



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
TORONTO POLICE SERVICE
AND
CONSTABLE SANG YOUB LEE #11810
(CASE 8-2023)**

ALLEGATIONS:

Count 1: Neglect of Duty

DECISION

Hearing Officer: **Superintendent Taufic Saliba #1796**
Peel Regional Police

Prosecutor: **Ms. Alexandra Miller**
Prosecution Services

Defence Counsel: **Mr. Gary R. Clewley**

Case Number: **8.2023**

Date of Hearing: **April 14, 2023**

Date of Decision: July 17, 2023
This decision is divided into four parts:

PART I: OVERVIEW
PART II: THE HEARING
PART III: ANALYSIS AND FINDINGS FOR DISPOSITION
PART IV: DISPOSITION

PART I – OVERVIEW

Background

- [1] Constable Sang Youb LEE #11810 commenced his employment with the Toronto Police Service (TPS) (the Service) in December, 2019. Constable LEE presently holds the classification of Second Class Constable.

Allegations of Misconduct

- [2] It is alleged that Constable Sang Youb LEE #11810 (Constable LEE), a member of the Toronto Police Service, committed the following misconduct:

[3] **Count One: Neglect of Duty**

It is alleged that Constable LEE committed misconduct in that he did without lawful excuse, neglect or omit promptly and diligently to perform a duty as a member of the police force of which he is a member, contrary to Section 2(1)(c)(i) 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.

- [4] Constable LEE appeared before me on April 14, 2023, in answer to a Notice of Hearing that was served on him on February 16, 2023, alleging one (1) count of Neglect of Duty.

Plea

- [5] On April 14, 2023, during his 1st Appearance, Constable LEE entered a plea of Guilty to one count of Neglect of Duty. An Agreed Statement of Facts (ASF) was tendered (Ex #6) and read into the record by the Prosecutor. Based on those facts and the confirmation by Defence that they were substantially correct, a finding of misconduct was registered.

Decision

- [6] I have carefully reviewed the submissions and relevant information presented by both the Prosecution and Defence as well as previous Tribunal decisions. In light of the mitigating and aggravating circumstances involved in this matter, the penalty for Constable Lee imposed under Sec 85(1) of the *Police Services Act*, will be:
- [7] For Neglect of Duty, in that he did without lawful excuse, neglect or omit promptly and diligently to perform a duty as a member of the police service;
- [8] a reduction in rank from 2nd Class Constable to 3rd Class Constable for a period of twelve (12) months, following which the officer will be returned to the rank of 2nd Class Constable on the basis of satisfactory work performance to be determined by the officer's Divisional Commander, and
- [9] further ordered under Section 85(7)(b) of the *Police Services Act*, to enrol, attend and successfully complete any supplemental training deemed necessary by the Service and the Toronto Police College.
- [10] The above penalty combination is imposed under the authority of Sec 85(1)(g) of the *Police Services Act, R.S.O. 1990*.

PART II: THE HEARING

Exhibits

- [11] The following exhibits were tendered during the hearing:

Exhibit #1	Delegation to a Hearing Officer (Supt. T. Saliba)
Exhibit #2	Designation to a Prosecutor (Ms. A. Miller)
Exhibit #3	Notice of Hearing (Amended)
Exhibit #4	Agreed Statement of Facts
Exhibit #5	Prosecution – Book of Records (BOR)
Exhibit #6	Prosecution – Book of Authorities (BOA)
Exhibit #7	Defence – Book of Authorities (BOA)
Exhibit #8	Defence – Reference Letters for P.C. Lee (X14)
Exhibit #9	Defence – Awards Recommendation for P.C. LEE #11810
Exhibit #10	Defence – Case Reference – Y.R.P. & P.C. B. Stitt
Exhibit #11	Defence – P.C. LEE #11810 Apology
Exhibit #12	Defence – Case Reference – O.P.P. & P.C. A DeHamilton

Participants

- [12] The Prosecution was represented by Ms. Alexandra Miller and the Defence was represented by Mr. Gary R. Clewley. The Tribunal was also addressed by Constable Lee, the complainant's father (A.G.I.) and the complainant's sisters (T.I. and A.I.). This will be discussed in *Part IV: Analysis and Findings* section of this document.

Agreed Statement of Facts

- [13] The facts in this matter are substantially agreed upon by the parties to this Tribunal. The Agreed Statement of Facts, filed as Ex #4 states:
- [14] Officer Sang Youb Lee is attached to 32 division, working in a uniform capacity. On August 15, 2022, he and his partner, Police Constable Anson Alfonso (11358) attended a radio call for a domestic incident. They met with the complainant and their interaction with her was captured on body worn camera.
- [15] The female complainant told him and his partner that her ex-boyfriend was harassing her and threatening her via text. She showed them her phone. It contained text messages back and forth between the parties. Clearly their breakup was unpleasant. Words were exchanged and his were of a threatening nature.
- [16] Officer Lee regarded their interaction as one of mutual harassment, following an unpleasant breakup. The complainant told him she did not want to have him charged. She said she did not want to see another black man go to jail and she was concerned that if he were charged, he would retaliate against her. Instead, she sought the advice of the officers as to how to obtain a peace bond or restraining order against her ex-boyfriend.
- [17] Officer Lee misapprehended the evidence presented to him. Accordingly, though he had grounds to arrest the ex-boyfriend for uttering threats, neither he nor his partner arrested him. Instead, officer Alfonso called the ex-boyfriend and warned him to stay away from the victim. Also, the officers told the complainant to avoid contact with her ex-boyfriend and cautioned her accordingly.
- [18] On account of his view of the matter, officer Lee failed to upload evidence into Versadex in a timely manner and he failed to alert his supervisor or the CIB about the event.
- [19] Similarly, he failed to identify the event as an Intimate Partner Violence Call. For the same reason, officer Lee failed to ask the supervisor to attend the call, nor did he meet later with his supervisor. While at the scene, while officer Lee continued to speak with the complainant, officer Alfonso called their sergeant and the CIB and officer Lee left it to him to inform them regarding the event.

