of the Ontario Provincial Police, the tow truck personnel and the court staff who was involved in, or was aware of the circumstances of his arrest, would not see it in a positive light. This Tribunal is a public forum and I note that no known members of the media were present during this proceeding, but a member of the public was observing online. If this matter is reported on in the future by the media, it will likely cause further damage to the reputation of the Service.

65. All procedural fairness considerations have been addressed in this instance. He was provided the opportunity to make full answer and defence, and has had the benefit of an experienced counsel throughout these proceedings.

66. I have reviewed the information from Constable Boag's personnel file in Exhibit 4, at Tab 11. Constable Boag has been recognized on approximately an impressive 11 occasions for his involvement in a number of significant arrests and investigations throughout his career, and two letters of appreciation. Those arrests / investigations involved firearm offences, drug investigations, organized crime frauds, and confidential sources. I also reviewed Defence Exhibit # 6, their submission of Constable Boag's personnel file. The information contained in Exhibit #6 mirrored the information submitted by the Prosecution in Exhibit 4, Tab 11 and Tab 12.

67. The source documents in Exhibit 4, at Tab 11, for the awards and letters he had received provided further details. It was evident that Constable Boag had made many positive contributions to the various divisional/service priorities. His involvement in significant investigations led to a number of arrests for serious offences.

68. In Exhibit 4, at Tab 12, I reviewed Constable Boag's annual performance appraisals dating from 2015 to 2021. In the appraisals, his supervisors commented on the type of work he produces. Words that were used include, "*....he continues to work hard on a daily basis and that hard work is leading to excellent results; contributes to other units assisting in investigation and drafting of search warrants*". In his most recent evaluation his supervisor made the following comments "*PC Boag is an exceptional officer who has maintained a positive attitude and work ethic*". All of his supervisors have extremely supportive comments. PC Boag's personnel file is mitigating.

69. Past behaviour is often an indication of what can be expected from a person in the

future. Constable Boag has an impressive employment history and has been recognized many times for his contributions. Constable Boag has accepted responsibility for his actions. He entered an early guilty plea in Criminal Court and pleaded guilty in the Tribunal.

70. As discussed in Andrews and Midland Police Service, 2002, OCCPS, an officer with a prior unblemished employment record should be provided with the opportunity to be rehabilitated. In this case, coupled with his prior positive employment record, the actions he has taken since this event, and the observations of those supervisors in a position to observe his behaviour, Constable Boag has demonstrated that he has the potential to reform or be rehabilitated.

71. I am satisfied that deterrence specific to Constable Boag has been addressed through his acceptance of responsibility, his early guilty pleas, both, in this Tribunal and in Criminal Court, and his willingness to accept a penalty. In regards to general deterrence, the outcome of these proceedings will be published on TPS Routine Orders, the decision will be published on the TPS Intranet and the decision will also be posted on the TPS External Website. Those documents are available to Public and the entire Service membership, and will reinforce the previous messaging in regards to the potential consequences for this type of misconduct.

72. The Commission discussed the need for fairness and consistency in the discipline process in Buckle and Ontario Provincial Police Service, OCCPS, 2005, penalties must be consistent with prior similar cases. The Prosecutor provided a number of historical cases in support of the joint penalty position. The Prosecutor sought a penalty of an 18 month reduction in rank classification and Counsel Mr. Kherha joined Inspector Benoit on this position.

73. The Prosecution submitted the following cases to support the joint submission: Smith and Toronto Police Service, 2011; Allard and Toronto Police Service, 2012; Sievers and Toronto Police Service, 2014; Kingdon and Toronto Police Service,

2015; Ford and Toronto Police Service, 2016; Ladurantaye and Toronto Police Service, 2021; Murray and Toronto Police Service, 2014; Priebe and Toronto Police Service, 2022; Little and Toronto Police Service, 2023 and Canning and Toronto Police Service, 2023. Defence Counsel submitted the following cases for the Hearing officer to consider: Koech v. Toronto Police Service, 2021; Bennett v. Ottawa Police Service, 2012; Bromfield v. Hamilton Police Service, 2009; Yakimishyn v. Peel Regional Police Service, 2008; and Kelly v. Toronto Police Service, 2005. In reviewing all of the cases from both the Prosecution and the Defence, it was apparent that even though many outcomes bore a number of similarities to others, there was no consistent penalty that was imposed. Each was considered on its own merit, and penalties imposed were in a range that was dependent on all of the mitigating and aggravating factors specific to that case. The two following cases assisted more than the others in determining a disposition.

