TRIBUNALS ONTARIO

Ontario Civilian Police Commission

TRIBUNAUX DÉCISIONNELS ONTARIO

Commission civile de l'Ontario sur la police

Citation: *Zarabi-Majd v. Toronto Police Services*, *2024 ONCPC 29*

Date: 2024-04-04
File: 23-ADJ-008

Between:

Constable Zarabi-Majd — Appellant

and

Toronto Police Service — Respondent

Decision and Order

Panel: Laura Hodgson, Vice Chair
Emily Morton, Vice Chair
Colin Osterberg, Vice Chair

Participants: Melanie Webb, Counsel for Constable Zarabi-Majd;

Noah Schachter, Mathew Capotosto, Counsel for Toronto Police Service

Held by Videoconference: January 11, 2024

INTRODUCTION

[1] In a decision dated December 19, 2022, the Hearing Officer, Deputy Chief (Retired) Robin McElary-Downer, found the Appellant, Constable Zarabi-Majd, guilty of four counts of insubordination and four counts of discreditable conduct contrary to the Code of Conduct under the *Police Services Act* (the PSA). In the penalty disposition dated May 2, 2023, the Hearing Officer ordered the Appellant dismissed from the Toronto Police Service (TPS) unless she resigned within seven days.

[2] The Appellant appeals from the findings of misconduct and from penalty.

[3] For the reasons that follow, the appeal is dismissed.

OVERVIEW

[4] The Appellant, an officer with the TPS, was diagnosed with post-traumatic stress disorder and had been on leave since 2018. She alleged that she was a witness to and victim of workplace sexual harassment.

[5] The Appellant's misconduct occurred while she was on leave. In her reasons for penalty the Hearing Officer summarized the misconduct as follows:

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

[6] The Appellant submits that the Hearing Officer erred by dismissing her two applications to adjourn the misconduct proceedings, failing to conduct the misconduct hearing itself in a procedurally fair manner and making specific errors in relation to count eight (harassment of another officer). The Appellant also submits there are numerous errors in the decision ordering the Appellant's dismissal from the TPS. As set out below, there is no basis for the Commission to interfere with the Hearing Officer's decision to decline to grant the adjournments, nor with her misconduct or penalty decisions.

[7] Following the hearing, the Commission requested written submissions on the application of a "Doré analysis" as established in *Doré v. Barreau du Quebec*, 2012 SCC 12 and recently reaffirmed in *Commission scolaire francophone des Territoires du Nord-Ouest v. Northwest Territories (Education, Culture and Employment)*, 2023 SCC 31, at para 66. The parties were asked to make submissions as to whether the misconduct proceeding and penalty were a proportionate limit on the Appellant's rights under the *Charter of Rights and Freedoms,*[1] including her s. 2(b) right to freedom of expression. For the reasons that follow, the Commission is satisfied that the Hearing Officer's finding of misconduct and penalty balances the statutory objectives of the PSA with the Appellant's expressive rights under the *Charter*.

THE STANDARD OF REVIEW

[8] The standard of review applied by the Commission when considering an appeal from the decision of a hearing officer is reasonableness on questions of fact and correctness on questions of law: *Ottawa Police Service v. Diafwila,* 2016 ONCA 627. Questions as to whether facts satisfy a legal test are questions of mixed fact and law and are to be reviewed on the standard of reasonableness unless there is an extricable question of law involved: *Floria v. Toronto Police Service,*

[1] Being Part 1 of the *Constitution Act*, 1982, being Schedule B to the *Canada Act 1982* (UK), 1982 c. 11 [*Charter*]

2020 ONCPC 6 (CanLII); *Dunsmuir v. New Brunswick,* 2008 SCC 9, at para. 53. Findings of fact and credibility assessments made by a hearing officer are owed particular deference: *Toronto Police Service v. Blowes-Aybar,* 2004 CanLII 34451 (Ont. Div. Ct.).