- [20] On August 18, 2022, three days after the encounter between the officers and the complainant, the ex-boyfriend killed her, and a warrant was issued for his arrest. A short time later, he was arrested and taken into custody.
- [21] Officer Lee's actions constituted a failure to do his duty to act on information and evidence provided by the complainant. His conduct constituted a substantial departure from what is expected of a reasonable police officer in these circumstances.
- [22] In so doing, officer Lee committed misconduct in that he did without lawful excuse, neglect or omit properly and diligently to perform a duty as a member of the Toronto police service.

PART III: SUBMISSIONS

- [23] Prior to the commencement of submissions, Counsel Mr. Gary Clewley requested that Constable LEE have an opportunity to address the complainant's family who were present in the hearing room. Constable LEE's apology is transcribed on page 15 of this document.

Submissions of the Prosecution – Ms. A. Miller

- [24] The Prosecution advised that it was seeking a penalty of dismissal in this matter. The Service recognizes the importance of this case being heard in front of an independent Hearing Officer due to the impact on the community and the interest of the police service's reputation.
- [25] The Prosecution noted that the objectives of discipline were to correct unacceptable behaviour, to deter others from similar behaviour, and to assure the public that police are under control.
- [26] The Prosecution referred to the considerations that are laid out in the Police Services Act when determining the appropriate disposition for misconduct and highlighted those that they felt were most relevant to this matter:

Public Interest

- [27] The Prosecution stated that Constable Lee's actions have implications on the public trust that the Service strives to uphold. Holding P.C. Lee accountable will maintain the public's confidence in the Service's discipline process while also ensuring that TPS members fulfill their obligations to the community. P.C. Lee did not fulfil his obligation to act on the information that was provided by the complainant.

- [28] Further, this matter received publicity which has resulted in an erosion of trust and confidence in the police. As a result, the Service released a message to the community encouraging individuals experiencing intimate partner violence to continue to call police for assistance. TPS receives over 19,000 intimate partner violence calls every year and recognizes the serious impacts that it has on victims, their families and society.
- [29] The Prosecution referred to media coverage of Constable Lee and his partner's involvement with the complainant in this incident (Ex #5 – BOA – Tab 8) and asserts that it has contributed to the public's mistrust of the police.
- [30] The Prosecution then referred to the TPS *Standards of Conduct* document (Ex #5 – BOA – Tab 2) which includes the Chief's position that TPS members are held to a higher standard of conduct than other citizens. This is something that is necessary to the integrity of the Service. As such, Constable Lee's actions demonstrated a lack of judgement and were highly unprofessional as he did not follow-up with basic steps.
- [31] The Prosecution also referred to the TPS *Core Values* document (Ex #5 – BOA – Tab 4), noting that Constable Lee fell short of meeting these expectations as well.

Seriousness of the Misconduct

- [32] The Prosecution stated that this is a fundamental consideration towards any disposition. Constable Lee's actions were a substantial departure of what is expected in these circumstances. The seriousness of this misconduct was exacerbated by the fact that the complainant was killed by her ex-boyfriend days later. The Prosecution emphasized that it cannot be said the involved officers caused the complainant's death, however their behaviour had a significant impact on their reputations and that of the Service. Intimate partner violence and domestic calls are extremely serious and prevalent, and the outcome cannot be known.
- [33] The Prosecution questions the future usefulness of Constable Lee and as such, is seeking dismissal.
- [34] The Prosecution then referred to Constable Lee's *Oath of Office* (Ex #5 – BOA – Tab 3). The public expects police officers to uphold their Oath of Office, which the Prosecution feels Constable Lee failed to do.

Specific and General Deterrence

- [35] The Prosecution referenced the case of *Andrews & Midland Police Service* (Ex #6 – BOA – Tab C) in order to support the Service's view that misconduct will not be tolerated, and that dismissal will send that message to P.C. Lee and other members of the Service.

Damage to the Reputation of the Police Service

- [36] The Prosecution highlighted this factor as aggravating in the determination of penalty, and again referenced the negative media articles that this matter generated. The Chief of Police recognizes the need for transparency as well as engaging an outside Hearing Officer due to the seriousness of the alleged misconduct and the impact that it has on the Service and community trust.
- [37] The Prosecution agreed that P.C. Lee's guilty plea at the earliest opportunity, along with his public apology demonstrates his recognition of the seriousness of the misconduct.
- [38] The Prosecution also provided:
- an overview of Constable Lee's employment history, which is also an important factor to consider towards a disposition (Ex #5 – BOA – Tab 5),
 - Constable Lee's four (4) complimentary activity documents and one (1) minor discipline report (Ex #5 – BOA – Tab 6), and
 - Constable Lee's performance appraisals for the 2-year period since being hired. The appraisals outline Constable Lee's professionalism and future potential (Ex #5 – BOA – Tab 7).

