



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 COREY SPENCER-ANDERSON (10843)

Charge: Discreditable Conduct  
Improper Use of Character and Position

DISPOSITION DECISION

Hearing Officer: Detective Superintendent K.M. Bickerton, Ontario Provincial Police

Prosecutor: Mr. Mattison Chinneck

Defence Counsel: Mr. Stephen Prust

Case Number: 52/2018

Hearing Date: May 1,2,3,5, 2023 and August 10,11, 2023

Decision Date: Delivered in Person, December 12, 2023

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**

This decision contains personal, intimate, and medical information about involved persons. Great care should be taken to not improperly disclose or publicize any such information.

**Certain Exhibits are not to be disclosed due to Toronto Police Service (TPS) building security risks.**

***The decision, as much as was practicable, was anonymized to protect the identity of the victim and witnesses. The Toronto Police Service may choose, as they find appropriate, to further redact the decision to protect the identity of involved persons. This decision shall not be released to the public until the Toronto Police Service has had the opportunity to review and redact it as may be required.***

### ***Allegations of Misconduct***

#### **CHARGE NO. ONE (1)**

YOU ARE ALLEGED TO HAVE COMMITTED MISCONDUCT IN THAT YOU DID ACT IN A DISORDERLY MANNER OR IN A MANNER PREJUDICIAL TO DISCIPLINE OR LIKELY TO BRING DISCREDIT UPON THE REPUTATION OF THE POLICE FORCE, contrary to Section 2(1)(a)(xi) of the Schedule Code of Conduct of Ontario Regulation 268/10 and therefore, contrary to Section 80(1)(a) of the Police Services Act, R.S.O. 1990, as amended.

#### **STATEMENT OF PARTICULARS:**

1. Being a member of the Toronto Police Service, attached to the amalgamated 54/55 Division, you performed your duties in a uniform capacity assigned to primary response.
2. During the period of January 2016 to June 29<sup>th</sup>, 2018, you were involved in a

relationship with E.M., a member of the Toronto Police Service. On June 29<sup>th</sup>, 2018, at approximately 9:30 p.m., E.M. informed you she wished to end the relationship by electronic message.

3. During the period of 10:15 p.m. on June 29<sup>th</sup>, 2018, onward, you attempted to contact E.M. both in person at her home address, and electronically numerous times. E.M. advised you on several occasions to leave her alone. You failed to cease your attempts to contact E.M. E.M. advised you that she was frightened and did not want to have to involve the police.
4. On Wednesday, July 4<sup>th</sup>, 2018, at approximately 12:55 a.m. while off duty, you drove your personal vehicle to 55 Division. You dressed in your Toronto Police Service uniform with all use of force options, including your firearm. You contacted PC Tommy KUNG (8918) who was working in a uniform capacity at the time and asked to meet him at 54 Division. You drove your personal vehicle to 54 Division where you met PC KUNG.
5. PC KUNG was working in a uniform capacity operating a stealth marked police car. You had a conversation with PC KUNG in which you advised that you were working dayshift and that you couldn't sleep as you were stressed out.
6. You asked PC KUNG to drive you to your girlfriend's house which is located outside of 54/55 Division boundary to pick something up from her house. At approximately 1:24 a.m. you left 54/55 Divisional boundary and proceeded to an address in 33 Division.
7. PC KUNG parked the Toronto Police Service vehicle out front of the address and waited. You went to the front door, knocked, and were invited in by the upstairs tenant.
8. You advised the tenant that there was a police investigation involving the basement tenant. E.M. is the basement tenant at this address. You requested the upstairs tenant take you through their apartment to gain access to E.M.'s apartment.

9. You entered the area of E.M.'s apartment and remained inside for 5-10 minutes.
  
10. You exited the area of E.M.'s apartment and asked the upstairs tenant to leave the exterior door unlocked and not to tell the complainant that you were ever there. You returned to the police vehicle and PC KUNG drove you back to 54 Division.
  
11. At approximately 7:00 p.m. on July 4<sup>th</sup>, 2018, E.M. was working evening shift. You contacted E.M. and identified yourself as Chris Garrito. E.M. recognized your voice and hung up the phone.
  
12. In doing so, you committed misconduct in that you did act in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the Toronto Police Service.

**CHARGE NO. TWO (2)**

YOU ARE FURTHER ALLEGED TO HAVE COMMITTED MISCONDUCT IN THAT YOU DID IMPROPERLY USE YOUR CHARACTER AND POSITION AS A MEMBER OF THE POLICE FORCE FOR PRIVATE ADVANTAGE, contrary to Section 2(l)(f)(v) 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.

**STATEMENT OF PARTICULARS:**

13. Being a member of the Toronto Police Service, attached to the amalgamated 54/55 Division, you performed your duties in a uniform capacity assigned to primary response.
  
14. During the period of January 2016 to June 29<sup>th</sup>, 2018, you were involved in a relationship with E.M., a member of the Toronto Police Service. On June 29<sup>th</sup>, 2018, at approximately 9:30 p.m., E.M. informed you she wished to end the relationship by electronic message.

15. During the period of 10:15 p.m. on June 29<sup>th</sup>, 2018, onward, you attempted to contact E.M. both in person at her home address, and electronically, numerous times. E.M. advised you on several occasions to leave her alone. You failed to cease your attempts to contact E.M. E.M. advised you that she was frightened and did not want to have to involve the police.

16. On Wednesday, July 4<sup>th</sup>, 2018, at approximately 12:55 a.m. while off duty, you drove your personal vehicle to 55 Division. You dressed in your Toronto Police Service uniform with all use of force options, including your firearm. You contacted PC Tommy KUNG (8918) who was working in a uniform capacity at the time and asked to meet him at 54 Division. You drove your personal vehicle to 54 Division where you met PC KUNG.

17. PC KUNG was working in a uniform capacity operating a stealth marked police car. You had a conversation with PC KUNG in which you advised that you were working dayshift and that you couldn't sleep as you were stressed out.

18. You asked PC KUNG to drive you to your girlfriend's house which is located outside of 54/55 Division boundary to pick something up from her house. At approximately 1:24 a.m. you left 54/55 Divisional boundary and proceeded to an address in 33 Division.

19. PC KUNG parked the Toronto Police Service vehicle out front of the address and waited. You went to the front door, knocked, and were invited in by the upstairs tenant.

20. You advised the tenant that there was a police investigation involving the basement tenant. E.M. is the basement tenant at this address. You requested the upstairs tenant take you through their apartment to gain access to E.M.'s apartment. You gained access to the upstairs tenant's apartment by using your position as a police officer for your advantage.

21. You then again used your position as a police officer for your advantage to gain

access to E.M.'s apartment.

22. You entered the area of E.M.'s apartment and remained inside for 5-10 minutes.

23. You exited the area of E.M.'s apartment and asked the upstairs tenant to leave the exterior door unlocked and not to tell the complainant that you were ever there. You returned to the police vehicle and PC KUNG drove you back to 54 Division. Your attendance at E.M.'s address was not for any official police business. In doing so, you committed misconduct in that you did improperly use your character and position as a member of the police force for private advantage.

## **Background**

24. The events leading to the allegations of misconduct against PC SA occurred in or around early July 2018. The misconduct allegations and relating proceedings began in 2019. Since that time several adjournments and delays in this disciplinary tribunal proceeding have occurred. Some of the delays are attributable to underlying criminal proceedings. Other delays will be addressed below.

25. PC SA pled not guilty to three allegations of misconduct outlined in Notices of Hearing (NOH) 52/2018 and 51/ 2019. The hearing commenced on April 25, 2023. Following the testimony of prosecution witnesses, PC SA entered a plea of guilty to one count of discreditable conduct and one count of improper use of character and position. The prosecution withdrew one count of having been found guilty of a criminal offence. Disposition submissions were heard in August 2023.

## **Criminal Proceedings**

26. As a result of the investigation following the events of July 4, 2018, PC SA was charged with criminal offences. On Tuesday July 30, 2019, he pled guilty to having been Unlawfully in a Dwelling contrary to the *Criminal Code of Canada*. Subsequent to his pleading guilty to the criminal offence, PC SA then withdrew his plea. The second

Court proceedings were heard before Justice T. Lipson of the Ontario Court of Justice. In the <sup>1</sup>Court decision dated January 5, 2022, Justice Lipson found PC SA Not Guilty.

## **Plea**

27. PC SA entered a plea of guilt to one count of discreditable conduct and one count of improper use of character and position. A third count of misconduct was withdrawn.

## **Representation**

28. PC SA was initially unrepresented. Following his plea of guilty, PC SA was represented by Mr. Stephen Prust, a paralegal. Counsel, Mr. Mattison Chinneck represented the Toronto Police Service (TPS) as prosecutor.

<sup>1</sup> Decision of Justice Lipson, Prosecution Exhibit Book, Tab 11

## **Positions on Penalty**

29. On behalf of PC SA, Mr. Prust suggested a forfeiture of days or hours of up to ten days or eighty hours. Mr. Chinneck on behalf of the TPS was seeking dismissal.

## **Preliminary Considerations**

30. PC SA pled to each identified count in the allegations and the statement of particulars therein. For the purpose of this written decision, I consider the NOH and particulars for all intents and purposes, to be considered an Agreed Statement of Facts (ASoF).

31. The facts of PC SA's misconduct are not in dispute. What remains to be decided is an appropriate disposition. The cases and references presented by the parties in addition to evidence heard confirm in my mind a disposition from a substantial demotion to dismissal is within the reasonable range. With respect, I do not agree with the proposition of defence counsel that ten days or eighty hours are reasonably within the appropriate

range. The TPS position is that of dismissal.

32. My task with respect to dismissal can be distilled to one primary question: Has PC SA's usefulness to the Toronto Police Service and the public he serves been annulled?

33. It is widely accepted and established in law that the goals of the police discipline process are to correct errant behaviour, deter misconduct, and reassure the community. I will strive to identify and consider relevant established discipline factors. I must consider if each factor is mitigating, aggravating, or neutral with respect to disposition, and I must weigh the significance of each factor reasonably.

## **Decision**

34. Having considered the evidence and finding it to be clear, convincing, cogent, and weighty I accepted PC SA's plea of guilty and found him guilty of the two counts of misconduct as specified in the Notices of Hearing; specifically one count of discreditable conduct and one count of improper use of character and position. I have carefully considered submissions of the parties through the lens of an experienced officer and, where appropriate, through the eyes of the reasonable person in the community, dispassionate and appraised of all facts.

Order: Constable SA shall be demoted to third-class constable.

35. Elevation from third-class constable to second-class constable, will occur automatically, only after he has held the third-class constable position for a period of one year. Elevation from second-class constable to first-class constable, will occur automatically, only after he has held the position of second-class constable for a period of one year.

This order is made under section 85(1) (c) of the Police Services Act

36. Constable SA shall attend counselling/therapy sessions with a qualified psychologist or



psychiatrist. Constable SA will provide the clinician with unedited versions of this disciplinary decision and the January 5, 2022, decision of Justice Lipson so that the clinician is fully informed to address how to approach counselling.

37. Every three months, for a period of two years, unless the medical professional specifies treatment is no longer required, Constable SA shall ensure that the Toronto Police Service receives from the qualified psychologist or psychiatrist, a written report relating to his ability to perform and continue to perform, his duties as a police officer and whether PC SA is developing in areas identified by the clinician. Should the clinician find, at any time in the two-year period, treatment is no longer required, a report outlining the findings and prognosis will be provided to the Toronto Police Service. This report shall satisfy any questions or requirements of the Toronto Police Service within the bounds of professional rules governing the clinician and Human Resources Practices within the Toronto Police Service.

38. Refusal or failure by PC SA to participate in any required therapy sessions or failure to provide the required reports in accordance with the conditions, without reasonable excuse, will entitle the Toronto Police Service to initiate disciplinary proceedings should they so decide.