[9] In *Imperial Oil Limited v. Haseeb*, 2023 ONCA 364, the Court of Appeal for Ontario recently described the reasonableness review in the following terms, at para. 43:

> In applying the reasonableness standard, the focus is "on the decision actually made by the decision maker, including both the decision maker's reasoning and the outcome." In addition, the reviewing court is not to hold the reasons up to a standard of perfection or conduct a "line-by-line treasure hunt for error". [Citations omitted]

[10] With respect to issues of procedural fairness the Commission must consider whether the required elements of procedural fairness in the particular circumstances have been met: *Forestall v. Toronto Police Services Board*, 2007 CanLII 31785 (Ont. Div. Ct.) at para. 38; *Canadian Pacific Railway Company v. Canada (Attorney General)*, 2018 FCA 69 at para 49; *Brooks v. Ontario Racing Commission*, 2017 ONCA 833 at para. 5.

[11] On an appeal from penalty the Commission is not permitted to reweigh factors and substitute its own opinion. Unless there has been a clear error in principle or relevant material factors ignored, the Commission will not interfere with the penalty even if it would have come to a different conclusion. The Commission's task is to determine whether the Hearing Officer's decision was reasonable in the circumstances: *Karklins v. Toronto (City) Police Service*, 2010 ONSC 747 at para 10*; Kobayashi et al and the Waterloo Regional Police Service*, 2015 OCPC 12 at para 33.

SUMMARY OF THE FACTS AND PROCEDURAL HISTORY

[12] On October 12, 2019, while on leave from the TPS, the Appellant created a Twitter account titled "Dirty Shades of Blue". The account profile picture

depicted the Appellant in a TPS hat. There is no dispute this account was owned and operated by the Appellant.

[13] On January 29, 2021, the TPS Professional Standards Unit ordered the Appellant to attend an interview as a witness in an investigation into a workplace sexual harassment allegation. In response to the notice, the Appellant called a Professional Standards Detective and, using obscenities, indicated her refusal to attend. She did not attend the interview.

[14] On February 19, 2021, the TPS notified the Appellant that she was the subject of an investigation with respect to her use of Twitter and ordered her to attend an interview. Among the multiple posts at issue, were two of the Appellant's posts on February 11, 2021. One was a reply to a Twitter post by the TPS Chief in which the Appellant referenced a senior officer and wrote: "Plunge for the rookies who were forced to attend dusty old Tavener sex parties being Pimped! #MeToo". The other was a Twitter post made by the Appellant in reply to a post by the Mayor of Toronto that stated:

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

[15] In response to the February 19, 2021 notice to attend an interview, the Appellant replied by email "I WILL NOT BE ATTENDING" and posted a copy of the email attachments from Professional Standards on Twitter. She did not attend the interview. The failure to attend interviews as required by the January 28 and February 19, 2021 notices formed the subject of the first count of insubordination.

[16] On February 23, 2021, the TPS ordered the Appellant to immediately stop posting references on her Twitter account to two specific TPS members whom the Appellant believed were unfairly treated by the TPS. These members had told TPS that the Appellant's posts were harassing and impacted their well-

being. The Appellant immediately posted a copy of the order to Twitter, including the members' names, and continued to use their names in her later posts. This conduct resulted in the second count of insubordination.

[17] Count three related to the Appellant's continued use of her Twitter account to post about ongoing internal TPS investigations and her perceived mistreatment by the TPS. From October 12, 2019, until her account was suspended by Twitter in August 2022, the Appellant was estimated to have posted over 25,000 tweets in total. The Hearing Officer detailed a number of these posts in her decisions. For example, the Hearing Officer reproduced the Appellant's April 25, 2022 post replying to a post by the TPS Chief of Police:

> You are a sexual predator enabling coward james.
> You are a thug.
> You are a woman abuser.
> You are a coward.
> You are a disgrace.
> Fuck patriarchy.
> Fuck white supremacy.
> Fuck enablers.
> We deserve better than you and so does your own daughter James.
> #MeToo #NDA #StopNDA

[18] On July 7, 2021, the TPS served the Appellant Notices of Hearing alleging two further counts of insubordination and two counts of discreditable misconduct. The Appellant immediately posted the Notices on Twitter with the words "I WILL NOT BE ATTENDING". The Appellant did not attend appearance dates before the disciplinary tribunal and the matter was adjourned to January 10, 2022. This failure to appear before the tribunal resulted in the service of a fifth Notice of Hearing for insubordination.