74. The case of Ladurantaye and Toronto Police Service from 2021 has similarities with the matter before me. In this matter, Constable Ladurantaye was off duty and became involved in a motor vehicle collision, causing extensive damage to both vehicles. Constable Ladurantaye attempted to leave the scene with his vehicle. The vehicle was heavily damaged and forced him to stop. Officers attended and arrested Constable Laduarantaye for Impaired Driving. He provided two breath samples; 194 and 186 mgs. The officer pled guilty in court and received a fine of \$2250 and a one-year driving prohibition. Constable Ladurantaye pled guilty to discreditable conduct was given a disposition of a 15 month demotion. The case assists in determining an appropriate disposition.

75. The case of Canning and Toronto Police Service from 2023 has similarities with the matter before me. In this matter, Constable Canning was off duty and became involved in a motor vehicle collision, causing extensive damage to both vehicles. Constable Canning had consumed alcohol and collided with a parked car causing extensive damage. Constable Canning pled guilty to Driving with over 80 mgs of alcohol in 100 ml of blood. He received at \$2300 fine and a one year driving

prohibition. Constable Canning pled guilty in the tribunal to discreditable conduct was given a disposition of a 15 month demotion. The case assists in determining an appropriate disposition.

76. When considering if aggravating factors exist to the seriousness of an already serious offence, I am of the opinion that the Hearing Officer should look to determine if the drinking/ driving offence;

Involved a member of the public, Involved a collision,

Involved property damage or physical injury,

Involved an attempt to obstruct justice, flee or attempt to obtain special favour by virtue of being a holder of public office,

Involved a breath reading that was excessive, Involved alcohol present in the vehicle, Involved reckless driving as a factor,

If the behaviour was before or after the "Chief's Order of Concern and Warning." and

If there is a history of serious misconduct.

77. If one or more of these factors exist, I am of the opinion the seriousness of the offence alone could result in significant demotion or dismissal, after considering and balancing all elements of sentencing.

78. In this case, a criminal conviction occurred, and there are significant aggravating factors to the discreditable conduct, including: **Firstly**, a motor vehicle collision with a member of the public occurred, resulting in damage to both vehicles and property. **Secondly** the collision involved colliding with a dump truck which shows the lack of attention to driving or recklessness of the driving. **Thirdly**, members of the Emergency Services had to treat PC Boag for minor injuries, and **fourthly**, the behaviour was after the Chief's Orders of Concern and Warnings.

79. A penalty must be appropriate to the circumstances, and a penalty imposed in one case may not be appropriate in another similar case, based on the disposition



factors that are present. In the matter before me, the misconduct of Constable Boag was no doubt serious and the circumstances surrounding his actions presented an unwarranted risk to the public. In this case, a penalty of a demotion is appropriate based on a consideration of all of the disposition factors.

The penalty I am imposing is within the range of penalties for other cases involving similar misconduct.

80. In mitigation, Constable Boag has contributed much to the community which is reflected in his positive employment record. He accepted responsibility for his actions by entering a guilty plea both in Criminal Court and in this Tribunal at the earliest opportunity.

81. Constable Boag has taken positive steps to address his personal issues and put this matter behind him. I encourage him to share his experiences with other Service members to reinforce the consequences of consuming alcohol and operating a motor vehicle, and to prevent others from doing so. Based on the information before me, I am sure he has learned much from these events, I am also confident that once this matter is behind him he will return to being a productive member of the Service.

82. PC Boag took the opportunity to address the Tribunal. He apologized for his actions. PC Boag also apologized for thinking he could deal with his anxiety by himself. He acknowledged his anxiety and should be commended for seeking professional help to address it. No one should feel that they need to apologize for not being able to deal with things alone. This statement from PC Boag clearly demonstrates his regret for his actions and will continue to address them.

83. I acknowledge that Constable Boag has displayed remorse after committing the specific misconduct, for which he now faces sanctions. The Tribunal strongly urges Constable Boag to heed the principles of progressive discipline and to govern

himself by its intent. To do otherwise is to bring his usefulness to the Toronto Police Service into question and potential jeopardy.

84. The Prosecution requested that Constable Boag be ordered to attend treatment as recommend by Toronto Police Service - Wellness Unit. Defence Counsel made no submissions on this request supporting the Service's initiative to assist with officer wellness.

85. I have reviewed the mitigating and aggravating factors, considered the submissions of Defence Counsel and the Service Prosecutor, and previous related Tribunal decisions. I am aware that I am not bound by the joint submissions on sentence, but on the totality of the evidence before me, I have found no compelling reason to depart from the joint submission. I have determined a penalty.

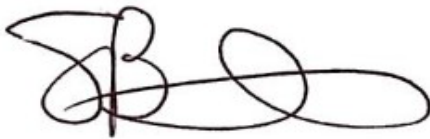
**Disposition:**

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

For Discreditable Conduct in that Constable Boag is guilty of: a criminal offence that is an indictable offence or an offence punishable by summary conviction, a demotion from First Class Constable to Second Class Constable for a period of 18 months, after which time he can be returned to his former classification of First Class Constable.