39. This order is made under section 85 (7) (b) of the Police Service Act.

## **PART II: THE HEARING**

40. As mentioned above, a full hearing of evidence and allegations had commenced and was largely completed before PC SA changed his plea from not guilty to guilty. I will briefly summarize preliminary motions as well as evidence called up to the point of the guilty plea being entered.

### **Preliminary Motions**

41. PC SA filed a number of what could be considered “last minute” or late notices of

motion and requests for adjournments. One motion was in relation to an adjournment request in order for the officer to retain counsel. This adjournment request was denied for reasons stated on the record. These reasons included the timing of the request considering the amount of time and numerous previous appearances before this tribunal. The officer had been represented by numerous, indeed four or more, lawyers throughout this process and was unable to maintain agreements or relationships and the representation of the various counsel. The previous counsels are believed to have included (not in order of involvement) Mr. Selwyn Pieters, Mr. Sandy Khera, Mr. D. Butt, and Mr. Gary Clewely.

42. I ruled (paraphrased) that, despite the officer's opportunity to be represented by counsel in these proceedings, it was not in the public interest to continually adjourn the matter until the officer could secure and maintain the services of yet another lawyer.

43. Additionally, in relation to counsel, PC SA expressed concerns that the Toronto Police Association (TPA) had declined to indemnify or otherwise provide the officer legal representation any longer; an issue with which this tribunal had no authority to intervene in. A hearing officer cannot direct the TPA in this regard. PC SA proceeded unrepresented up to the point where he entered a guilty plea.

### **See Appendix "B" For further Objections/Motions**

44. The hearing commenced with the officer being self-represented. As this matter was resolved after a guilty plea was entered following witness testimony, the following is intended to provide an overview of witness testimony and is not intended to address all that a witness may have said.

### **Prosecution Witnesses**

PC K.

- PC K is a front-line uniform constable with the TPS having been so employed since

2004.

- In June and July 2018, the officer was assigned to 54 Division and was familiar with the building.
- The officer explained how access to the division was gained by employees through a card reader system with a TPS identification card.
- Through <sup>2</sup>documents produced by the prosecutor; the witness was able to explain the entry to and movements within the division by PC SA.
- PC K was able to identify, from prosecution exhibits, photographs and diagrams from within and around the division including entrances and the gun storage locker.
- PC K explained what they knew of TPS issue firearms storage policy and practices and that PC SA appeared to have been authorized to store their firearm at the division in the gun locker room.
- From exhibits provided to the witness they were able to explain where and when PC SA had entered and exited the division and stored their firearm.
- PC K was able to describe when PC SA returned to the division just before 1:00 a.m. on July 4, 2018. PC SA attended the gun room not long thereafter. PC K was on duty. PC K was familiar with PC SA as they had worked together in the past and their relationship was only work related.
- On July 4, 2018, at about 1:30 a.m. PC SA contacted PC K saying he (SA) wanted to talk. PC K met PC SA at the division and thought PC SA may have been doing a paid duty as he was in full uniform.
- PC K described the markings on the TPS cruiser he was driving. PC SA told PC K he couldn't sleep and asked for a ride to his girlfriend's house to pick up something. SA had called PC K twice to see when he (PC K) was coming. PC K felt this sounded a bit urgent.
- PC K found the hour (1:30 a.m.) to be an unusual time to be asked for a ride.
- PC SA was described as being in full uniform with gun belt and use of force options.
- PC SA said he was stressed over division amalgamations and a dating app issue. PC SA said he was not on a paid duty.
- PC K felt he was doing PC SA a favour by driving him to his girlfriend's house.
- PC SA directed PC K to a residence on Roanoke Drive. This was outside of PC K's divisional boundary.

- PC SA got out and spoke with an older gentleman with white hair at the residence. PC K did not really see a lot of what PC SA was doing at the residence as it was dark. PC SA returned about five minutes later and PC K drove him back to the division. PC K did not notice if PC SA had brought anything with him from the residence.
- PC K was later disciplined for having driven PC SA to his girlfriend's house and it was the only time they had ever been disciplined in their career.

2 Prosecution Exhibit Book, various Tabs

### **Cross Examination (By PC SA)**

- PC K agreed it was possible for officers to let others into the gun room. He agreed the document regarding how PC SA stored his firearm was outdated.
- PC K did not specifically recall seeing if PC SA had a gun in his holster. He acknowledged it was possible to wear a gun belt without a gun in the holster.
- PC K did not know when tasers were issued to officers.
- PC K did not perceive PC SA was going to cause harm or harass anyone.
- PC K did not see PC SA bring anything out of the residence and PC SA was inside for about five minutes.
- PC K was disciplined for forty hours to be worked as a result of driving PC SA to the residence.

### **Re-direct**

- PC K did not get out of his car when he picked up PC SA. It was possible PC SA's gun was on his right side, and he (PC K) didn't see it.
- PC K was able to read and interpret the card reader print out (exhibit).
- PC K agreed people about to do bad things do not normally state their intentions.

Mr. I

- Was 62 years of age and employed as a construction project manager. His work required attention to detail.
- He lived in the upper portion apartment of the Roanoke residence where EM had occupied the lower unit.
- He moved into the apartment on June 30/ July 1, 2018 (i.e., Just prior to the incident before this tribunal)
- Mr. I was awoken, startled, by a knock on his door at 1:35 a.m.
- He peeked out his window and saw what he believed to be a police car parked on the street.
- He provided a description of the layout of the residence and apartments.
- When he saw what he believed was a police officer he went to the door.
- He would not normally have just walked out but when he saw what he believed was a police car he answered the door.
- Referring to exhibits presented, he elaborated on the layout.
- The police officer at his front door advised he was there for an investigation regarding the tenant downstairs. Mr. I advised the officer he (Mr. I) was not the landlord.
- The officer went downstairs and into the apartment. He was down there for five or ten minutes.
- Mr. I was concerned and wondered what he had got himself into having just moved in.
- When the officer came back upstairs, Mr. I asked if everything was ok. The officer told him that he (PC SA) had left the door unlocked and if the tenant noticed, for Mr. I to say he forgot to lock it. Mr. I found this odd.
- The officer was sweating and said he had been running. The officer was answering questions Mr. I hadn't asked. He also found this odd.
- The officer said he wanted to go through the inside door. Mr. I thought, he is a police officer so it was okay.
- Mr. I was not sure what kind of investigation and recalled a past experience where the police had come to his house as his neighbour's son had passed away in an accident.
- Mr. I let the officer in as an act of good will and assumed if the police had something to

do, they did not have to explain it to him.

- Mr. I stayed in his apartment while the officer was downstairs.
- The officer told Mr. I not to tell anyone he was there.
- A random person would absolutely not have been let in and Mr. I would not have answered the door. He 100% would not have let the officer in if he said it was his girlfriend's place. Mr. I explained he had a daughter.
- Mr. I was not able to sleep after the officer left. The goings on had bothered him to the point where, later that day, he went to the police station.
- Mr. I reported what had occurred to the officers and when he mentioned the address and name of the tenant things took a different turn and the officers were quite concerned. The police took over from there.
- Mr. I described the officer's uniform and could not recall if he saw a gun belt.
- Mr. I did not know the tenant downstairs other than having said hello once.
- Mr. I felt deceived and manipulated by PC SA.
- It made Mr. I uncomfortable when the officer said he left the basement apartment door unlocked. Before he left for work in the morning Mr. I locked the door.
- Mr. I identified PC SA as having been the officer that attended the apartment on the evening in question.

## **Cross Examination**

- Mr. I was sure of the date but not the day of the week of the incident.
- Mr. I provided his recollection of the police uniform PC SA was wearing. He specifically recalled the shoulder flash. Mr. I did not specifically recall the officer's eye colour.
- Mr. I was comfortable that it was indeed a police officer at his door.
- Mr. I disagreed with the suggestion anything other than the term "investigation" was used by PC SA. Mr. I believed there was a police investigation involving the tenant downstairs.
- Mr. I did not know if the tenant was home when he was asked how to get into the apartment.
- Mr. I did not know if it would be legal or not for an officer to enter the apartment, but he

was asked and he wanted to comply with the police.

- Mr. I reiterated when PC SA came back upstairs, he told Mr. I he had left the door unlocked and not to tell anyone he (PC SA) was there. Mr. I was told to tell the tenant he (Mr. I) had left the door open.
- Mr. I remembered PC SA said he (SA) was sweating. Mr. I had no recollection PC SA said he was out of breath from climbing stairs.
- Mr. I strongly denied being coerced to use the word investigate.

### **Re-Direct**

- When he was awakened by the knock on the door Mr. I was 50/50 asleep and awake. He was focussed on some things while perhaps not on others like whether the officer at the door was wearing a gun.
- Mr. I may have noticed the officer's eye colour if it was the middle of the day.
- Mr. I would not have let the prosecutor into the apartment dressed the way he was.
- It was possible the door to the basement was opened when PC SA went downstairs.
- No pressure was put on Mr. I at any time to provide certain answers.
- After reviewing the statement he had provided to police Mr. I indicated he would not change anything.

### **Witness: CD**

- CD had been friends with EM since grade school.
- In June 2018, CD and EM had made dinner plans. EM had called CD at 9:00 p.m. and 11:00 p.m. EM was distraught, scared, and nervous.
- EM said that PC SA had been at her apartment and was banging on the door asking to come in. EM felt unsafe. This went on for forty-five minutes.
- CD told EM to call the police. EM asked CD to just stay on the phone with her.
- PC SA continued to try to get in and was banging on the door. He was demanding he be let in.
- EM was scared and crying, and her voice was trembling.

- On a later date, June 28, CD and EM went out for dinner. They were dressed up. PC SA had been sent a photo of what EM was wearing and he questioned who she was dressed up for.
- The prosecutor showed CD several <sup>3</sup>text messages between EM and PC SA. CD described the texts, including those where PC SA was questioning the appearance and attire of EM, as not very nice, manipulative, doubting, controlling, gas lighting, and generally “icky”.

## **Cross Examination**

- CD had never met PC SA.
- On the evening of the incident, when there was banging on the door, CD only heard a male voice.
- CD considered EM to be one of her best friends.
- CD explained she had never met PC SA due to scheduling issues, she and EM had busy schedules.
- CD indicated EM was only in a relationship with PC SA.
- CD indicated she still felt icky and reiterated she was not aware of any other people EM had been seeing as she only ever spoke of PC SA.

45. The cross examination by PC SA turned to areas related to his suspicion EM was seeing or communicating with other men. He was encouraged to move past this area as it was not relevant to the allegations.

- CD relayed EM had told her about body image insecurities she had resulting from things PC SA had said. PC SA harmed EM verbally not physically.
- When asked how CD knew it was him at the door, she explained EM referred to the man at the door as C (first name of PC SA) and he was the only C she and EM knew.
- The banging on the door went on for a half hour or less.
- CD heard the male voice and the banging on the door through her phone.
- CD did not call the police because EM asked her not to although CD was concerned.



## **Re- Direct**

- The complainant (EM) has a high-pitched feminine voice.
- EM did not respond to the knocking at the door.
- Verbal abuse by PC SA related to body image comments and name calling.

46. Upon completion of CD's testimony PC SA indicated his desire to plead guilty to the counts in Notice of Hearing 52/2018 saying words to the effect "he did it" and began to elucidate. Earlier in the proceedings he had voiced concerns on the record regarding Notice of Hearing 51/2019 alleging misconduct for having been found guilty of a criminal offence. He was ultimately found not guilty of a criminal offence as outlined above.

47. I requested a recess to allow PC SA and Mr. Mattison to discuss between themselves, the proposed plea - off the record. Upon return PC SA pled guilty to the counts in Notice of Hearing 52/2018 and the prosecution withdrew Notice of Hearing 21/2019.

48. The matter was adjourned for the parties to prepare their positions and submissions regarding disposition. Submissions were heard on August 10 and 11, 2023. Mr. Prust represented PC SA on these dates.