[19] The Appellant also failed to attend an interview as ordered with Professional Standards about other misconduct allegations on August 14, 2021. The TPS served three additional Notices of Hearing alleging one count of insubordination for failing to attend the interview and two further counts of discreditable

conduct. One count of discreditable conduct related to the Appellant's alleged harassment of a fellow officer and the other to an interaction with a member of the public on her Twitter account. On the day she received the Notice, the Appellant posted it to her Twitter account.

[20] The TPS served the Appellant with further Notices of Hearing in relation to counts 9 through 11, alleging discreditable conduct pertaining to her conduct on Twitter.

[21] Because the Appellant repeatedly stated that she would not attend proceedings, the respondent advised that, if necessary, it would bring an application to have the misconduct hearing proceed *in absentia*.

[22] Hearing dates were to be set on March 24, 2022. Counsel for the Appellant appeared and advised that she would be requesting an adjournment *sine die*. Hearing dates were scheduled for August with the adjournment motion to be heard on May 24, 2022. The Hearing Officer indicated that the Respondent's request to proceed *in absentia* would only be considered if the Appellant's adjournment application was denied and the Appellant failed to attend the hearing.

[23] In reasons dated June 14, 2022, the Hearing Officer denied the application for an adjournment. Weeks later the Appellant brought a second motion for an adjournment *sine die*. In a decision dated September 24, 2022, the Hearing Officer denied an adjournment, finding the second application amounted to an abuse of process. New hearing dates were scheduled for November 1 to 4, 2022.

[24] In an email dated October 21, 2022, following the Hearing Officer's offer to discuss any issues to accommodate the Appellant at her hearing, counsel, who had acted for the Appellant on the adjournment applications, indicated that neither she nor the Appellant would participate in the misconduct hearing. Neither the Appellant nor counsel appeared on November 1, 2022, the first date

of the misconduct hearing. The Hearing Officer granted the Respondent's request to proceed *in absentia*. The Respondent called one witness and tendered documentary, audio and video evidence. In a decision dated December 19, 2022, the Hearing Officer found the Appellant guilty of four counts of insubordination and four counts of discreditable conduct.

[25] At the penalty hearing on March 2, 2023, the Appellant was represented by counsel (the same counsel as on appeal to the Commission). The Hearing Officer ordered the Appellant dismissed from the TPS in a decision dated May 2, 2023.

ISSUES RAISED ON APPEAL

[26] The Appellant raises the following issues on appeal:

i. Did the Hearing Officer err in dismissing the Appellant's adjournment requests?

ii. Was the misconduct hearing procedurally unfair?

iii. Did the Hearing Officer err in finding the Appellant guilty of discreditable conduct by displaying harassing behaviour towards another officer (count 8)?

iv. Did the Hearing Officer err with respect to penalty?

The Commission raised and sought submissions on the following issue:

v. Is the disciplinary action against the Appellant a proportional limit on her *Charter* rights?

ANALYSIS

i. Did the Hearing Officer err in dismissing the Appellant's adjournment requests?

May 24, 2022 Adjournment Request

[27] It was common ground that the Appellant was diagnosed with PTSD. At the first adjournment request the Appellant submitted that that her PTSD symptoms would be exacerbated by exposure to reminders of her work. She sought an indefinite adjournment until she recovered "sufficiently to enable her to attend a disciplinary hearing."