Consistency of Disposition

- [39] The Prosecution states that consistency is one of the basic principles of the discipline process. Similar misconduct must be met with similar discipline, albeit no two cases are the same.
- [40] To elaborate on this point, the Prosecution referred to *Schofield and Metropolitan Toronto Police Service (1984)* (Ex #6 – BOA – Tab D) which highlights the importance of consistency in the discipline process as an earmark of fairness when considering similar cases.
- [41] The Prosecution then provided an overview of three recent cases for the Tribunal's consideration (Ex #6 – BOA):
- [42] Toronto Police Service and P.C. Ioan Floria #5259 (Tab E):
This involved criminal charges against the officer (acquitted), followed by a discipline hearing where he was found guilty of failing to report information regarding an alleged kidnapping, conducted database queries and had ties to organized crime. The Tribunal decision to dismiss was upheld on appeal to OCPC.
- [43] Toronto Police Service and P.C. Matthew Brewer #90065 (Tab F):
This matter involved misconduct over a 3-year period. The officer pleaded guilty and then sought a penalty of demotion, however the Prosecutor sought dismissal due to the officer's history of criminal and PSA misconduct. The Tribunal decision to dismiss was upheld on appeal.

- [44] Toronto Police Service and P.C. Troy Sylvester #6982 (Tab G):
This matter involved an allegation of theft of money from a prisoner. The officer, who had a lengthy history of misconduct, was convicted of Corrupt Practice at a Tribunal. The Tribunal imposed a penalty of dismissal.
- [45] The Prosecution provided these cases not as factual comparators to the case before this Tribunal, but rather to highlight the comparable seriousness of the misconduct and the resulting damage to the Service's reputation.
- [46] Further, the Prosecution tabled *Metropolitan Toronto Police and P.C. G. Trumbley* (Ex #6 – BOA – Tab A) to lay out the test for dismissal in police discipline proceedings. More specifically, the objective of dismissal is not to punish the officer, but rather to abdicate the employer of an employee who it deemed not fit to continue employment.
- [47] Finally, in referencing *York Regional Police and P.C. R. Venables* (Ex #6 – BOA – Tab B), the nature of the officer's misconduct is weighed against his usefulness and future suitability as a police officer.
- [48] In closing, the Prosecution submitted that the proposed penalty of dismissal falls within the range that is expected for the type of misconduct alleged against Constable Lee.

Submissions of the Defence – Mr. G. Clewley

- [49] Defence opened their submissions with the view that this matter is not a case of wilful misconduct, deceit, bias, indifference, or laziness. Rather, this was a case of neglect – a failure to properly do the job due to both inexperience and a lack of training.
- [50] On the date of this incident, P.C. Lee had been a police officer just over two years and his partner had been an officer for approximately three years. Constable Lee was not partnered with a senior member. In fact, both officers could be considered as “mentees” who were confronted with a volatile and complicated matter. The complainant did not want to provide a statement or to “send another black man to jail”. Nevertheless, Defence emphasized that the complainant was still a victim of the domestic call and through no fault of her own.
- [51] The Toronto Police Service pays increased attention to, and provides training for, domestic calls. In the case of Constable Lee, his training at the Ontario Police College (OPC) was shortened by one week and his post-OPC training at the Toronto Police College was shortened by four weeks due to the COVID pandemic. As a result, Constable Lee did not receive, nor could he participate in a domestic violence training program as it was cancelled.

- [52] As outlined in the A.S.F., Constable Lee misunderstood the evidence before him as a case of mutual harassment. He concluded that the best solution was for the two parties to stay apart and not contact each other. The complainant sought advice about obtaining a peace bond or a restraining order, including directions on how to get to the courthouse. Constable Lee thought that would solve the problem for the complainant.
- [53] Defence admits that Constable Lee was wrong and that he should have done more. For this failure, Constable Lee feels terrible and is filled with regret. He was overcome with grief when he learned the enormity of his error and has since sought counselling (Ex #8 – Medical Letter). He has taken responsibility for his neglect and apologized to the victim’s family.
- [54] Defence referred to the 13-character references that were submitted by Constable Lee’s colleagues and supervisors. The letters describe Constable Lee’s diligence, caring and hard work – characteristics that are echoed in his performance evaluations. Constable Lee still assists his parents in operating their family business. Having said that, Defence stated that enthusiasm is not a substitute for the experience that helps police officers in what they do. That experience is augmented by ongoing training. Defence submits that this situation lacked both.
- [55] Defence then touched on the issue of Constable Lee’s rehabilitation. His remorse and acknowledgement of what went wrong are key here. He took responsibility for his actions, offered an apology, and pleaded guilty at his first appearance. If allowed to keep his employment, Constable Lee is willing to attend any retraining and new training that may be required. Defence suggests that the penalty of dismissal is reserved for repeat, undeterred offenders and for the worst type of misconduct like those in the cases offered during the Prosecution’s submissions.