## **Disposition Submissions.**

49. The following is intended to be an overview of submissions and testimony and is not intended to encapsulate all that was put forth. Written submissions of the parties will be addressed separately.

## **Prosecution Witness EM.**

- EM is employed by the Toronto Police Service.
- EM has had work related struggles mentally/emotionally.
- On June 29, 2018, EM returned home from work and PC SA was at her residence.
- EM had ended the relationship as it was unhealthy in an emotional sense.
- PC SA had been telling EM what to wear and they had been arguing about other matters in their relationship.
- On June 29 they had been sending messages back and forth.
- EM had ended the relationship prior to when she arrived home to find PC SA there.
- Related other instances where PC SA had been at her home uninvited.
- Reviewed <sup>4</sup>text messages from PC SA in which EM believed PC SA was being controlling, manipulative, jealous, and degrading.
- EM knew she had to break up with PC SA as the relationship had become toxic.
- EM believed PC SA had insecurities which may have explained his behaviour toward her.

<sup>4</sup> What's App text messages, Prosecution Exhibit Book, Tab 4

- EM offered to get PC SA his belongings that may have been in her apartment or leave them outside for him to retrieve.
- There was a time when PC SA was at EM's residence uninvited, and he was banging on the door and the windows. EM told him she was going to call the police or 911 but she did not want that for him. EM was shocked and scared.
- EM had undergone therapy for mental health/emotional issues.
- EM had made it clear to PC SA prior to July 4<sup>th</sup> that the relationship was over, and she did not want PC SA to contact her.
- Related an incident where PC SA had called EM at work and used a fictitious name. EM had recognized his voice.
- Was referred to comments made by PI (a friend of PC SA) in an <sup>5</sup>affidavit. EM denied the allegations of behaviour attributed by PI.
- PC SA leaving her door unlocked (on the evening in question) was the scariest part for her as she did not know what he was planning to do.
- EM stated she would have to find another job if PC SA remains a police officer and she

would lose trust in the service (TPS).

- In reference to a statement EM gave to police investigators, she explained when she said PC SA was not violent, she meant he never hit her. She was trying to protect PC SA but was fearful of him. When she told investigators she was not afraid it was not accurate.
- EM reiterated her feelings of why PC SA should not continue as a police officer including public safety concerns.

### **Cross Examination- Mr. Prust**

- EM and PC SA were in a relationship from January 2016 until June 29, 2018. Agreed it was a tumultuous, on again-off again relationship.
- PC SA spent a lot of time at EM's residence and had been given a key in 2017.
- PC SA kept some personal items at EM's residence.
- Agreed the statement provided (by EM) to the TPS was not completely accurate. EM explained she was scared and confused.
- In addition to issues arising from their relationship, EM sought counselling for unrelated reasons.
- PC SA never specifically threatened EM with violence.
- EM again denied the events described by PI in an affidavit.

### **Re- direct**

- EM was shown <sup>6</sup>text messages and agreed it was June 4<sup>th</sup>, 2018, when PC SA returned the key to her apartment.

<sup>5</sup> Defense Materials, Affidavit of P I

<sup>6</sup> Prosecution Exhibits, Tab 12

## Prosecution Oral Submissions- Mr. Chinneck.

- The actions of PC SA were not a simple mistake. His actions resulted from elaborate planning.
- Chose to go to the police division, put on his uniform, duty belt, with pepper spray and handcuffs, chose to unlock his firearm and put it in his duty belt, lied to a fellow officer, lied to Mr. I then tried to subvert Mr. I into part of his scheme.
- It was the position of the prosecution, on behalf of the Toronto Police Service, that dismissal was the appropriate penalty.
- The prosecutor summarized their case submissions regarding dismissal. (See below for analysis).
- The purpose of dismissal is not to punish, but to rid the employer of an officer who is no longer fit to serve the community.
- Highlighted the test for dismissal outlined in case submissions.
- Suggested the most applicable considerations in the matter of PC SA were public interest, the seriousness of the misconduct, damage to the reputation of the Toronto Police Service, and the need for deterrence.
- Corrective discipline should be sought but, in the matter of PC SA this principle does not apply. The officer's behaviour was reprehensible, he misappropriated his police equipment and use of force options with the intention to mislead. He caused others to unwillingly be complicit in his misconduct, and misled the public in what was equivalent to and act of intimate partner violence (IPV).
- IPV can be carried out at any time during a relationship and after it has ended and includes emotional abuse.
- PC SA exploited his position of trust as a police officer. Rehabilitation should be a minor consideration.
- The burden of proving mitigation for medical reasons is on the officer.
- Public confidence and public trust were seriously harmed by the officer's actions.
- The officer's corrupt behaviour undermined public confidence.
- PC SA's behaviour breached the oath's that he swore to.
- The conduct outlined in the ASoF is at the highest end of the spectrum regarding

seriousness.

- Public interest is a massively aggravating factor.
- The officer's actions were not isolated and constituted a series of harassing behaviour.
- The officer placed his own desires above his oath of office.
- The seriousness of the misconduct indicates anything short of dismissal would be unreasonable.
- The officer's guilty plea came after the hearing and should not be considered mitigating.
- The disposition should be consistent with other similar cases.
- PC SA remained fixated on EM.
- A clear message needs to be sent to other officers.
- The officer's actions were calculated.
- The fact that the officer sought help when it was too late.
- The officers' actions have and will continue to shed a bad light on the TPS.
- The fact that this matter involved IPV is, alone, aggravating.
- PC SA's actions have demonstrated he is no longer fit to remain a member of the TPS.

### **Defence Oral Submissions- Mr. Prust**

- There is no dispute this was serious misconduct.
- PC SA and EM cared for each other during their relationship, but unkind things were said.
- Raised the fact that EM had medical diagnoses regarding her mental health. The mental health challenges suffered by EM affected their relationship.
- Referred to the affidavit of PI and suggested physical abuse had occurred by EM against PC SA.
- Suggested EM's credibility was in question as her statement to the police differed from her testimony. She told police she had done things to hurt him.
- In communications between PC SA and EM near the end of June 2018, EM indicated she would speak to PC SA tomorrow. PC SA assumed EM wanted to work things out.
- Clear from evidence including that of PC K, PC SA was stressed.

- When PC SA entered the laundry area at EM's residence, he retrieved personal documents and left.
- He was told by TPS investigators not to have contact with EM, and he has not, even to present.
- No violence or threat to EM's safety. He worked for a month after the incident before being suspended.
- EM told police PC SA was a good man and did not want to see him get in trouble.
- EM did not appear traumatized in her police interview.
- This was a one-time incident although serious. PC SA was only there one time and for five to ten minutes.
- This has not undermined the reputation of the service.
- The press were not involved and there were no criminal convictions.
- Discussed <sup>7</sup>*Hussein* case of drinking and driving and submitted it was more serious than the matter of PC SA.
- Dismissal is too high of a penalty.
- PC SA has shown remorse and acceptance and sought the help of a psychologist. The psychologist declared PC SA would not repeat the behaviour.
- PC SA gained insight into and understanding to control his emotions.
- Submitted character letters on behalf of PC SA.
- He had no intention to cause harm.
- Reviewed the officer's employment history. (see below)
- PC SA's mother relies on him for food and shelter.

<sup>7</sup> Defense BOA, Toronto Police and Supt. R. Hussein

- This matter has dragged on for over five years and has had a detrimental effect on the officer. He has felt isolated and outcast.
- The officer has shown exceptional compassion when dealing with the community.
- Suggested the TPS, in citing *Hussein*, goes easy on senior officers but constables get "the hammer brought down on them".
- Suggested ten days pay or eighty hours would be appropriate.

## Reply- Mr. Chinneck

- Raised concerns that defense counsel put forth information that was not before the tribunal.
- Submitted that *Hussein* was not comparable to the matter of PC SA. IPV was viewed as more serious than drinking and driving.
- Disagreed with the suggestion PC SA put his gun belt on in preparation for dayshift. It was put on eight hours before the start of his shift.
- The letter from the psychologist was dated. It was received in the context of a pending criminal trial not due to remorse.
- PC K never received an apology.
- The criminal trial resulted in the majority of delays.
- Defence counsel had raised the issue of PC SA having been self-represented. The prosecution played April 11<sup>th</sup> recordings of the proceedings during which Mr. Butt removed himself from the record and was no longer representing PC SA. PC SA was told by the hearing officer he (PC SA) had the opportunity to retain another lawyer but, that the matter would proceed on the scheduled May dates. PC SA agreed or acknowledged the hearing officer's position. The officer had ample time to arrange for another counsel to represent him but chose not to.
- The officer did not have a supervisor testify on his behalf as to his value to the service.
- The assertion that the officer was stressed, tired, and hungry at the time of the misconduct supports he is not fit to serve.

## PART III: ANALYSIS AND FINDINGS

### Written Submissions

50. I have reviewed all written submissions of the parties. The following is an overview of submissions I found helpful and applicable as well as addressing why I may not have found certain submissions helpful. It is not intended to address all submissions.

## Prosecution

51. Mr. Chinneck reviewed the established and accepted principles governing the determination of a disposition in Police Disciplinary matters:

52.<sup>8</sup>The first principle is that the disposition should fully accord with the purposes or the police discipline process, which are as follows: the employer's interest in maintaining discipline in the police workplace; the rights of a respondent police officer suspected of misconduct being treated fairly; the public interest, ensuring a high standard conduct in the constabulary, and public confidence in the constabulary; and when members of the public are involved (whether or not they register a formal complaint) the process should ensure that the interests of those individuals are protected.

53. The second principle which flows from the move towards a more remedial philosophy, as noted above - dictates that a corrective disposition should take precedence over a punitive disposition, where possible.

54. The third principle is the presumption of the least onerous disposition, which the presumption would be displaced if the public interest or other specified consideration should prevail.

55. The fourth principle is proportionality requiring that the tribunal consider all applicable mitigating and aggravating considerations, and then weigh those applicable factors appropriately. A detailed discussion of proportionality follows.

56. The fifth principle is that the law holds police officers' conduct to a higher standard compared to other employees. Court and tribunal decisions have consistently embraced the concept that police officers should be held to a higher standard of behaviour compared to other employees or members of the public. The Ontario Police Commission has stated that the "proper approach to take is to estimate the penalty that might be paid by a civilian with no previous misconduct in his or her record and then to



add to that an increase in the penalty because of the fact that this person is a police officer...

<sup>8</sup> Prosecution Book Of records, Tab 1, Ceyskens

57. I am guided by the commonly held principles above and will further apply the relevant disposition factors identified in scholarly texts and jurisprudence. I will address whether the factor is mitigating, aggravating or neutral and will assign weight accordingly.

## **Discipline History**

58. Tab 6 in the prosecution Book of Records contains PC SA's record of discipline at the unit level. These are considered less serious misconduct. Twice in 2014 and once in 2016 the officer was deducted hours, at the divisional level, for being late for work. In 2017 he was assessed hours for not answering his radio, not following transport policy, and was found eating in a restaurant without making proper notifications.

59. I will further address this below under "employment history."

## **Trumbley et al. and Fleming et al, 1986 CanLII 146 (ON CA)**

60. The Court of Appeal wrote:

*61. A Police Act discipline proceeding is not a criminal or penal proceeding within the purview of s. 11. The most serious consequence that can befall a police officer in such proceedings is the loss of his or her position and, while a serious consequence, it is a civil consequence and not punishment of a criminal nature. A police discipline matter is a purely administrative internal process. Its most serious possible consequence makes it analogous to a discipline matter in ordinary employer-employee relationships, even though the procedure governing it is more formal. The basic object of dismissing an employee is not to punish him or her in the usual sense of this word (to deter or 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. Police disciplinary proceedings are much closer to professional disciplinary proceedings than to ordinary prosecutions and, the case-law with respect to professional disciplinary proceedings is now uniformly to the effect that they are not subject to s. 11.*

62. Analysis: While a dated decision, I believe the sentiments of the Court hold true today. I have/will endeavour to consider whether PC SA remains fit to be employed by the Toronto Police Service.