And Constable Boag is further ordered under Section 85 (7) (b) of the Police Services Act (PSA) to attend in person within 30 days at Toronto Police Service – Wellness Unit to Ms. Patricia Oliveira, or person designated by the Wellness Unit, and seek treatment as recommend by Toronto Police Service – Wellness Unit.

Charge # 1 of Discreditable Conduct in Case 42.2023 is marked withdrawn at the request of the Prosecution.

A handwritten signature in black ink, appearing to be 'S Branton', with a large, stylized 'B' and a long horizontal stroke extending to the right.

Shane  
Superintendent  
Hearing Officer

Branton

December 4<sup>th</sup>, 2023

## **Appendix 'A' - List of Exhibits 42/2023 Constable Jason Boag (90594)**

Hearing Officer S. Branton Letter of Delegation (**Exhibit 1**)

Prosecutor L. Benoit Letter of Designation (**Exhibit 2**)

Agreed Statement of Facts (**Exhibit 3**)

### **Prosecution Book of Records (Exhibit 4)**

2017 Ed., Ontario Police Services Act by Ceysens & Childs (Tab 1) Toronto Police Service Oath of Office- Constable Boag (Tab 2) Ontario Police Services Act s. 43(1)-Criteria for Hiring (Tab 3) Ontario Police Services Act s. 42(1)-Duties of Police Officer (Tab 4) Toronto Police Service – Core Values (Tab 5)

Toronto Police Service Standards of Conduct, Chief Saunders (Tab 6) Ontario Police Services Act, 2017, Employment History, pp 305-354 (Tab 7) Police Discipline Chapter (Tab 8)

Reasons for Sentence (Tab 9) Certified Copy of Information (Tab 10)

Constable Boag (90276) – TPS 950 and Awards and Letters of Recognition (Tab 11)

Performance Appraisals (Tab 12)

### **Prosecution Book of Authorities (Exhibit 5)**

Andrews and Midland Police Service, 2002, OCCPS (Tab A)

Bright, Konkle and the Niagara Board of Inquiry, OCPC, 1997-01 (Tab B) Christian and Grbich and Aylmer Police Service, OCCPS, 2002 (Tab C)

Buckle and Ontario Provincial Police Service, OCCPS, 2005 (Tab D)

Carson and Pembroke Police Service, OCCPS, 2001 (Tab E)

Smith and Toronto Police Service, 13/2009, 2011 (Tab F) Allard and Toronto Police Service, 41/2011, 2012 (Tab G) Sievers and Toronto Police Service, 41/2013, 2014

(Tab H) Kingdon and Toronto Police Service, 18/2014, 2015 (Tab I)

Ford and Toronto Police Service, 4/2016, 2016 (Tab J)  
Ladurantaye and Toronto Police Service, 3/2021, 2021 (Tab K)  
Murray and Toronto Police Service, 14/2014, 2014 (Tab L)  
Priebe and Toronto Police Service, 13/2022, 2022 (Tab M)  
Little and Toronto Police Service, 35/2021, 2022 (Tab N)  
Canning and Toronto Police Service, 12/2023 and 84/2022, 2023 (Tab O)

**Defence Book of Personnel File of Constable Boag (Exhibit 6)**

Awards Recommendation- Dangerous Operation Investigation (Tab 1)  
Corporate Awards Recommendation- Drug Investigation (Tab 2)  
Awards Recommendation- Organized Crime Fraud Investigation (Tab 3)  
Awards Recommendation- Break and Enter Investigation (Tab 4)  
Awards Recommendation- Threaten Suicide Investigation (Tab 5)  
Awards Recommendation- Suspicious Person Investigation (Tab 6)  
Awards Recommendation- Person with a Gun Investigation (Tab 7)  
Awards Recommendation- Person with a Gun (Tab 8)  
Awards Recommendation- Drug Investigation (Tab 9)  
Awards Recommendation- Person with a Gun Investigation (Tab 10)  
Awards Recommendation- Threaten Suicide Investigation (Tab 11)  
Awards Recommendation- Ontario Police Fitness Award (Tab 12)  
Letter of Appreciation from Chief Mark Saunders (Tab 13)  
Letter of Appreciation from Cindy Gouveia (Tab 14)  
Civilian Performance Reviews (Tab 15)  
Performance Appraisal & Development Plans (Tab 16)

**Defence Case Book** (Exhibit 7)

Koeh v. Toronto Police Service, 6/2019, 2021 (Tab 1)  
Bennett v. Ottawa Police Service, 2012 ONCPC 16 (Tab 2)  
Bromfield v. Hamilton Police Service, 2009 ONCPC 9 (CanLII) (Tab 3) Yakimishyn v. Peel Regional Police Service, 2008 ONCPC 5 (Tab 4)  
Kelly v. Toronto Police Service, 2005 ONCPC 3 (CanLII) (Tab 5)