Consistency of Disposition

- [56] Defence stated the importance of applying consistency *consistently*. While no two cases are the same, similarities can be detected from each in order to provide the basis for fair discipline.
- [57] Defence asserted that the cases presented by the Prosecution as precedent for dismissal in this case, did fall short of the mark.
- [58] Defence provided an overview of the Ontario Civilian Police Commission’s (OCPC) role with respect to police discipline Tribunal findings of guilt and related penalties. Although the OCPC very rarely overturns a Hearing Officer’s finding of guilt due to their role as a first-hand observer and interpreter of the hearing, it does exercise more latitude with respect to the penalties that are handed down. This is due to the OCPC’s perspective to assess similar facts towards ensuring consistent penalties.

[59] To elaborate on this point, Defence referred to the penalty circumstances in the following cases, while focusing on the key aspects of remorse and rehabilitation:

Note: Cases #1 and #2 involve a Sergeant and a Constable in the same incident.

1. Andrews & Midland Police Service (Ex #6 – BOA – Tab C) & (Ex #7 – BOA – Tab 3); where Sergeant Andrews misleads investigators regarding a bar fight involving off-duty officers. He also influenced an 8-year Constable towards the same misconduct. Both made false statements to investigators and showed no remorse. At a Tribunal, both were found guilty of Neglect and Deceit. Although the Prosecution sought dismissal, the Hearing Officer demoted Sergeant Andrews to 3rd Class Constable (resulting in a 3 ½ year period before regaining his rank). OCPC amended the penalty to a demotion to 2nd Class Constable (resulting in a 2-year period before regaining his rank).
2. Gregg & Midland Police Service (Ex #7 – BOA – Tab 4); where Constable Gregg refuses to answer questions from investigators and later lied about what happened. She was found guilty of insubordination at Tribunal and dismissed. The OCPC, recognizing that, among other things, she had an unblemished career, re-instated her, and imposed a demotion in rank.
3. Stitt & York Regional Police (Ex #10); where Constable Stitt was found guilty at Tribunal of Neglect of Duty (X2) and Deceit. The Hearing Officer imposed penalties of demotion and forfeiture of pay. Stitt previously demonstrated a pattern of inadequate or unsatisfactory performance.

[60] Defence proposed a comparison between Andrews/Gregg and Constable Lee. Andrews and Gregg were more experienced and participated in a coverup that led to criminal charges. Further, neither Andrews nor Gregg showed any remorse. This is in contrast to Constable Lee, who was not deceitful nor insubordinate, but rather took responsibility and pleaded guilty at his first appearance.

[61] Several other cases were discussed by the Defence. Each is listed below along with a brief summary:

1. R. v Boulanger, 2006 SCC (Ex #7 – BOA – Tab 1) for perspective to assist in distinguishing wilful misconduct from negligence. A parallel was then drawn to illustrate Constable Lee's conduct as a mistake.
2. Toronto Police Service and Constable Kyle Upjohn (Ex #7 – BOA – Tab 2) in which the Tribunal considered if the misconduct was wilful or due to negligence, followed by an analysis of the officer's potential to be rehabilitated. (24-month reduction in rank classification)

3. Toronto Police Service and Sgt. H. Chow (Ex #7 – BOA – Tab 7) Sgt. Chow received a service call regarding a sexual assault. He did not immediately respond to the scene but rather attended another call. He later attended the scene with other officers. Sgt. Chow had the requisite sex assault investigation training. (17 days forfeiture)
4. Ontario Provincial Police and Insp. B. Cecchini #7263 (Ex #7 – BOA – Tab 8) Insp. Cecchini Received an anonymous letter regarding domestic violence between two officers under his command. He did not disclose the letter for several months. Prior discipline. (120 hr forfeiture).
5. Ontario Provincial Police and Sgt. G.S. Bettcher (Ex #7 – BOA – Tab 10) Received a letter regarding an inappropriate relationship between two young persons. Wilfully ignored evidence and did not commence a proper investigation. (80 hr forfeiture).
6. Ontario Provincial Police and Sgt. R.C. Cota (Ex #7 – BOA – Tab 15) officer contacted about a missing male. Commenced an investigation but did not tell others – a proper search area was not established. Other officers eventually located the male. Prior discipline. (40 hrs forfeiture)
7. Ontario Provincial Police and Sgt. J. Postma (Ex #7 – BOA – Tab 17) officer attended a 911 call re: domestic violence. He did not follow OPP procedure and didn't believe the complainant, arrange photographs or obtain statement. (30 hrs forfeiture)
8. Ontario Provincial Police and Sgt. J. Neild (Ex #7 – BOA – Tab 20) investigated death of MVC victim on roadway. Advised family that death was of natural causes. Did not secure scene or gather evidence. Cancelled collision investigators. (24 hr forfeiture)
9. Ontario Provincial Police and Sgt. P. Rancourt (Ex #7 – BOA – Tab 22) did not supervise a domestic violence investigation. There was a subsequent incident. Prior PSA discipline X2. (Reprimand)
10. Ontario Provincial Police and Cst. D. Dionne (Ex #7 – BOA – Tab 5) failed to attend a 911 call – cleared the call with dispatch. Victim later found deceased 2 days later. Officer takes responsibility and remorse later in process. (24-month reduction in rank classification)
11. Toronto Police Service and Cst. S. Karimloo (Ex #7 – BOA – Tab 6) officer received assault call. The officer did not attend. Made false entry that he did attend. Guilty 3 PSA counts. Pleaded not guilty but found guilty. Found to be lazy and complacency – bias towards people in that neighbourhood. Wilful neglect. (12-month reduction in rank classification)