[28] In support of her application the Appellant tendered two letters from her psychiatrist, Dr. Nwachukwu. The first letter was undated but noted a "visit date" of October 5, 2021. Dr. Nwachukwu wrote that the Appellant was unable to attend a hearing because of "significant exacerbation of her symptoms which occurs when exposed to reminders of her work experiences". The doctor wrote, "[t]he exacerbation of her symptoms is significantly stronger when these reminders relate to her particular work experiences as opposed to another person's experience." The letter provided no details with respect to the Appellant's treatment or prognosis. Dr. Nwachukwu indicated, "I can confirm that Ms. Zarabi attends my outpatient clinic. I will certainly be able to advise you when she has recovered sufficiently to enable her [to] attend a disciplinary hearing in any form." The second letter indicated that "[b]ased on her presentation on January 7, 2022, it is my opinion that Ms. Firouzeh Zarabi-Majd is not able to attend a tribunal hearing currently either in person or virtually."

[29] The third document tendered by the Appellant was a letter from clinical psychologist, Dr. Haskell, dated July 27, 2020. This letter was written at the request of the Appellant's civil counsel for the purpose of explaining the Appellant's delay in commencing an application to the Human Rights Tribunal of Ontario (HRTO). In her letter, Dr. Haskell summarized how the Appellant viewed her work experiences at the TPS. At that time, the Appellant was assessed as having a "classic posttraumatic presentation." It also noted that the Appellant's "hyperarousal symptoms" had somewhat diminished. Dr. Haskell concluded that the Appellant delayed in making the HRTO application until 2020, when she was "psychologically able to do so".

[30] The Respondent submitted that the Appellant's medical documentation was insufficient and contradicted by the Appellant's behaviour. The Respondent relied on the Appellant's ability to participate in other litigation and her activity on social media, both related to her workplace experiences.

[31] The Hearing Officer's June 14, 2022, reasons for denying the adjournment are extensive. She reviewed the medical documentation and noted that Dr. Haskell's 2020 report confirmed the Appellant suffered from PTSD but failed to advance the Appellant's current request for an adjournment. She held:

> In fact, if the report was not so dated, I would find it detrimental to the applicant's motion to adjourn, since Dr. Haskell's findings promotes the applicant to take her complaint to a tribunal, in this instance, the HRTO.

[32] The Hearing Officer considered, but ultimately did not accept, the opinion of the Appellant's psychiatrist Dr. Nwachukwu. The Hearing Officer concluded that the Appellant's behaviour "considerably undermined" the psychiatrist's view that she was unable to participate in disciplinary proceedings because of the impact of reminders of her work experience.

[33] The Hearing Officer reviewed the Appellant's ongoing participation on Twitter including that, as recently as two days prior to the motion hearing, she had posted about her personal work experiences.

[34] The Hearing Officer considered the Appellant's participation in other legal proceedings. In May of 2021 the Appellant testified as a witness on a *Charter* application brought by the defence in an unrelated criminal proceeding (*R. v. Barreau*). Her evidence related to the conduct of an arresting officer, who was one of the TPS officers named in the Appellant's HRTO complaint. The Hearing Officer noted the Appellant's own evidence that she testified at these proceedings voluntarily and not under subpoena. In that testimony the Appellant specifically discussed her personal experiences with the TPS officer at issue.

[35] The Hearing Officer also noted the Appellant's ongoing participation in both an HRTO proceeding and a Grievance Application on the Duty of Fair Representation before the Ontario Police Arbitration Commission. Both proceedings related to her personal work experiences. In the Hearing Officer's view, participation in these proceedings did not align with Dr. Nwachukwu's view that she was unable to participate in PSA proceedings.

[36] The Hearing Officer concluded the following:

> I find the totality of the evidence points to a pattern of behaviour symptomatic of an individual determined to avoid accountability for one's own alleged misconduct. The applicant has refused to comply with the orders of Professional Standards and has yet to appear before this tribunal, and yet she has proven she is capable of speaking of her personal work experiences in a criminal court setting; she has proven she can speak of her personal work experiences in her HRTO application; and, she has proven she is capable of speaking of her personal work experiences by posting such on her Twitter account. While I remain satisfied the applicant suffers from PTSD, I am not convinced it restricts her from participating in this tribunal.