### **Venables v. York Regional Police Service, 2008 ONCPC 8**

63. Analysis: The underlying facts related to misconduct in *Venables*, are, in my view, more serious than those in the matter before this tribunal. *Venables*, amongst other behaviours, made derogatory remarks to an Eastern European citizen and, without justification or provocation, punched the citizen in the face. The citizen had been sitting, handcuffed, in the back of a police cruiser at the time. The officer pled guilty to the criminal offence of assault. He was ultimately dismissed as a result of his misconduct. Prior to his dismissal the officer had an unblemished employment record.

64. In their decision on appeal, the ONCPC wrote:

*65. Notwithstanding mitigating factors in his favour, to our mind, it was certainly open to the Hearing Officer to conclude that Constable Venables' actions were so egregious that they raised insurmountable doubts about his future suitability as a police officer.*

66. I am required to consider whether PC SA's actions were so serious that they are insurmountable with respect to his future as a police officer.

67. *Lévis (City) v. Fraternité des policiers de Lévis Inc.*, [2007] 1 S.C.R. 591, 2007 SCC 14

68. In this Supreme Court of Canada decision, the officer's behaviour was distinctly different from the matter of PC SA in that it involved considerable violence, firearms, and a number of subsequent criminal convictions. Additionally, it would seem the law in Quebec at the time seemed to include a reverse onus that required an officer to automatically be dismissed following criminal convictions unless the officer can establish why they should not be dismissed. The appeal was, at least in part, focussed on this aspect of Quebec law.

69. The Prosecutor highlighted the following excerpt from paragraph 24:

*70. Furthermore, it is a decision that requires the balancing of competing interests of the police officer facing dismissal, the municipality, both as an employer and as a public body responsible for the security of the public, and of the community as a whole in maintaining respect and confidence in its police officers.*

71. I agree that these principles apply in Ontario police disciplinary matters, however, the entire paragraph seemed to have been focused on the application of the aforementioned Quebec law at the time of the decision. I note that, ultimately, the Supreme Court of Canada reinstated the decision to dismiss the officer.

### **Gulick v. Ottawa (City) Police Service**

72. When police responded, a series of events occurred which resulted in several criminal charges being brought against Constable Gulick. As well, a number of disciplinary charges were laid. Disciplinary proceedings were suspended pending the outcome of the criminal proceedings. Constable Gulick pled guilty and was convicted of four criminal offences. He received a suspended sentence with two years probation and community service. His behaviour included assault against other officers as well as his partner. I found *Gulick* more serious than the matter of PC SA.

### **Cst. Rob Furlong #2524 and the Law Enforcement Review Board, 2013 ABCA 121**

73. The underlying misconduct in this case is not analogous to the matter before this tribunal. The prosecutor highlighted the following passage:

74. 28] *Some discussion was directed at the normal common law test on whether misconduct by an employee justifies dismissal. In general terms the test is that the conduct of the employee must be so egregious that it amounts to a breakdown in the continuing relationship between the employer and the employee. Often dismissal is not seen as appropriate for a single incident, and is only justified after progressive discipline. Those tests, at least as they are developed in the case law on wrongful dismissal, are not helpful in this context. As has been observed many times, service on a police force is not an ordinary type of employment. Apart altogether from the extraordinary powers that police officers are given, their continuing service is governed by a public disciplinary regime, set out in the Police Act, RSA 2000, c. P-17 and the Police Service Regulation. Police officers are, in many respects, subject to different standards of conduct, and a higher level of workplace discipline than ordinary employees. This is not a situation where the Edmonton Police Service was terminating a contractual relationship with an employee. The respondent was being subjected to public discipline for misconduct, which engages the public interest and public law, not just a private contractual relationship...*

75. Analysis: The public interest, public trust, and confidence are significant issues to be addressed when considering whether an officer can continue their employment.

76. The Court, further in the decision, quoted the following :

77. *In some instances, the operation of the police service, public safety and public confidence may not be compromised by the conduct in question, and the presiding officer may choose to impose a punishment which allows the offending officer to continue his duties with the service. In other circumstances, the presiding officer's experience in maintaining discipline within the service and fostering public safety and confidence, his experience in the effectiveness of certain punishments in promoting discipline and correcting behaviour, and his knowledge of the requirements of safe police practices, may lead him to conclude that the conduct in question requires the*

*dismissal of the offending officer.*

78. In the matter of PC SA, the question, in my view, is not so much whether harm to public confidence and trust occurred, because they unquestionably have. The question, in my view and amongst other considerations, is; has public confidence and the reputation of the Toronto Police Service been damaged irreparably and would this be exacerbated by any disposition other than dismissal.

### **Correa v. Toronto Police Service, 2009 ONCPC 1**

79. The prosecutor highlighted the following passage:

*80. He considered the factor of the officer's recognition of the seriousness of the misconduct and/or remorse and noted that the officer's lack of recognition or any remorse was exhibited by the fact that Constable Correa still has not been interviewed in relation to the newspaper article and consequently remains defiant of the five lawful orders. He concluded that the "blatant disregard and contempt" of Constable Correa was a challenge to the good order of the Service and "grossly offends the public interest" and that the officer's conduct "portrays a disturbing impression of an officer who is readily amenable to defying management's lawful orders". These are strong statements, but within his authority to conclude based upon the evidence and the findings made.*

81. Analysis: The underlying misconduct in *Correia* is not at all comparable to the matter before this tribunal. I acknowledge recognition of the seriousness of the misconduct and remorse are important considerations addressed elsewhere in this decision.

### **Shorey and the Belleville Police Service ,2017 CanLII 53072 (ON CPC)**

82. *Shorey* is a case involving Intimate Partner Violence (IPV) where the officer was convicted of criminal harassment and breach of trust and subsequently found guilty of misconduct under the *Police Services Act*. The officer's dismissal was upheld on

appeal.

83. The behaviours outlined in *Sorey* are generally analogous, though more profuse, than those of PC SA. Additionally, in *Shorey*, continuing risk factors and threats to the victim were identified in the criminal court process. While not at all minimizing how PC SA has made EM feel by his misconduct, there was no evidence or suggestion that any continued threat existed.

84. *There is growing understanding that harassment is a serious crime, with significant and sometimes devastating impacts on victims. Increased availability of information online has heightened concern with privacy rights and decreased public tolerance for database misuse, cyber-stalking and other privacy breaches. The Hearing Officer described the appellant's offences as egregious. He concluded that the public can and will not tolerate such conduct by a police officer. We agree.*

85. I will address the seriousness of the misconduct and egregious nature of PC SA's behaviour elsewhere.

86. The prosecutor further drew my attention to the following excerpts:

87. *There is no doubt that some police officers have been treated less harshly in the disciplinary process. However, while the penalty of dismissal was at the highest end of the range of penalties, it was available to the Hearing Officer on the facts of this case and his decision provides a reasonable basis for the penalty imposed. The penalty of dismissal is not disproportionate to the offence and falls within the range of possible, acceptable and defensible outcomes that were open to the Hearing Officer on the evidence. We see no basis to intervene.*

88. *The Hearing Officer's reasons are not perfect. However, the reasonableness standard does not require the reasons to be perfect, nor does it require the Commission to agree with every element of the reasoning or the result. Had we been in the Hearing Officer's shoes, we may well have viewed the appellant's prospects for rehabilitation more*

*positively, or assessed and weighed other penalty factors differently than the Hearing Officer. That said, the findings made by the Hearing Officer were available to him and fall within the reasonableness standard.*

89. I will consider and address available dispositions in further detail. The prosecutor, on behalf of the TPS, has submitted the only reasonable disposition is dismissal. I find that dismissal is at the high end of dispositions available to me. With that said, I do not find the position of the TPS unreasonable or unfair in consideration of all the circumstances.

### **Hassan v. Peel Regional Police Service, 2006 ONCPC 7**

90. Analysis: *Hassan* involved an officer who was smuggling illegal drugs into Canada, was untruthful with authorities, and attempted to use his position to gain advantage. He was found guilty of possession of a controlled substance in Court. Again, I find the facts are not analogous to the matter of PC SA.

91. The prosecutor brought the following excerpt to my attention:

*92. The Hearing Officer found that “Constable Hassan’s misconduct, viewed in its totality, is made more serious in that it reveals serious ethical impropriety on more than one level, and is further aggravated by the fact that it resulted from a conscious and deliberate series of actions. It is not misconduct that can be characterized as momentary in nature ...” We would certainly agree.*

93. I agree with the prosecution that PC SA’s actions could not be characterized as momentary and did constitute a deliberate and planned series of actions. The underlying motives and purpose between he and *Hassan* are distinct.

### **Purbrick v. Ontario Provincial Police, 2011 ONCPC 7**

94. Analysis: *Purbrick* was stealing from his employer, the OPP, and pled guilty to four

related criminal charges. Upon being found guilty of misconduct he was ordered dismissed. On appeal, the dismissal was overturned to a lengthy period of demotion starting from first- class constable to fourth-class constable. The prosecutor highlighted the following:

95.81. *Pleading guilty is one of the most indisputable forms of admission of culpability, wrongdoing and responsibility. The Appellant pled guilty in both his criminal trial and in the disciplinary proceeding. The Hearing Officer failed to acknowledge the mitigating nature of this course of action. Indeed, the Hearing Officer states:*

*“He needed to step up to the plate and admit his indiscretions and pave the way as a start for rehabilitation.”*

96. In stating the above, the ONCPC found the hearing officer’s finding unreasonable.

97. Analysis: I acknowledge that the Purbrick case is dated. I am equally aware that the principles outlined therein remain valid and relevant. I note, despite being found guilty of four criminal offences for stealing from his employer, the ONCPC ruled dismissal was not an appropriate outcome and replaced it with the substantial demotion above.

98. PC SA did eventually plead guilty. The evidence called to the point where the guilty plea was entered was quite strongly in favour of the prosecution. Nonetheless, on his own accord, PC SA did plead guilty. He also initially plead guilty to a criminal charge for which he was ultimately found not guilty.

### **Carson and Pembroke Police Service, 2001 CanLII 56731 (ONCPC)**

99. Analysis: Officer Carson was involved in an incident of IPV following which he was charged criminally for threatening. Carson pled guilty in court. The officer’s misconduct hearing resulted in his demotion to fourth-class constable. His return to first-class under the PSA (as stipulated) would mean he would have to progress numerically back up to first-class constable. This decision was reduced by ONCPC to a one-year



demotion. I note the mitigating and aggravating factors outlined in the criminal and disciplinary matters may differ from those in the matter presently being considered.

100. The prosecutor highlighted the following:

101. 35. *We have considered the authorities referred to by both counsel for the Appellant and the Respondent. We have no doubt that a guilty plea should be recognized as a mitigating factor and taken into account along with other factors in determining an appropriate penalty. This was perhaps best expressed by the Ontario Court of Appeal in R. v. Santos at page 1 where the court held: "The Appellant pleaded guilty on all counts but this significant mitigating factor was dismissed by the trial judge as being inevitable because of the overwhelming evidence against him. With respect, this is an error on his part. We do not subscribe to the proposition that there should be less weight to a plea of guilty from a person who has been inescapably caught."*

102. Analysis: The evidence presented by the prosecutor up to the point where PC SA pled guilty was weighty and convincing. This is not to say the officer was not able to bring forth a defence in full answer to the allegations, but his defence would have been significantly challenged to overcome the strength of the case against him. I am instructed by the above passage in that the timing of PC SA's change of plea should not, in isolation, erase any weight assigned. I was also of the impression, without drawing a conclusion or inference, PC SA seemed more concerned about the outstanding count of having been found guilty of a criminal offence which was withdrawn concurrent to his guilty plea.