12. Ontario Provincial Police and Cst. DeHamilton (Ex #7 – BOA – Tab 9) Prior discipline (2010 Neglect – 32 hrs forfeiture). In 2016 PSA for similar misconduct – does not attend MVC after two requests (100 hrs forfeiture).
13. Ontario Provincial Police and Cst. DeHamilton (Ex #12) Officer receives call for MVC but he says he can't find it. Then attends and lies re it being impaired. (Dismissal upheld by OCPC). This is progressive discipline for wilful misconduct.
14. Kawartha Lakes Police Service and Cst. Cathy McLeod (Ex #7 – BOA – Tab 11) Allegation of sex assault between young persons. Officer attends with appropriate training. Did not seize clothing (lost evidence), no statement. HO said wilfully neglectful on 2 counts of neglect (60 hr forfeiture)
15. Ontario Provincial Police and Cst. J. Clark (Ex #7 – BOA – Tab 12) officer dispatched to unconscious male. Did not advise EMS of man's ID. Witnesses witnessed assault. Officer did not take names, interviews. Pleaded guilty later. (60 hrs forfeiture)
16. Ontario Provincial Police and Cst. T.A. Johnson (Ex #7 – BOA – Tab13) failed to investigate fatal ATV MVC. Did not interview witnesses or get contact info. (48 hrs forfeiture).
17. Ontario Provincial Police and S/Cst. R. Dinsdale (Ex #7 – BOA – Tab14) failed to properly investigate fatal (X5) MVC. Charges against driver were later stayed. (20 days forfeiture reduced to 6 days by OCPC).
18. Ontario Provincial Police and Cst. L.J. Turgeon (Ex #7 – BOA – Tab 16) officer attended a domestic call and asked the victim and son to attend station for statement. The officer did not submit domestic supplementary report. The officer was later charged and showed no remorse – pleaded guilty (40 hrs forfeiture and 40 hrs penalty).
19. Ontario Provincial Police and Cst. A. Emmerson-Stringer (Ex #7 – BOA Tab 19) responded to domestic violence call – no report, no proper notes, no interviews. Pleaded not guilty. Found guilty. (24 hrs forfeiture).

[62] Defence concluded submissions with the view that the cited cases involved wilful misconduct through deceit and fabrications. Almost all of the cases resulted in penalties of forfeiture of hours.

[63] In cases where the officer is capable of being rehabilitated, offers a sincere apology, and takes responsibility, the range of penalty is between 5 – 12 days, specifically 10 days with re-attendance at the police college for domestic violence training. Defence also suggested that Constable Lee would attend and speak to victims of domestic abuse and support agencies, as well as speak at the Toronto Police College about his experience.

[64] Defence maintained that since Constable Lee is a junior officer who did not have the necessary training, this case should not result in dismissal or demotion, but rather penalty hours. He misapprehended the circumstances, didn't lie about it or hide it and, once he realized his error, he admitted it. Constable Lee has not exhausted his usefulness to the Service, but rather is more useful due to what he's learned from this experience.

PART IV: ANALYSIS AND FINDINGS

[65] I would like to begin by acknowledging the tragic loss of Ms. Daniella Mallia, and the impact that it had on her family, her friends and her community. They will forever cope with this tragedy, and I extend my sincere condolences to them.

[66] This hearing was held to ensure accountability with respect to the police response to the complainant's call on August 15, 2022, and to ensure that victims of intimate partner violence receive the care, compassion and service that meet the standards of the Toronto Police Service.

[67] I have reviewed and carefully considered the information provided during this hearing, including the Agreed Statement of Facts, the submissions made by the Prosecution and Defence, and the accompanying supportive documents.

[68] As the outside adjudicator for this matter, I must make an objective, dispassionate assessment of the evidence presented during this Tribunal with respect to the appropriate penalty. This ensures procedural fairness to the officer and accountability to the public. As stated during the hearing, no two cases are the same. As such, the penalty must reflect the unique circumstances of this case while clearly recognizing both the gravity of the misconduct and the moral blameworthiness of the officer.

[69] One of my primary considerations as I hear submissions by both the Prosecution and Defence is Constable Lee's culpability as it relates to this incident. In other words, were his actions a result of negligence or wilful misconduct?

[70] The principle of proportionality is key to arriving at a fair and effective disposition. It provides considerations that are referenced in almost every police discipline proceeding, some of which were touched on to varying degrees in the Prosecution's and Defence's respective submissions. The considerations that I find relevant to focus on in assessing Constable Lee's misconduct are:

- Public Interest
- Seriousness of the Misconduct
- Recognition of the Seriousness of the Misconduct
- Employment History
- Potential to Reform or Rehabilitate the Police Officer
- Effect on Police Officer and Police Officer's Family
- Consistency of Disposition
- Specific and General Deterrence
- Systemic Failure and Organizational Context
- Damage to the reputation of the Toronto Police Service

[71] Where appropriate, I have addressed two considerations together due to similar factors and relevance.

Public Interest

Damage to the Reputation of the Police Service

[72] I accept the Prosecution's submissions regarding the impact that this matter had on public trust in the Toronto Police Service. Confidence in the police is critical as a foundation to the partnerships and collaborations that are necessary for true community safety and wellbeing. When that confidence is challenged, the public must feel that the Service's discipline process is both credible and transparent.