[37] The Hearing Officer found the onus for an adjournment was not met and that "in balancing the principles of procedural fairness, the public interest and desire for timely resolutions to police disciplinary matters, Constable Zarabi-Majd's matter will proceed." The Hearing Officer also noted her commitment to work with parties to make any reasonable accommodations necessary.

July 15, 2022 Adjournment Request

[38] Weeks following the release of this decision, counsel for the Appellant advised she would bring a second adjournment request. The Hearing Officer directed the application be heard in writing. In the written application the Appellant proffered another letter from Dr. Nwachukwu, dated May 27, 2022. This letter reiterated that the Appellant could not participate in a hearing and that posting on social media did not have the same impact on the Appellant as participation in the disciplinary hearing process. The Respondent submitted the second

application was an abuse of process as there was no material change in circumstances justifying a renewed application. The Hearing Officer also received written submissions on the abuse of process issue from both parties.

[39] On September 24, 2022, again in comprehensive reasons, the Hearing Officer dismissed the second adjournment application. She found the application, which largely reproduced submissions made at the first adjournment motion, constituted an abuse of process. The Hearing Officer agreed with the Respondent that while the May 27, 2022, letter from the psychiatrist provided "minor tweaking" it was not new evidence. The Hearing Officer also referred to the fact the Appellant's medical letter lacked factual foundation, was unsworn and without confirmation of the physician's credentials. Ultimately, the Hearing Officer concluded that the new note was "deficient, confusing and groundless". In her reasons, the Hearing Officer reiterated her commitment to work with the Appellant to determine any accommodation for the disciplinary hearing.

No Error in Failure to Consider Undue Hardship

[40] In her factum the Appellant asserts that once the Hearing Officer accepted that the Appellant had PTSD and this was a disability "it was incumbent on the Tribunal to accommodate the Appellant to the point of undue hardship." She states the Hearing Officer erred by failing to address in her reasons what would constitute undue hardship, and why an adjournment would prejudice the Respondent to the point of undue hardship. We do not agree.

[41] The fact that the Appellant has a disability (i.e., was diagnosed with PTSD) did not on its own establish discrimination. The onus is on the Appellant to establish that there is discrimination based on a disability. The Hearing Officer found that the Appellant did not establish that participating in the disciplinary hearing constituted discrimination or that an indefinite adjournment was a necessary accommodation. This factual conclusion was open to the Hearing Officer and is entitled to deference.

[42] The Appellant also suggests “[i]t is difficult to see how an adjournment of limited duration would have caused any significant degree of hardship” and argues minimal actual prejudice would have flowed to the Respondent. The difficulty here is that the only relief the Appellant requested was an indefinite adjournment, not one of limited duration. Her motion material requested an adjournment “until such time as she has recovered sufficiently to enable her to attend a disciplinary hearing”.

[43] As noted by the Respondent, even if the onus did shift, it was clear from the Hearing Officer’s reasons that granting an adjournment *sine die* in the circumstances of this case would cause undue hardship:

> To grant an adjournment, in this case and mark it *sine die* since no end date was provided by the psychiatrist, as to when the applicant would be medically cleared to attend the hearing, would in light of the SPPA, fail to secure a just, most expeditious and perhaps a cost-effective proceeding.

[44] The Hearing Officer fairly concluded that, in the circumstances of this case, an adjournment was not required to accommodate the Appellant. We find no requirement in these circumstances for her to have more comprehensively assessed undue hardship.