### **Constable Frederick Schofield and the Metropolitan Toronto Police Force, 1984 CanLII 3101 (ON CPC)**

103. Analysis: This case is from 1984. The officer had been convicted of criminal assault following his interaction with a shoplifter. The officer assaulted the shoplifter by jabbing him with his baton, apparently to induce an inculpatory statement. The officer also used the shoplifter's ethnicity as a less than subtle threat. On appeal the officer was assessed a demotion, reduced on appeal to twelve days pay.

104. Having been a police officer in the 1980's, I am comfortable in saying policing practices, accountability and community expectations of the police have significantly evolved since that time. I know through training and experience that it is highly probable similar behaviour committed more recently would, properly and appropriately, result in a significantly more severe outcome.

105. The prosecutor highlighted the following:

106. Each case must be judged on the facts peculiar to it. Consistency in the discipline process is often the earmark of fairness. The penalty must be consistent with the facts, and consistent with similar cases that have been dealt with on earlier occasions.

107. I am guided by this principle which remains applicable in 2023.

**Provincial Constable D.E. Williams v Ontario Provincial Police, 1995 CanLII 15417 (ON CPC)**

108. Analysis: This case addressed suspension, dismissal, and withholding remuneration. I address it here only to suggest it may have been confused with another case involving an officer named *Williams*. The citation for what is believed to have been the intended submission is *Williams v OPP 1995, 2 O.P.R. 1047 (O.C.C.P.S)*.

109. I know that *Williams* factors, particularly in cases of dismissal are identified as:

- The nature and seriousness of the misconduct;
- The ability to reform and rehabilitate the officer; and
- The damage to the reputation of the police force that would occur should the officer remain on the force.

**Constable Imants Karklins and The Toronto Police Service, 2007 CanLII 87211 (ON CPC)**

110. Analysis: The underlying facts in *Karklins* are not analogous to the matter at hand. The prosecutor highlighted:

111. 132. 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 singular acts of misconduct that strike to the heart of the employment relationship and effectively exhaust an individual's potential usefulness to perform the key duties of a police officer. Such singular acts may raise obvious concerns with respect to character.

112. Analysis: I am aware that a single act of misconduct can result in dismissal. I will consider PC SA's misconduct and provide further analysis elsewhere as to the duration of the misconduct and weigh it accordingly.

#### **Guenette and Ottawa-Carleton Regional Police Service, 1998 CanLII 27136 (ON CPC)**

113. The following passage was highlighted by the prosecutor:

114. 40. *Mr. Ray further submitted that the "usefulness test" to be used in determining whether dismissal is the appropriate penalty consists of three factors. They include:*

115. Analysis: The excerpt refers to the "usefulness test" which are also referred to as the "Williams factors" as discussed above.

#### **Constable Ryan Deroche and the RCMP (Royal Canadian Mounted Police)**

116. Analysis: The prosecutor cited this matter in oral submissions. The written decision submitted did not contain specific highlights. I made the following notations and observations:

117. *Deroche* was an officer who engaged in IPV. Over a period of several months he

assaulted and threatened his partner. The officer was charged criminally, and the charges were resolved by a peace bond.

118. Analysis: Again, I am in no way minimizing the behaviour of PC SA. *Deroche's* misconduct involved physical assaults and threats that took place over several months. The assaults resulted in injuries to the victim. *Deroche's* behaviours also included an instance where he invited one of the children to observe an argument between he and the victim, during which the officer threatened suicide by using a pistol. Other acts of IPV occurred in front of children as well. I find the misconduct in *Deroche* to have been more prolific and even more serious than the conduct of PC SA. *Deroche* was dismissed.

119. *Deroche*, being a Federal case (RCMP) is guided by different legislation than officers in Ontario. With that said, although federally sourced from the Department of Justice, I find the following excerpts instructive and applicable:

120. *[90] While the Conduct Measures Guide provides a starting point for the analysis of the appropriate conduct measures, it is somewhat dated. The term "domestic violence" in and of itself is not reflective of the broad understanding of the scope of abusive behaviours that may arise in family or intimate partner relationships. The courts have, in recent years, expressly recognized the full scope of abusive behaviours and their impact on victims as well as other family members, and on children in particular.*

121. *Violence in Relationships means the use of abusive behaviour by an individual in a relationship to control and/or harm the other individual in the relationship, including, but not limited to, different forms of physical neglect and/or emotional abuse. For forms and types of violence, refer to the Department of Justice website.*

122. *Family violence is when someone uses abusive behaviour to control and/or harm a member of their family, or someone with whom they have an intimate relationship.*

123. *Family violence includes many different forms of physical and emotional abuse, as well as neglect carried out by family members or intimate partners. It may include a single act*

*of violence, or a number of acts that form a pattern of abuse. Family violence can have serious and sometimes fatal consequences for victims and for those who see or hear the violence.*

*124. Family violence is not just physical violence. A person can be the victim of one or more forms of violence or abuse including:*

- *physical abuse*
- *sexual abuse*
- *emotional abuse*
- *financial abuse*
- *neglect*

*125. Emotional abuse happens when a person uses words or actions to control, frighten or isolate someone or take away their self-respect.*

*126. Intimate partner violence or abuse that happens:*

- *within a marriage, common-law or dating relationship*
- *in an opposite-sex or same sex relationship*
- *at any time during a relationship, including while it is breaking down, or after it has ended.*

*127. Not all intimate partner violence is the same. In some cases, one person may want power and complete control over their partner and will use different ways (including physical violence) to get it.*

*128. This type of abuse almost always gets worse over time. It often leads to serious physical violence and can cause you to have lasting health problems, including post-traumatic stress disorder (PTSD).*

129. The excerpted portion of the decision were sourced from the Federal Department of Justice and are applicable in Ontario. The breadth and scope of the harm caused by any form of intimate partner violence cannot be overstated. Our society continues to grapple with challenges associated with IPV. Some communities in Ontario, Sault Ste. Marie for one, have referred to IPV as an epidemic. I consider IPV to be a scourge on our communities and everyone in society, most especially the police, should work to repel any and all forms of IPV. By his behaviour depicted in the NOH and testimony, PC SA certainly committed emotional abuse as an outcome of his attendance at the victim's residence. EM remains shaken as does Mr. I remain concerned by the incident.

130. There is no doubt that the behaviours and misconduct of PC SA clearly constitute a form of IPV and there is equally no doubt that EM was victimized by PC SA.

131. I will address this further below under the Nature and Seriousness of Misconduct.

### **Written Submissions by Defence Counsel- Mr. Prust**

132. Mr. Prust submitted a document entitled <sup>9</sup>*Penalty Submissions for the Defence* along with documents in support of the officer's position on disposition. The following is an overview of submissions but may not address each submission individually.

<sup>9</sup> Defense Exhibits, Penalty Submissions

133. Some of the assertions brought forward by defense counsel were not specifically addressed. Some issues raised seemed to take the form of matters being considered for appeal. Some of the submissions appeared to be new evidence not previously brought before this tribunal. The prosecutor objected to the impropriety of some of the submissions.

134. I appreciate Mr. Prust joined these proceedings "late in the game" and was challenged to prepare submissions in that vane. I found no mischief or attempted impropriety. In my following overview I will attempt to not address new evidence or information that was not previously put forth in these proceedings.

135. The following are not in order of significance or importance per se.

### **TPS v. Constable Daniel Smith**

136. This is a matter where an officer inappropriately contacted a citizen who had been a witness and asked them for a date via text message.

137. Analysis: *Smith* is not sufficiently analogous to offer assistance.

### **Gordenier v. The Ontario Provincial Police, 2022 ONCPC 06**

138. Analysis: This case is not sufficiently analogous to the matter of PC SA. *Gordenier* was a case of detachment level deceit of the officer's peers when he interfered with the issuance of a traffic ticket to his friend.

### **Boutin v. The Ontario Provincial Police, 2022 ONCPC 10**

139. Analysis: This matter is not analogous to the matter of PC SA. *Boutin* involved an officer failing to remove property from a residence he had sold as well as discreditable behaviour toward members of the public.

### **Toronto Police and Supt. Hussein**

140. Analysis: The facts and nature of misconduct in *Hussein* (impaired driving) are markedly distinct from those involving PC SA. There was no evidence to support the suggestion that TPS goes easier on senior officers than it does on constables with respect to discipline. A review of the decision identifies the range of disposition in six similar cases for officers, regardless of rank, was a nine to twenty month demotion. The cases (*Hussein* and PC SA's) are so factually divergent that I do not find this submission and corresponding media coverage helpful.

## **Letter from MS (PC SA's mother)**

141. I will not reproduce the letter in entirety. The following excerpts (anonymized) offer some insight and context.

- His dedication to contributing to society has been evident since his teenage years when he began working as a security guard at Fairview Mall. Subsequently, he enrolled in the Toronto Police Auxiliary Program, selflessly volunteering his time to serve the community while pursuing a full-time education in Police Foundations at Centennial College. His commitment and ambition led to his employment as a Police Constable when he turned twenty.
- (He)experienced a significant shift in his focus and motivation due to his entanglement in a relationship that did not reciprocate his feelings. The distraction resulted from his lack of awareness of investing his time and energy only in relationships where he is appreciated and celebrated.
- He acknowledges his mistake and is fully willing to accept responsibility for his actions. (His) guilty plea at the Toronto Police Tribunal, as well as at the Criminal Court, despite its rejection and subsequent "not guilty" verdict, demonstrates his sincere willingness to be accountable for his decision to visit the residence in question while off duty and in uniform.
- (He) is genuinely remorseful for his actions and possesses the potential to reintegrate as a valuable member of society. The impact of this situation on both PC SA and myself has
- been unbearable, considering that he takes care of me financially. I kindly request your consideration for leniency in your sentencing decision, affording Corey the opportunity to move forward, learn from this incident, and make positive changes in his life.

## **Letter from VC Excerpts**

- Throughout our acquaintance, (PC SA) has consistently displayed qualities of kindness, love, hard work, & community involvement. I have personally experienced his



caring and compassionate nature, which extends not only to myself but also to those around him. Despite not being my own child, I hold (PC SA) in the highest regard, treating him as if he were a member of my own family.

- While I understand that (PC SA) made a mistake by choosing to visit his ex-girlfriend's residence off duty and in his uniform, I respectfully ask for leniency in his sentencing. (PC SA) has shown deep remorse for his actions, and I believe that he is genuinely committed to learning from his mistake and making amends.

## **Letter From Police Constable TS**

142. Analysis: PC TS spoke highly of PC SA's work ethic particularly in the context of being a scenes of crime officer (SOCO). PC TS did show that he was aware of the misconduct allegations against PC SA and referred to the allegations as a "mistake." I consider the use of this word to be inaccurate and would not consider the behaviours associated with IPV outlined in the NOH being described as mistakes. With that said the overall sentiments are favourable.

143. Newspaper Article: 26 tales of courage and compassion amid the chaos of the Toronto van rampage.

144. The article and accompanying image provide insight into PC SA's character. In one of the darkest days in Toronto's history PC SA appeared to show true kindness, compassion, and support to a distraught citizen.

145. Further commentary will be found elsewhere.

## **Affidavit of PI**

146. Analysis: The purpose of my deliberations is to assess an appropriate disposition for the misconduct to which PC SA has pled guilty. The affidavit of PI was sworn in July 2023, and the events depicted therein between PC SA and EM were described as having occurred in 2018. The timing of this affidavit gives me pause as to why this information was only recently brought forward.

147. It has been established in testimony before this tribunal, the relationship between PC SA and EM was tumultuous. I accepted this general notion depicted in the affidavit. EM was asked about other issues alleged in the affidavit and denied them plainly. PI did not provide testimony at this hearing and was obviously not cross examined. The other issues identified are given no weight with respect to disposition.

### **Letter from Doctor Klarreich**

148. The letter from Dr. Klarreich is somewhat helpful in that it outlines PC SA's acknowledgement of wrongdoing and an opinion that he is unlikely to repeat similar behaviour. It was also helpful to note that PC SA gained a degree of insight into some of the underlying causes of his behaviour.