[73] The Prosecution provided several media articles that were published in relation to this incident (Ex #5 – BOA – Tab 8). There was sufficient media attention that the Service took the immediate step of releasing a public message encouraging those impacted by intimate partner violence to continue to call police for assistance. Exhibit #5 included mention of Chief Demkiw's visit with the complainant's family to advise them of the internal investigation along with his reassurance that officers respond to these calls with compassion and professionalism.

Seriousness of the Misconduct

[74] In considering this factor, it is imperative to first address any perceived connection between Constable Lee's misconduct and the complainant's tragic death three days later. I agree with the Prosecution's position that it cannot be said Constable Lee caused the complainant's death. Further, this Tribunal cannot muse over hypothetical scenarios and outcomes had the call been handled differently that day. An individual has been charged criminally and is before a court in relation to her death. Nonetheless, it has been established that Constable Lee's actions were a departure from of what was expected in this type of investigation.

- [75] A close examination of this proportionality consideration is fundamental to weighing a penalty, as it requires that all relevant mitigating and aggravating factors be examined. In addition to the information that was presented during submissions, I am obligated to factor in the officer's competence due to his experience in a particular function, namely; the investigation of a domestic complaint.
- [76] To this point, Defence counsel submitted that Constable Lee's training at both the Ontario Police College (OPC) and the Toronto Police College were shortened due to the Covid pandemic, resulting in him not receiving nor participating in a domestic violence training program.
- [77] Although I accept this submission, I weigh it against the fact that Constable Lee surely attended other domestic related calls during his two-year career. He would have done so with other officers who possessed varying levels of experience, along with access to the Service's policies and procedures as guides.
- [78] There is no evidence that Constable Lee lied regarding his activities in this matter or was previously involved in similar or repetitive misconduct.
- [79] I must also assess if Constable Lee was acting in good faith and if his misconduct arose from a lack of understanding. I find both of these to be true. On this point, Defence referenced *R. v. Boulanger (2006)* (Ex #7 – BOA – Tab1), which involved an off-duty officer ostensibly benefiting from an on-duty officer re-examining his accident report. In contrast, Constable Lee's conduct was on-duty and did not seek benefit from anyone else, however I accept the finding in *Boulanger* that mistakes and errors in judgement do not meet the bar for mental culpability.

***Recognition of the Seriousness of the Misconduct
Effect on Police Officer***

- [80] As the Hearing Officer in this matter, I must apply careful consideration when assessing the degree of remorse and assigning its weight towards a disposition. The Tribunal recognizes that Constable Lee admitted his mistake and as described by his counsel, he was overcome with grief when he learned of the complainant's tragic death. As a result, he sought professional counselling. He cooperated with the internal investigation, took responsibility, and pled guilty at the first opportunity.
- [81] During his hearing, Constable Lee addressed the complainant's family and provided an impassioned apology (reference page 5 of this decision). He acknowledged the grief that they felt and admitted that this tragedy will weigh heavily on him.

[82] Constable Lee’s apology read as follows:

My name is Sang Youb Lee, one of the officers who interacted with Daniella when she called us for help.

I want to start by expressing my deepest remorse and apologies to your family.

I vividly remember briefly talking with Daniella. I could tell she was a kind-hearted person who always thought of others first. I am so sorry I misunderstood the circumstances she found herself in. That day, I thought I did my job.

I cannot imagine the grief and agony your family is experiencing, and I understand that my apologies cannot undo the tragedy that occurred to Daniella. However, I hope that my words are a small step towards healing for your family and loved ones during this difficult time.

I want to assure your family that I take my responsibilities as a police officer very seriously. I am committed to learning and improving myself as an officer.

Please know that this tragedy will always weigh heavily on me as a reminder of Daniella, and that I will remain vigilant and dedicated to the safety of our community.

Again, please accept my sincere condolences and apologies for the loss of your beloved Daniella.

[83] I find that Constable Lee’s sincere remorse and understanding of his misconduct, coupled with an apology to the complainant’s family, must be acknowledged.

Employment History

Potential to Reform or Rehabilitate

[84] For perspective on these two factors, I first refer to the OCPC decision regarding *Sgt. Greg Andrews and the Midland Police Service (2002)*, for comparison. This case was tendered by both the Prosecution (Ex 6 – BOA – Tab C) and Defence (Ex 7 – BOA – Tab 3) to support their respective positions on penalty. I extract from this decision that Sgt. Andrews’ misconduct included; “*a false, misleading or inaccurate statement to an investigating officer*”, leading the original Hearing Officer to stray from the Prosecution’s request to levy a penalty of dismissal, but rather impose a demotion period of several years followed by a requirement to re-apply for promotion to his original rank.

[85] The Commission found even this penalty too severe. It recognized the twenty personal and professional reference letters that were submitted in support of Sgt. Andrews (similar to the reference letters that were provided for Constable Lee). The Commission also addressed the issue of rehabilitation, stating:

[86] *“unless the offence is so egregious and unmitigated the opportunity to reform should be a significant consideration. The Hearing Officer was correct in his final assessment not to impose the penalty of dismissal. He was also correct that the penalties imposed for misconduct must be strong enough to send a clear message to other officers that such conduct or any conduct of this nature will not be tolerated.*

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

[88] My second reference is to the OCPC decision regarding *Cst. Debra Gregg and the Midland Police Service (2001)*, which involves the same incident in the Sgt. Andrews decision, and also addressed the issue of rehabilitation. Cst. Gregg had eight and half years of service and an unblemished employment record. The Hearing Officer’s penalty of dismissal was amended by the Commission to a demotion for a period of 1-year.