No Failure to Consider other Accommodations

[45] As recently affirmed by the Commission in *Anderson v. OPP*, 2024 ONCPC 27 CanLII at paragraph 30, the decision to grant an adjournment pursuant to s. 21 of the SPPA is discretionary. It must be made fairly and in accordance with the principles of natural justice. Adjournment considerations include, among other relevant factors, the history of the proceeding and the public interest in the expeditious resolution of disciplinary proceedings. There is no right to an adjournment and the onus is on the party requesting the adjournment to show that it is required: *Christian Brudlo and The Toronto Police Service*, 2005 CanLII 81117 (ON CPC) at paras. 100-102, *Law Society of Upper Canada and Igbinosun*, 2009 ONCA 484.

[46] The Appellant suggests that the Hearing Officer erred in not considering options to accommodate the Appellant other than a *sine die* adjournment. She suggests these included adjourning proceedings subject to medical updates, requesting alternative medical opinions or conducting a hearing in writing. None of these options were proposed at the adjournment motions. Again, the Appellant requested an adjournment *sine die* and the onus was on her to establish this was required. The Hearing Officer found the medical evidence was insufficient and the onus was not met. It was not then incumbent on the Hearing Officer to canvass alternative options without an evidentiary basis or input from the Appellant: *Rollins v Pinkerton,* 2020 ONCPC 7 at para 22.

[47] In both adjournment decisions, and in the Hearing Officer's correspondence to parties, she repeatedly indicated her willingness to consider accommodations for the Appellant short of an indefinite adjournment. For example, in correspondence dated October 1, 2022 the Hearing Officer suggested use of a virtual or hybrid hearing format, relocation of the hearing outside of a TPS facility, use of civilian attire for all participants and adjusted tribunal hours with extended breaks. There is no evidence that the Appellant responded to these suggestions or made any remedial requests short of an indefinite adjournment. In fact, the evidence before the Hearing Officer was that the Appellant clearly and repeatedly indicated on social media and directly to the TPS that she had no intention of participating in the proceedings. In these circumstances there was no error or procedural unfairness in the Hearing Officer not considering alternatives to the adjournment requested.

No Error in Weighing of Evidence

[48] The Appellant takes issue with the Hearing Officer's consideration of the evidence on the adjournment applications. We find that in both motion decisions the Hearing Officer engaged in a fulsome, meaningful analysis of the evidence. The Hearing Officer compared evidence of the Appellant's participation on social media and in other legal proceedings with her medical evidence that she

could not participate in PSA proceedings because of the subject matter. The medical evidence consisted of summary letters void of information about the rehabilitation process. There was no information about adherence to treatment, prognosis, or the factual basis for the physician's conclusions, including the extent of his knowledge of the nature of the Appellant's participation in other proceedings and online. It was open to the Hearing Officer to find the Appellant's evidence failed to meet the onus required for an adjournment.

Treatment of Medical Evidence

[49] The Appellant argues that the Hearing Officer erred by relying on medical evidence presented by the Respondent. At the first adjournment hearing, the Respondent tendered an email exchange, dated October 8, 2021, between Dr. Schweigert, an occupational medicine consultant with TPS and the TPS "Wellness Unit" and Dr. Nwachukwu. Dr. Shweigert's email describes his conversation with Dr. Nwachukwu: "nonetheless when I spoke with the psychiatrist and pointed out the court attendance and the social media activity he agreed with me that she could attend virtually to the internal investigation."

[50] With respect to this evidence, the Hearing Officer concluded "[w]hile my decision does not turn on Dr. Schweigert's evidence, I find it weakens Dr. Nwachukwu's assertion that the applicant cannot attend her disciplinary hearing." We find no error. The Hearing Officer did not rely on Dr. Schweigert's medical evidence, she relied on his evidence with respect to communications with Dr. Nwachukwu about the Appellant's ability to attend the hearing. It was open to the Hearing Officer to find that Dr. Nwachukwu's medical opinion was weakened by his own statement to Dr. Schweigert.