149. The letter was written in 2019, in the context of the criminal proceedings against PC SA. The Doctor was not called as a witness and did not have an opportunity to turn their mind specifically to misconduct, as well as, to provide specific evidence that may have been sought for example: what insensitivity to establishing boundaries means to a lay person, how, following six sessions, they medically/professionally arrived at the conclusions in the letter, the nature of his treatment and any tools provided or developed, specific knowledge of the behaviours displayed leading to misconduct.

150. Analysis: In addition to assessments above, I view character letters as assistive in a general sense but cannot place more than minimal weight on a letter alone. The authors did not testify before this tribunal and were not available for cross examination. The letters showed that some or all of the authors were aware of the misconduct committed by PC SA, but the breadth and depth of their knowledge could not be assessed or tested. For example, authors did not address the effect on witnesses and the victim, they did not address their thoughts on public interest and public trust to any degree. Their appreciation and understanding of all the facts could not be assessed.

### **Disposition Considerations**

151. As I have offered my opinions and findings, in part, “based on my experience and training” I offer the following:

152. I have been a hearing officer since 2016, full time since 2018 until very recently. Prior to becoming a full-time adjudicator, I spent approximately 17 years in investigative roles from the rank of Detective Sergeant as a polygraph examiner/forensic interviewer, to Detective Inspector/Multi-Jurisdictional Major Case Manager for major crimes, primarily homicides.

153. As an adjudicator, I have considerable training through the Ontario Police College and the Ontario Association of Chief’s of Police Hearing Officer committee which I currently chair. I have attended (since 2017) an annual three-day seminar for hearing officers, prosecutors and defence counsel involved in the police discipline process (keynote speaker has always been Mr. P. Ceysens); I have attended courses through Osgoode Hall Law School and the Society of Ontario Adjudicators and Regulators (SOAR) in relation to adjudication and administrative law.

154. These are layperson tribunals, and I am not a lawyer or otherwise specifically legally trained. My highest education is a Bachelor of Applied Arts (Justice) from the University of Guelph, completed in 2016. With that said, by virtue of my position as a full-time hearing officer and continuing education, I have been afforded the opportunity to gain understanding into the administration of police disciplinary processes, hearings, decisions, and jurisprudence.

155. I will now address the commonly held disposition considerations. I will identify if the area is mitigating, aggravating or neutral and will address the weight I assign to the analysis.

### **Nature and Seriousness of the Misconduct**

156. PC SA’s misconduct was driven by forethought and was not a momentary lapse in

human judgement. He went to the police division while off duty, changed into his TPS uniform, retrieved his duty belt and use of force options including his firearm. He then contacted a fellow officer (PC K) to drive him to his girlfriend's home under the guise of a ruse. PC K was later disciplined for driving PC SA to an area outside of his patrol area.

157. On arrival, PC SA spoke with Mr. I while PC K waited, unawares, in his cruiser. Mr. I testified in these proceedings. He was a professional person and an articulate, composed witness who presented as a respectful and genuinely decent citizen who had respect and compassion for his neighbours and for the police. PC SA duped Mr. I, who had been awakened from bed, into allowing him (SA) into EM's apartment under the deception of an ongoing police investigation. After being downstairs for a few minutes, PC SA returned to Mr. I's apartment. PC SA told Mr. I he (SA) had left the door to EM's apartment unlocked then asked Mr. I not to tell anyone he (SA) was there. PC SA instructed Mr. I to say that he (Mr. I) had left the door unlocked if anyone were to inquire. PC SA then returned to the cruiser where PC K had been waiting, unaware of the highly irregular behaviours of PC SA.

158. Mr. I was and remains troubled by the incident. Later, on the same day that PC SA had been at his residence, Mr. I was sufficiently concerned about what had occurred that he went to a TPS division and reported the incident.

159. The impact and effect on EM was notable as she expressed in her testimony. She was, indeed, a victim of intimate partner violence in the form of emotional abuse and a significant breach of the sanctity and security of her home. From EM's own description, she continues to be troubled by the actions of PC SA. It was encouraging to hear the support EM has received from her employer as well as from her friends and her family.

160. I understand that those involved and others who may become aware of PC SA's misconduct have and/or may ponder what PC SA did while in the apartment, why he was there, why did he wear his gun, why did he leave the door unlocked and so forth. It is not unexpected that people may speculate whether he had intentions other than those outlined in evidence. These are completely understandable apprehensions.

There are no clear answers to some of these questions.

161. I do observe, based on evidence presented, that had PC SA intended or planned to carry out an even more nefarious act than described, it seems unlikely he would have involved PC K, an on-duty officer with whom PC SA was only casually acquainted. PC K remained parked outside the address in question, in a police cruiser, while PC SA was inside. This is not meant by any means to minimize the seriousness of the misconduct. It is my hope this may address the concerns of those affected and might allay, even if only slightly, their angst.

162. I consider this misconduct to be at the high end of seriousness, so much so that I have already concluded it was not at all unreasonable for the TPS to seek PC SA's dismissal and certainly within the range of available outcomes. I have given dismissal my most serious contemplation.

163. The seriousness of the misconduct alone could, in the absence of significant mitigation, result in an officer's dismissal. The seriousness of the misconduct is significantly aggravating and markedly weighty.

### **Recognition of the Seriousness of the Misconduct**

164. PC SA pled guilty to two counts of misconduct, notwithstanding that much evidence had been called prior to his change of plea. He initially pled guilty in criminal court before ultimately being found not guilty. Through counsel, in submissions, he acknowledged this was serious misconduct. In the character letters provided, the authors alluded to the fact that PC SA knew what he did was wrong and had feelings of remorse. Additionally, regardless of speculation on possible motivations related to his criminal proceedings, he sought counselling.

165. PC SA has known for some time that his dismissal was being sought. It is hard to imagine how any person facing dismissal could not recognize the seriousness of the misconduct when their employment was in jeopardy.

166. I am satisfied PC SA has recognized the seriousness of his misconduct and consider it a mitigating factor of moderate weight.

### **Damage to the Reputation of the Toronto Police Service**

167. Viewed through the eyes of the reasonable person in the community, dispassionate and fully aware of all of the facts and circumstances, it is clear damage to the reputation of the Toronto Police Service has occurred. I conclude further damage will result should the facts become more widely known. The media has been present at times during this tribunal and will likely report on the evidence and outcome. If/when the facts are made available to the public, further harm to the reputation of the TPS is an unavoidable result.

168. PC SA took deliberate steps to wear his uniform and use his position as a police officer to serve his own personal scheme. Mr. I, who had high regard for the police at least prior to this incident, remains troubled by the events as does CD. Evidence indicated EM's family is aware of the circumstances. I expect their view of PC SA and by extension, Toronto Police Service, is less than favourable as a result of PC SA's conduct.

169. When this disposition becomes public, I expect some people in the community will find it reasonable and fair while others will disagree. Regardless of this disposition, the nature and seriousness of the misconduct has and will continue to shed a less than favourable light on the TPS.

170. Though I do not find it irreparable, damage to the reputation of the Toronto Police Service is aggravating and significantly weighty.

### **Public Interest/Public Trust**

171. It takes years for a police service to gain the faith and confidence of the people in the communities we serve. Misconduct such as the matter before this tribunal can only serve to undermine that hard earned trust. Our police services continually strive to achieve and

maintain the confidence of the community which is essential for us to effectively perform the duties and responsibilities entrusted to us.

172. The behaviours outlined in both counts in the NOH depict behaviours that run completely contrary to expectations of the community and of the Toronto Police. PC SA used his position and Toronto Police equipment to unlawfully, and for a dubious and deceptive purpose, enter the apartment of his ex-girlfriend. He deceived a colleague and a member of the public to pursue his ill-conceived intentions.

173. PC SA's misconduct created a victim in EM who was adversely affected by his actions. PC SA has already shaken the confidence of citizens as previously addressed. In doing so PC SA has offended his oath and obligations as a police officer where he swore to protect people and uphold the law.

174. The reasonable person could only conclude that notable damage to the public trust and confidence has resulted from PC SA's misconduct.

175. The adverse effect on public trust and public confidence is significantly aggravating and weighty.

## **Employment History**

176. At the time of his misconduct, PC SA had over ten years experience. I acknowledge submissions from the prosecutor that much of PC SA's training is mandatory. I do note PC SA has received some specialized training including as a Scenes of Crime Officer (SOCO). From my personal experience, specialization is usually sought or requested by an officer. I find PC SA is an experienced officer with specialist training and with documented successes. I am aware of the principle inculcated in police discipline that consideration should be given when the community has a significant investment in an officer. Clearly the community has a significant investment in PC SA.

177. I have carefully reviewed the officer's TPS employment resume as well as evaluations

and related documentation.

178. PC SA has received positive entries and been commended for his positive interactions with the community, work as a SOCO, and other positive commentary from community members. Notably a media article and accompanying photograph taken on a dark and tragic day for Toronto, depict PC SA as a sensitive, caring, and compassionate officer with the ability to empathize and support people in the community in a kind and meaningful way. These human traits are qualities that cannot necessarily be taught and speak more to a person's character than their professional abilities. The article appeared to have "gone viral" on social media and shined an extremely favourable light on the officer and the Toronto Police Service. Despite his misconduct, PC SA has positive traits and abilities that, in arriving at a disposition, should also be considered.

179. PC SA's evaluations, while unremarkable and with some performance improvement issues identified, depict an officer who, overall, had performed consistently at a median and acceptable level of expected performance.

180. Since the beginning of his career up to 2017, PC SA has been subjected to informal, "unit level discipline" for behaviours not related or similar to those described in the NOH. This includes two instances of being late for work, one instance of apparently napping on duty, and one instance of not answering his radio while at a restaurant. Such behaviours, while not individually viewed as grievous, are not complimentary to the officer and were likely off-putting to his employer and to colleagues. These factors are considered in view of the officer's employment history but did not influence this disposition in a substantial way.

181. While less than stellar from a performance perspective, as alluded to, PC SA's employment history also reflects examples of positive character attributes and an officer who has added value to the TPS and to the community.

182. I consider PC SA's employment history to be mitigating with more than moderate weight. This finding was influenced in the officer's favour by the positive character attributes identified.



## Ability to Reform and Rehabilitate

183. I begin by acknowledging other disposition factors can minimize or neutralize any weight given to an officer's ability to reform. This consideration can be rendered moot as suggested by the prosecutor. Clearly PC SA's misconduct was at the very high end of seriousness. I do not conclude that it rises to the extreme end of the spectrum whereby his ability to reform, rehabilitate and rebuild himself should be disregarded. I do not conclude there is no hope for rehabilitation. I believe there is.

184. Part of my analysis here will also address the notion of the risk of recidivism. Although distinct from the ability to reform, in the context of IPV it should be addressed. I acknowledge any findings that may follow are suppositions. Only PC SA's future behaviour will confirm or invalidate any hypothesis.

185. I addressed PC SA's favourable character attributes above. The positive character attributes along with other factors addressed, give hope for his potential to reform and rehabilitate. His acknowledgement that his behaviour and misconduct were wrong and were serious also bodes well for the potential to reform. His acknowledgements were shared with some of the people who provided character references on his behalf who mentioned he knew what he did was wrong and had expressed genuine remorse to them.

186. The events resulting in misconduct occurred in 2018. Since that time, PC SA has not contacted EM in any manner. As his counsel pointed out; he was told not to contact EM and he did not. There was no evidence or suggestion that, in the five plus years that have lapsed he has done anything untoward that would put him in any sort of jeopardy. This too speaks positively with respect to his ability and/or potential to reform.

187. There were indicators that PC SA continues to struggle somewhat regarding dealing with conflict or disharmony in interactions with others. He apparently could not maintain a relationship with several counsel, the Toronto Police Association, and, at times his reactions and communication during these proceedings revealed the appearance of or a

tendency to mistakenly make unhelpful negative assumptions. This resulted in unnecessary conflict and avoidable quarrelsome exchanges. I make these observations as a layperson who is an experienced police officer, and they should not be interpreted otherwise.