[89] With respect to Constable Lee, he had approximately 27 months of policing experience when he responded to the complainant’s call in August 2022. Although he was still a junior officer at the time, both the Prosecution and Defence provided information that was sufficient for me to understand the type of person and officer he is.

[90] Constable Lee’s performance evaluations consistently highlight his eagerness to learn and his respect, professionalism and assistance towards his police colleagues and members of the public. He is described by his supervisors as someone who communicates well and is calm in stressful situations. Constable Lee established himself as a contributing member who fit in well with his platoon. None of the evaluations indicated any ratings below “satisfactory” or identified any concerns with his performance.

[91] Defence submitted thirteen reference letters from colleagues and friends of Constable Lee. It is clear to this Tribunal that Constable Lee is well-liked not only for his personal character, but also for his professional skills. The majority of the letters cite his willingness to learn from his mistakes, how he helps others through empathy and compassion, and his potential to be a great police officer. Three of the letters noted Constable Lee’s service as a Canadian Navy Reservist prior to becoming a police officer.

[92] Although Constable Lee’s police employment record is brief, these letters are key to determining his potential for rehabilitation.

Consistency of Disposition

[93] Determining a fair and effective disposition in this matter requires careful consideration of the previous discipline cases that were submitted by the Prosecution and Defence.

[94] In addition to the cases that the Prosecution presented verbally, I reviewed the written decisions of three additional cases (Ex. #7 Tabs E, F, G). Each case resulted in dismissal and can be used to assess similarities which would support the same penalty in this matter.

1. Toronto Police Service and P.C. Ioan Floria #5259 (Tab E):

The seven-year veteran officer in this matter failed to report a kidnapping and in fact directed the injured complainant to not report it to other officers. He further directed them to mislead medical staff regarding the cause of the injuries.

There were multiple instances where the officer deliberately misleads others. There was no evidence of him acting in good faith or making mistakes due to inadvertence or lack of understanding. He was also deemed to be without remorse and beyond rehabilitation.

2. Toronto Police Service and P.C. Matthew Brewer #90065 (Tab F):

This matter involved multiple unrelated instances of misconduct, the first of which occurred when he was a 14-year veteran. The misconduct included aggressive behaviour towards others and two arrests for criminal offences. The Tribunal determined that the officer could not be rehabilitated.

3. Toronto Police Service and P.C. Troy Sylvester #6982 (Tab G):

This matter involved a veteran officer and three counts of misconduct. This was in addition to historical discipline matters in 1997, 2001, 2004 & 2005.

This matter involved an allegation of theft of money from a prisoner. The officer, who had a lengthy history of misconduct, was convicted of Corrupt Practice at a Tribunal. The Tribunal imposed a penalty of dismissal.

[95] Defence suggested during their submissions that the penalty of dismissal is reserved for repeat, undeterred offenders like those included in the above cases. I concur that the proposed penalty of dismissal in each of those cases was based on misconduct by veteran officers that was deliberate and on a repetitive basis over time. None of these factors have been shown to apply to Constable Lee.

Specific and General Deterrence

- [96] My assessment of this factor recognizes the equal importance of deterrence as it relates to Constable Lee and for officers throughout the Service. On this factor, I refer to *Toronto Police Service and Upjohn (2021)* (Ex #7 – BOA – Tab 2), where the Hearing Officer found specific deterrence to be addressed through Upjohn’s “*acceptance of responsibility, his guilty plea and willingness to accept penalty*”. General deterrence was subsequently addressed through awareness via the Service’s networks.
- [97] As stated previously, Constable Lee experienced deep emotional impact as a result of this incident. His early participation in counselling, participation in the internal investigation and guilty plea before this Tribunal are factors that leave no doubt in my mind that Constable Lee will not repeat this misconduct.
- [98] I must however emphasize the importance of general deterrence in this matter. The actions of police officers at every call, including those involving intimate partner violence, must meet the high standards that are set by the Toronto Police Service and indeed police agencies across Ontario. These standards exist to ensure that complainants receive the services and supports that they need and that police investigations are conducted properly. As illustrated in the Prosecution’s submissions (Ex. #5 – BOA Tab 8), the Service reacted immediately and issued a public reminder to victims that they can indeed call police for help. The police Chief personally visited with the complainant’s family to express his condolences and advise them of the internal investigation of the involved officers.
- [99] Although these immediate steps can be considered effective in raising awareness amongst all police officers towards general deterrence, it is imperative to augment that with an appropriate penalty in this matter. There must be no doubt in any officer’s mind that the Service’s standards of conduct and well-established response protocols shall be met when responding to intimate partner violence incidents.
- [100] I again refer to the OCPC decision regarding *Sgt. Greg Andrews and the Midland Police Service (2002)* regarding general deterrence:
- [101] *“the penalties imposed for misconduct must be strong enough to send a clear message to other officers that such conduct or any conduct of this nature will not be tolerated...(and) that the penalty must ensure public confidence in their police force.”*
- [102] The OCPC also established the need to impose an appropriate penalty that, when applicable, retains the opportunity for the officer to be rehabilitated. In this matter, I find the potential for Constable Lee’s rehabilitation, and hence its usefulness to TPS and the citizens of Toronto, to be quite high.