[51] The Appellant also asserts that the Hearing Officer applied an uneven standard of scrutiny to her medical evidence. In her reasons for denying the second adjournment application, the Hearing Officer made the following comment about Dr. Nwachukwu's evidence:

> … he has not been qualified as an expert, a curriculum vitae has not been produced, and his note is unsworn to [sic]. In my view, this is a missed opportunity to give weight, if weight is deserving.

[52] The Appellant finds it "perplexing" that similar observations were not made about the absence of credentials provided with respect to the email from Dr. Shweigert. She argues that sworn affidavits or evidence are not required and overcomplicate the administrative process.

[53] We find no error in the Hearing Officer's treatment of Dr. Nwachukwu's evidence, and we do not agree that the Hearing Officer applied uneven scrutiny to the Appellant's medical evidence. As noted by the Respondent, the Hearing Officer was, in her first motion decision, also critical of the Respondent's medical evidence stating "[i]t would have been helpful had Dr. Nwachukwu testified at this hearing, *as it would have been equally helpful had Dr. Schweigert testified."* (emphasis added). In any event, as the onus was on the Appellant to establish that an adjournment was necessary, we find no error in the Hearing Officer specifically questioning the strength of her medical evidence.

Treatment of participation in other proceedings and on Twitter

[54] In denying the first adjournment request, the Hearing Officer clearly found the evidence established that the Appellant was able to speak of her personal work experiences in a criminal court setting, in the HRTO process and in her postings on Twitter. The Appellant asks us to reconsider this evidence and to come to a different conclusion.

[55] The Appellant asserts that the Hearing Officer erred in not considering that when the Appellant gave evidence in the criminal trial in 2021, she was fulfilling a duty by testifying. She further submits it is reasonable to assume her PTSD symptoms were then exacerbated by this experience. The Hearing Officer was clearly aware the courtroom evidence was given in 2021, and noted the Appellant's own statement that her evidence was given voluntarily. There was

no evidence before the Hearing Officer that the experience of voluntarily testifying in the 2021 criminal proceeding exacerbated the Appellant's PTSD symptoms, and we are not satisfied that the Hearing Officer erred by not drawing the inference that it had.

[56] With respect to the Appellant's participation in the HRTO proceeding, the Appellant now asserts that the Hearing Officer should have considered the nature of the evidence, if any, the Appellant would give at the scheduled HRTO proceedings. The evidence before the Hearing Officer was that the Appellant's HRTO preliminary hearing was scheduled for the following month. The Appellant, who was represented by the same counsel at the adjournment motion as at the HRTO proceedings, offered no evidence that the scheduled proceeding did not require the Appellant to address her work experiences. It was open to the Hearing Officer to conclude the following:

> It stands to reason that since the applicant is able to participate in the HRTO hearing and presumably instruct counsel, then she can participate in her own disciplinary tribunal. I premise this on the fact the HRTO matter relates directly to the applicant's personal work experiences.

[57] We also do not find any error in the Hearing Officer considering the Appellant's persistent commentary on social media. The Hearing Officer concluded, "[t]he countless tweets I have examined undisputedly reflect the applicant's work experiences." Again, we would not reweigh this evidence. It was open to the Hearing Officer to find this behaviour contradicted the Appellant's assertion that exposure to her TPS work experiences prevented her from attending PSA proceedings.

No error in consideration of *Mauro v. Thunder Bay Police Service*

[58] At the first motion hearing the Appellant submitted that the case *Mauro v. Thunder Bay Police Service*, 2013 ONCPC 9, where an adjournment was denied because of insufficient medical evidence, was inapplicable to the circumstances of this case. In her reasons, the Hearing Officer fully detailed the

facts in *Mauro*, specifically noting the Appellant's submission that it was inapplicable. The Hearing Officer did however draw parallels with the limited medical information available in the Appellant's matter and the Mauro case. While the nature and quality of evidence available in Mauro differed, we find no error in the Hearing Officer's analysis.

[59] The Commission is not satisfied that the Hearing Officer erred in refusing the Appellant's motions for adjournment. She fully and fairly considered the evidence before her, and her conclusions are justified in relation to the facts and law. There is no basis for interference by the Commission.

ii. Was the misconduct hearing procedurally unfair?