188. PC SA's employment history (while less than stellar), his empathetic and compassionate attributes, and the fact that he has not repeated any behaviours comparable to the misconduct give a degree of comfort in suggesting that he is not obviously or apparently likely to repeat similar behaviours in the future. Regardless of his possible motivation, he has shown a willingness to attend counselling to avoid repeated behaviour of the nature that brought him before this tribunal.

189. I find PC SA's potential to reform and to continue to rehabilitate exists. Only he, through his behaviour in the future, can confirm this finding. I find these considerations mitigating and somewhat more than moderately weighty.

### **Procedural Fairness**

190. PC SA himself, earlier in this hearing and his counsel later, raised the issue of PC SA not being represented by counsel as being unfair. This concern has been addressed elsewhere. PC SA had been represented by counsel known to be experienced and recognized members of the defense bar. When his most recent former counsel, Mr. Butt, removed himself from the record in April 2023, PC SA was put on notice and acknowledged that the long-delayed hearing would proceed as scheduled in May. PC SA was given the opportunity to obtain yet another lawyer before the May date.

191. Paraphrasing the then hearing officer, Supt. Branton, the opportunity to reconsider the dates was open to discussion if the officer retained counsel in the interim. When the May date arrived, the officer appeared without counsel and brought forth a motion to adjourn. His motion to adjourn was denied. Among the reasons for the denial were the public interest and that of those involved and the numerous delays and appearances that had already transpired; some for the same issue, the officer's inability to maintain a relationship with counsel.

192. While self represented, PC SA engaged the process in his own defence actively. He raised a number of motions and/or objections and cross-examined witnesses considerably. Additionally, as a self represented party, PC SA was offered leeway and guidance by the tribunal and the prosecutor. PC SA was able to arrange representation for disposition submissions. To be clear, PC SA was never denied legal representation. He was denied a further opportunity to again delay this tribunal to arrange the representation of a fifth or sixth lawyer.

193. Defence counsel suggested in emails and submissions, that the Toronto Police Service held the charge of *having been found guilty of a criminal offence* over PC SA's head to somehow coerce a guilty plea. I was somewhat confused by the fact that the charge remained live when the officer was initially found guilty but was ultimately found not guilty.

194. I say I was confused, but at no time was there any hint of mischief on the part of the prosecutor or the Toronto Police Service.

195. The prosecutor in this and any disciplinary hearing, has the right to conduct their case without interference. Like any counsel, a prosecutor receives instruction from their client. Discussions and decisions between counsel and their client are typically protected by privilege. Whatever submissions, pleadings, or evidence the prosecution *may* have called in relation to the third count became moot when the officer changed his plea, and the count was withdrawn. I have previously recognized the evidence presented by the prosecution for the counts the officer pled guilty to, was strong and would have been quite difficult to overcome.

196. Despite the suggestion by defence counsel of compulsion being placed on the officer by the Toronto Police Service, there was no evidence at all that the third charge influenced the officer's decision to plead guilty. He acknowledged what he had done, in relation to the counts to which he pled guilty, on the record after three witnesses had testified and been cross examined. It is also telling that the Toronto Police Service did not change their position on disposition despite the charge being withdrawn.

197. Defence counsel suggested that the Toronto Police Service were using the third charge to somehow coerce a guilty plea. This begs the question, as the disposition position did not change, to what end and for what purpose was defence counsel suggesting coercion occurred? I do not see how the existence of the third count could reasonably have persuaded, pressured, or coerced the officer to plead guilty when the Toronto Police Service were seeking dismissal regardless.

198. I do not find that the issue(s) raised adversely affected the principles of procedural fairness, natural justice, or reasonableness, nor did it have any actual or foreseeable effect on the ultimate outcome.

### **Consistency of Disposition**

199. Submissions, jurisprudence, and based on my experience, arriving at an appropriate disposition to meet the goals of discipline often present unique challenges. There are no tables, charts, formulae, or other tools available to a hearing officer that will enable perfection in arriving at an appropriate sanction.

200. The importance of consistency, recognized as the *earmark of fairness*, cannot be overstated, and similar misconduct should attract similar sanctions. The task is considering and weighing the uniqueness of matters under consideration that distinguish one case from another. My decision must be reasonable given all the information available to me, with attention to the specific factors of PC SA's misconduct. Misconduct dispositions for similar offences with similar behaviours can result in a varying range of outcomes.

201. In this matter, submissions from the parties were considered elsewhere in this decision. As has often been my experience, none of the cases provided are exactly on point or share all of the same behaviours and underlying circumstances as the matter currently under consideration. I have found the defence disposition proposal untenable and unsupported by disanalogous case submissions.

202. *Shorey and the Belleville Police Service, 2017 CanLII 53072 (ON CPC)* bore some comparable factors including the element of IPV.

203. *Shorey* is a case involving Intimate Partner Violence (IPV) where the officer was convicted of criminal harassment and breach of trust and subsequently found guilty of misconduct under the Police Services Act. The officer's dismissal was upheld on appeal. (Further analysis above). The behaviours are analogous with the distinction being, *Shorey* was convicted of two criminal offences. *Shorey's* behaviours took place over a longer period.

204. Apart from the criminal convictions, I do not consider the behaviour in *Shorey* to be distinctly divergent or significantly less impactful than that of PC SA. EM and others involved were negatively impacted. While *Shorey's* behaviour was more prolific, he did not enter the victim's home, in uniform, armed, nor under a ruse etc. The behaviour of PC SA resulted in frightening and intimidating the victim and witnesses and has caused ongoing and considerable angst as in *Shorey*. Dismissal is, in my view, within the range, albeit the highest range, of dispositions regarding PC SA's misconduct. As I have chosen not to dismiss PC SA, I find a significant demotion is required and appropriate.

### **Constable Ryan Deroche and the RCMP (Royal Canadian Mounted Police)**

205. *Deroche* was an officer who engaged in IPV including assault and damaging property. Over a period of several months, he assaulted and threatened his partner. The officer was charged criminally, and the charges were resolved by a peace bond. The officer was dismissed. I find the behaviour in *Deroche* more serious than that in the matter under consideration.

### **Lévis (City) v. Fraternité des policiers de Lévis Inc., [2007] 1 S.C.R. 591, 2007 SCC 14**

206. In this Supreme Court of Canada decision, the officer's behaviour was distinctly different from the matter of PC SA in that it involved considerable violence, firearms, and a number of subsequent criminal convictions. The officer was dismissed.

## **Carson and Pembroke Police Service, 2001 CanLII 56731 (ONCPC)**

207. Officer Carson was involved in an incident of IPV with his wife and her new partner, following which he was charged criminally for threatening. Carson pled guilty in criminal court. The officer's misconduct hearing resulted in his demotion to second-class constable.

208. *Constable Carson, on duty armed and in full uniform, drove a police cruiser to his wife's residence wherein there was an emotional exchange between him, and D. Constable Carson uttered a threat to D consisting of words to the effect, "If you ever go near my daughter I will kill you, do you understand me, I will kill you."*

209. The criminal conviction and gravity of behaviour makes this matter distinctive in that it was a face-to-face threat very specifically to cause death. I further note, up to the point of his misconduct, *Carson* had enjoyed an unblemished employment history. PC SA's employment history, although overall mitigating, was not unblemished per se. In *Carson* the officer, while apparently on duty, was reacting to the alleged assault of his daughter by his wife's new partner which I consider an added emotional layer. PC SA was motivated by personal interests. I view this as a significant distinction supporting a more substantial disposition for PC SA.

210. On appeal, *Carson* was demoted to second-class constable for one year. There were errors by the hearing officer identified in *Carson* that contributed to the reduction of the demotion. Demotion is reasonably within the range of possible outcomes.

211. Further to reasons already stated, due to the fact that *Carson* was more of a "spur of the moment decision" fueled by concern for his daughter, and PC SA's misconduct entirely selfish, I conclude PC SA requires a much more substantial demotion.

## **Purbrick v. Ontario Provincial Police, 2011 ONCPC 7**

212. I have acknowledged the behaviour in *Purbrick* is not analogous to PC SA's. It involved thefts from his detachment including items like toilet paper. There are principles and distinctions in *Purbrick* that I find are assistive. Officer *Purbrick* had undergone extensive counselling and yet ONCPC required further treatment. Additionally, although *very serious* misconduct, OCPC substituted a lengthy demotion to fourth-class constable and counselling in lieu of dismissal due to the presence of identified mitigating factors.

### **Guenette and Ottawa-Carleton Regional Police Service, 1998 CanLII 27136 (ON CPC)**

213. *Guenette* involves a theft by the officer who was initially dismissed. On appeal the dismissal was reduced to a significant demotion. The analysis above and a complete reading provides insights into how consistent dispositions should be considered.

214. All cases were reviewed, and many were considered elsewhere under *submissions* analysis. The cases submitted were of some assistance in establishing range but those relatively analogous were quite limited.

215. In my seven plus years as a hearing officer, being a member and current chair of the Ontario Association of Chief's of Police Hearing Officer Committee, and from the training I have attended, I have been required to keep abreast of decisions and disposition trends in Ontario. I am confident in asserting there are, sadly, other comparable cases, not necessarily submitted, with analogous behaviours that have resulted in demotions while others in dismissal. All of the unique case facts and disposition considerations are deliberated, on a case-by-case basis, to guide and influence an appropriate disposition.

216. Finding: I find, in considering disposition factors and reasons detailed above, and the emotional impact on the victim and two civilian witnesses, the range of appropriate outcomes for similar behaviour to that committed by PC SA is from lengthy demotion to dismissal.

### **Effect on the Officer**

217. This disposition will have an impact on the officer's income. He is apparently the care giver for his mother or provides substantial assistance to his mother. The officer will remain employed and will continue to be remunerated at a lower pay grade.

218. The treatment or counselling requirement will benefit the officer personally and professionally as described.

219. The consequences of the officer's behaviour necessarily follow resulting from of his own decisions and actions that constituted serious misconduct. I have stated that I gave dismissal of the officer my most serious contemplation.

220. I find the effect on the officer is neutral.

### **Specific and General Deterrence.**

221. Notwithstanding the rehabilitative aspect of this disposition, I find the nature and seriousness of PC SA's misconduct and its affect on others requires serious consequences. PC SA will recognize and be reminded of the impact and effect his decisions and behaviour can have on his career, which should help to avoid future digressions from acceptable behaviour. It is important that the officer be reminded of the grave consequences his behaviour has had on the victim and others and on the prosect of his employment with the TPS. He will also understand that future misconduct will likely result in dismissal being sought. Similar future behaviour to his current misconduct will almost certainly result in his dismissal.

222. I would hope that members of the TPS or any police officer would know that behaviour like that depicted in the NOH will not be tolerated; full stop. I would also hope that police officers would be aware that the nature of this misconduct will carry the most serious consequences up to dismissal. This disposition will serve as a reminder to all that serious



consequences along with remedial measures (when appropriate) will result from similar misconduct.