Systemic Failure and Organizational Context

[103] Defence submitted that Constable Lee’s conduct on the day he met the complainant was a result of factors that placed him at a disadvantage. Counsel Mr. Clewley stated:

[104] *“This is a case of neglect, a failure to properly do the job. In this case, that failure lies in inexperience and lack of training. It is not a case of wilful misconduct. It is not a case of deceit. There is no bias present. There is no indifference and there is no laziness. This was the result of misapprehending what was before him. It was that misapprehension that affected his ability to serve and protect.”*

[105] Further, Constable Lee’s partner on that day had a similar level of policing experience and therefore not able to act as a mentor. However, I refer to my previous statement in paragraph [77], that an officer would have acquired some level of experience with respect to domestic calls over a two-year period.

[106] Finally, the pandemic impacted Constable Lee’s recruit training schedule, including the cancellation of domestic violence training. I do not have additional evidence to either support or contradict the specifics of this factor, however I must give it consideration in my assessment. I did note however, that Constable Lee completed an e-Learning segment via the Canadian Police Knowledge Network (CPKN) titled; *“Dom Vio Risk Mgmt (DVRM) Rpt”* on April 28, 2020 (Ex #5 – BOA – Tab 5).

[107] I recognize that Constable Lee’s capacity to respond to this call was not the result of deliberate negligence by the Service or a particular unit, but rather the unfortunate consequence of the circumstances listed above.

▪ Conclusion

[108] As noted on page 5 of this decision, Constable Lee requested an opportunity to address the complainant’s family. His sincere apology and acceptance of responsibility were a reflection that this experience has had on him.

[109] I also want to take a moment to recognize the complainant’s family, her father (A.G.I.) and sisters (T.I. and A.I.). They attended on the date of Constable Lee’s appearance and although they were not called as witnesses during the proceeding, they did request to address the Tribunal. They each expressed forgiveness towards Constable Lee, felt that he learned from this experience and requested that he not be dismissed from the Service.

[110] The complainant's father (A.G.I.) stated:

“Mr. Lee. I forgive you. As far as it goes, I think at that moment, you made a decision which right now you got to live with it like how I'm living with the loss of my daughter. I think for me, this is going to educate you, make you a better police officer. I don't want to see you lose your job. I think you learned a lot from this and I know deep in my heart that you'll be a better officer if given the chance. And I'd like the Tribunal to think about what I just said and give this officer a chance to prove himself. I think he will be an excellent officer.”

[111] The complainant's sisters (T.I. and A.I.) through Mr. Clewley, stated:

“They both authorized me to tell you that they join their father and that they forgive officer Lee and they do not wish to see him dismissed. They realize he's learned of this and they have every confidence that he will benefit from it and teach others not to make the same mistake.”

[112] I thank the complainant's family for their comments. They were made in recognition of the impact that her loss has had on them, and that the Toronto Police Service has taken steps to ensure accountability. My decision in this matter must be founded on the facts surrounding the circumstances of the call and Constable Lee's actions when he responded to it.

Disposition

[113] The Prosecution proposed a penalty of dismissal.

[114] The Prosecution stated during submissions that holding Constable Lee accountable will maintain the public's confidence in the Service's discipline process while also ensuring that TPS members fulfill their obligations to the community. It also put forward that Constable Lee's usefulness to the Service has been exhausted and as such, proposed dismissal. Although I agree with the first statement, I do not agree with the second.

[115] The Defence proposed a penalty in the range of 5 – 12 days, more specifically 10 days.

[116] The Defence relied on numerous cases that outline various types of wilful misconduct, almost all of which resulted in forfeiture of hours. I agree that these cases differ from the matter before this Tribunal in that Constable Lee's misconduct was not wilful. However, in my view a forfeiture of hours does not sufficiently recognize the departure from well-established Service policy, nor does it apply the appropriate degree of general deterrence.

[117] A core consideration in determining Constable Lee's usefulness to continue as a police officer and hence, a public servant to the citizens of Toronto, is anchored in his suitability to perform the duties of the job. In my view, this requires Constable Lee's understanding of the misconduct, genuine remorse, acceptance of responsibility, along with the confidence of credible references in his potential to serve.

[118] I find all of the above factors to be present in this matter. Constable Lee, recognizing the potential in himself, may offer to share his experience with new recruits and current officers as a further measure of general deterrence.

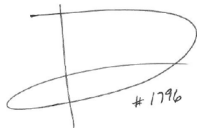
Penalty

[119] The penalty for Constable Lee in this matter, imposed under Sec 85(1) of the *Police Services Act*, will be:

[120] A reduction in rank from 2nd Class Constable to 3rd Class Constable for a period of twelve (12) months, following which the officer will be returned to the rank of 2nd Class Constable on the basis of satisfactory work performance to be determined by the officer's Divisional Commander, and

[121] Further ordered under Section 85(7)(b) of the *Police Services Act*, to enrol, attend and successfully complete any supplemental training deemed necessary by the Service and the Toronto Police College.

[122] The above penalty combination is imposed under the authority of Sec 85(1)(g) of the *Police Services Act, R.S.O. 1990*.



Superintendent Taufic Saliba #1796
Hearing Officer
Peel Regional Police