223. The need for deterrence is important and I consider it aggravating and weighty.

### **Treatment/Counselling Considerations**

224. An important component of this disposition is counselling/treatment for PC SA.

225. Based on evidence and awareness gained during nearly four decades of policing experience, I am convinced PC SA will benefit from further counselling. Although addressed elsewhere in this decision I will attempt to condense the reasons as follows:

- During the investigation and including testimony during this tribunal, it seems PC SA continues to struggle with self confidence issues in intimate relationships. During this tribunal there were times when the officer attempted to illicit information from witnesses and introduce evidence regarding his perceptions of EM's behaviour in their relationship. This had little to do with the allegations against him and went beyond the scope of what was relevant.
- During this tribunal as outlined in detail elsewhere, he was unable to maintain a relationship with several lawyers. I recognize that other factors may have contributed to this, however, it was evident that PC SA may have been challenged to communicate or compromise effectively and that may have contributed to disharmony.
- PC SA was unable to resolve issues or negotiate with the Toronto Police Association regarding obtaining counsel or legal indemnification for legal services. It is quite well known and accepted in police circles, that the Toronto Police Association have always been and remain strong advocates for their members. I infer it would be infrequent and irregular for the Toronto Police Association to arbitrarily withdraw legal support from a member. Clearly an amenable outcome could not be reached, at least according to PC SA.
- PC SA took out of context defensive postures at times during this tribunal. His reactions and communication during these proceedings revealed a tendency to

mistakenly make unhelpful negative assumptions. This resulted in unnecessary conflict and avoidable quarrelsome exchanges. I acknowledge, at times, by their nature, tribunals can have an adversarial atmosphere. PC SA, in my view, went beyond what could reasonably be expected. At times it appeared to be teetering upon indignation. The TPS was seeking PC SA's dismissal which may have contributed to his posture; however, I again suggest his inclinations went beyond what could be expected at times.

- PC SA's employment history had indicia of some challenges in relation to concentration, prioritization, and focus. This included instances of being late for work, misinterpreting work schedules, sleeping on the job, and not answering his radio. On their own, disconcerting but not insurmountable performance and less serious disciplinary issues, but they suggest a pattern of occasional disconnectedness to what priorities lay before him. These instances occurred over several years with the latest occurring in 2017. This is particularly viewed as a dichotomy in that PC SA presented, for the most part, as an articulate and intelligent individual during the hearing. The negative behaviours outlined are not usually associated to an officer with these traits.
- Uncontroverted and/or unchallenged testimony prior to the guilty plea being entered, indicated PC SA may have issues with respect to self confidence resulting in feelings of insecurity and distrust in relationships. These possibilities may have contributed to evidence, not directly related to his misconduct, related to unkind and accusatory text messages and communications referenced in testimony.
- One of PC SA's character references described his internal struggles with respect to relationships. Although written in relation to this tribunal there was no indication these struggles have been resolved.
- PC SA was said to have had challenges in relation to *insensitivity to establishing boundaries* identified by Dr. Klarreich. Although Dr. Klarreich indicated the matter had resolved after a few visits, it seems PC SA may have relapsed or reverted to a degree. In any event, Dr. Klarreich's assessment is quite dated at this point.

226. As mentioned previously re. *Purbrick* the ability to reform and rehabilitate is an important consideration that must not be overlooked. It seems clear in that decision, despite past treatment and counselling, it is open for a tribunal to consider further rehabilitative steps than those already undertaken by an officer. This was especially

true, in part, because the treatment and demotion were substituted for the dismissal that had initially been imposed on *Purbrick*.

227. None of the aforementioned should be misinterpreted as any form of a diagnosis or a scientific opinion. These are observations I have made that were demonstrated during the course of this tribunal. I do not have the education and training to offer my views other than as a layperson and an experienced police officer. I do not view the imposition of treatment to be punitive or a form of punishment. It is a balance between the expectations of the public, the needs of the employer, and fairness to the officer regarding the opportunity to rehabilitate. The Order is intended to be reformatory. The Order is structured, similar to that in *Purbrick* and in such a way that, should the clinician at any time conclude PC SA does not need treatment or counselling, the ordered participation shall cease.

## **Conclusion**

228. PC SA has committed serious misconduct through a form of Intimate Partner Violence. The nature and serious and specific details have been delineated in this decision. The behaviour he displayed including deceiving colleagues and a private citizen and exploiting his position as a police officer was offensive, abhorrent, and are clearly anathema to the Toronto Police Service and to our society, as a whole. His actions were not momentary lapses in judgement due to human frailty.

229. Based on the evidence, PC SA's series of bad decisions followed by extremely objectionable behaviour were likely fueled by plausible but poorly controlled emotions associated to matters of the heart. While the police are expected to wear a veneer of composure and professionalism at all times, we are not immune, as human beings, to making poor decisions during times of high emotions and dismay. There are, I suggest, few among us who can reflect upon never having experienced this, to some extent, in our lifetimes. This does not serve to excuse his behaviour in any manner.

230. In arriving at this decision, I assessed and weighed a number of factors. I have found

that although serious and highly disreputable warranting significant consequences, PC SA's misconduct did not rise to the level where his usefulness with the Toronto Police Service is spent. I considered community investment, positive character attributes, and his ability to reform, and the fact that the damage to the TPS, although significant, is not irreparable. I have been clear that I have concluded PC SA's misconduct was extremely serious but I have found it was not at the extreme end of the spectrum where it outweighed mitigation to a point warranting his dismissal. There was no evidence of assaultive or threatening utterances or behaviour beyond what was presented. The ability to reform has clearly been identified as a significant consideration. I have found PC SA's ability to reform outweighed the seriousness. In accordance with disposition principles under these circumstances I must afford the most lenient disposition.

231. I have concluded that PC SA has the ability to reform and rehabilitate from his transgressions and would benefit, personally and professionally, from further counselling, specified in the disposition to assist him through this process. Finally, I have found this outcome is consistent with other dispositions provided and those which I am aware of.

232. EM strongly advocated for PC SA's dismissal. I am sensitive to this and completely understand why they would feel this way. I cannot consider EM dispassionate in this regard as they were the target and victim of PC SA's behaviour. I trust the TPS will ensure steps are in place to avoid PC SA and EM crossing paths in as much as the TPS is able to control this.

233. I strongly suggest PC SA himself, take every measure possible not to contact EM in any way at any time. I would anticipate doing so for any reason other than unavoidable, accidental, or inadvertent work-related contact will result in further misconduct where dismissal could result.

234. On behalf of the Toronto Police Service I apologize to EM, Mr. I and CD for what they have had to endure as a result of PC SA's misconduct. I am hopeful that they will be able to realize that, although these results may not be quite what they were expecting, the Toronto Police Service has held PC SA accountable in a meaningful way. Most importantly, I sincerely hope EM will continue on the path of recovery and will be able

to move past this extremely difficult chapter in their life.

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

Order: Constable Spencer Anderson shall be demoted to third-class constable.

- Elevation from third-class constable to second-class constable, will occur automatically, only after he has held the third-class constable position for a period of one year. Elevation from second-class constable to first-class constable, will occur automatically, only after he has held the position of second-class constable for a period of one year.

This order is made under section 85(1) (c) of the Police Services Act

235. Order: PC SA shall attend counselling/therapy sessions with a qualified psychologist or psychiatrist. PC SA will provide the clinician with unedited versions of this disciplinary decision and the January 5, 2022, decision of Justice Lipson so that the clinician is fully informed to address how to approach counselling.

236. Every three months, for a period of two years, unless the medical professional specifies treatment is no longer required, PC SA shall ensure that the Toronto Police Service receives from the qualified psychologist or psychiatrist, a written report relating to his ability to perform and continue to perform, his duties as a police officer, and whether PC SA is developing in areas identified by the clinician. Should the clinician find, at any time in the two-year period, treatment is no longer required, a report outlining the findings and prognosis will be provided to the Toronto Police Service. This report shall satisfy any questions or requirements of the Toronto Police Service within the bounds of professional rules governing the clinician and Human Resources Practices within the Toronto Police Service.

237. Refusal or failure by PC SA to participate in any required therapy sessions or failure to provide the required reports in accordance with the conditions, without

reasonable excuse, will entitle the Toronto Police Service to initiate disciplinary proceedings should they so decide.

This order is made under section 85 (7) (b) of the Police Service Act.

A handwritten signature in black ink, appearing to read 'K.M. Bickerton', with a long horizontal line extending to the right.

K.M. Bickerton

O.P.P. Detective Superintendent #8004

December 12, 2023

## **Appendix “B” Preliminary Objections/ Motions**

The following issues were raised by the officer via email and were likewise replied to as follows:

Motion/Concern:

I, Corey Spencer-Anderson, respectfully submit the following motion to the tribunal:

On April 25th, 2023, the prosecution presented memo book notes written by prosecutor Mattison Chinneck containing newly written statements taken from EM, TK, Mr. LK, and CH in the month of April 2023. While they (*edited*) had already given statements in 2018, CH's statement was taken for the first time on April 6th, 2023, and was presented as disclosure to me on April 25th, 2023.

I respectfully request the superintendent to prohibit the use of the newly created statements and exclude CH from the witness list. Ms. CH had no involvement in the matter and had never met or interacted with me in any way. Moreover, she was not mentioned as a witness during my criminal proceedings, which ended with a finding of not guilty in 2022.

### **Reply by Hearing Officer:**

The notes provided from April 2023, are witness preparation notes. Witness preparation is a normal and accepted practice in all forms of litigation including police discipline matters. These are not “new” statements, they seem to be synopsisizing what occurred during witness preparation in advance of your hearing next week.

The prosecutor has asserted this material had been previously disclosed to you through your counsel. If the material was not provided to you by your counsel upon the dissolution of your representation agreement, that is an issue between you and your former counsel to resolve. With that said, you indicated, for whatever the reason, you did not have certain material. Information has since been provided to you to prepare for cross examination. This was a courtesy and not necessarily a requirement given that production (disclosure) had previously

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occurred. Unless you have evidence to the contrary, the production (disclosure) requirement has satisfied.

**Concern:**

The fact that Mr. Chinneck, who is a prosecutor and not a police officer, took these newly written statements raises concerns about bias.

**Reply by Hearing Officer:**

Mr. Chinneck is unquestionably permitted to take notes as part of his duties as a lawyer as any lawyer is. A lawyer's preparation notes are protected by litigation privilege. That is to say, they needn't be disclosed at all, unless certain criteria, not apparently present in this matter, are met. Notwithstanding the litigation privilege protection that may have been asserted, the notes have been disclosed to assist you. There is no impropriety on the part of Mr. Chinneck or any counsel under the circumstances you have outlined.

Your suggestion of potential bias has no legal merit.

**Concern:**

Furthermore, I request that the newly created notes regarding all other parties be prohibited. All parties had already provided their statements in 2018. Therefore, it would be unreasonable and unethical for the prosecution to conduct new interviews with these witnesses, pose the same questions that had already been addressed during the criminal proceedings, and then attempt to covertly introduce these new notes as evidence without providing me with full and complete disclosure, until today.

**Reply by Hearing Officer:**

With respect, for reasons outlined above, this argument has no legal merit.

**Concern:**

I also formally reiterate my request for legal representation from the Toronto Police Association. Representing myself in this trial is not appropriate, and it is within my rights to have legal counsel provided by the Toronto Police Association, regardless of my plea or



employment status. The Toronto Police Association's failure to provide me with proper legal representation amounts to a failure to represent me fairly.

**Reply by hearing Officer:**

This tribunal has no authority or jurisdiction to intervene or direct the Toronto Police Association. The fact that you are currently self represented can be addressed further, on the record, at the commencement of your hearing, should you so choose. Generally, any person can retain counsel independent of employment related indemnification decisions.

**Concern:**

I wish to draw attention to the fact that Mr. Chinneck's actions are alarming. He obtained the aforementioned statements after my criminal proceedings were concluded due to the fact his actions will be called into question throughout this trial. Mr. Chinneck's actions support my argument that the Toronto Police Service built a criminal case against me when this was nothing more than a Tribunal/Station level matter.

**Reply By Hearing Officer:**

As outlined above, the disclosed notes are not "new statements." They were the product of witness preparation.

**Concern:**

Furthermore, I will be using the transcript from criminal court, where the prosecutor reads out messages of E.M. (*anonymized for this decision*) physically assaulting me, yet no action was taken against her. I also intend to present three occurrences of police reports documenting egregious behaviour, yet no criminal charges were ever laid, but yet - Mr. Chinneck's office chose to lay criminal charges against me.

**Reply by Hearing Officer:**

You will, of course, be entitled to present any evidence in your defence deemed relevant to the allegations in the Notice of Hearing.