[60] With respect to the findings of misconduct following the November 2022 misconduct hearing, the Appellant raises two issues. The first issue pertains to the procedural fairness of the misconduct hearing

[61] Prior to proceeding *in absentia*, the Hearing Officer concluded the Appellant made a conscious, fully informed decision to not participate and was aware of the repercussions. The Hearing Officer was satisfied that the Notices of Hearing were served on the Appellant, that she was specifically informed that the tribunal could proceed in her absence and that the Appellant had repeatedly and publicly indicated she would not attend the hearing. Noting that "extenuating and persuasive circumstances" were necessary before a hearing was held *in absentia*, the Hearing Officer concluded that "more than ample evidence and circumstances" existed here.

[62] Though not raised as a specific ground of appeal, we find no procedural unfairness in the Hearing Officer proceeding in the Appellant's absence. These circumstances are quite distinct from those in *Anderson v. OPP*, supra, in which the Commission recently found the Hearing Officer's decision to proceed *in absentia* resulted in procedural unfairness. In *Anderson*, counsel had been removed from the record days prior to the hearing, there was no confirmation

that the Appellant received notice of the hearing date and new location and there was no evidence of prior lack of cooperation.

[63] The Appellant suggests that the misconduct hearing was “a deeply procedurally flawed and imbalanced process that was heavily weighted against the Appellant.” She properly notes the Respondent’s evidence was tendered mostly through exhibits and there was no cross-examination or objections raised. The Appellant contends “it behooved both the prosecutor and the Hearing Officer to exercise caution in the conduct of the hearing, and ultimately, for the Hearing Officer, in subjecting the evidence to careful scrutiny and consideration.”

[64] The Appellant had an opportunity to attend the hearing, to retain counsel, to test the Respondent’s evidence and have her own evidence considered. She chose not to. That alone does not make the hearing procedurally unfair. The Hearing Officer articulated as much in her June 2022 decision denying the first adjournment request:

> As demonstrated in her numerous tweets starting in July 2021 specific to her *Police Services Act* charges, the applicant knows of the case that has been made against her. She has and will continue to be given the right to be heard in this tribunal. She was represented by counsel in this motion. Owing to the serious jeopardy the applicant faces; I cannot emphasize enough how hopeful I am she will continue to choose to have counsel at her side. This ultimately is the applicant’s decision however, and the lack of counsel does not amount to procedural unfairness.

[65] The admission of the Respondent’s documentary evidence was in accordance with s. 15 of the SPPA. Hearing Officers have the discretion to admit hearsay evidence and the weight given it is within their discretion and “deserving of deference”: *Cudney, #254 v St. Thomas Police Service*, 2023 ONSC 3443 (CanLII) at para. 23.

[66] The Respondent and Hearing Officer did not fail to subject the Respondent’s evidence to the appropriate level of scrutiny. The Respondent relied mostly on the evidence of D/Sgt Bangild, who introduced documentary evidence and

explained the “mechanics of Twitter” to the tribunal. At the outset of the hearing the Respondent indicated that other witnesses were available to testify (in person or remotely) if required. The Respondent also fairly withdrew one count at the outset of the proceedings and, at the end of the proceedings, requested a not guilty finding on another. We see no indication that the Respondent failed to exercise caution or was procedurally unfair in the unusual circumstances of this case.

[67] In her comprehensive, 84-page misconduct decision the Hearing Officer fully and fairly assessed the evidence. For example, in finding the Appellant guilty of count 8 (discreditable conduct for harassment of another officer) the Hearing Officer considered multiple pieces of evidence and concluded that the sworn affidavits of the witnesses harmonized with the video evidence, the 911 call and the OPP report. The Hearing Officer’s fulsome analysis was also apparent in her finding the Appellant not guilty on count 7, which alleged discreditable conduct by using profane, abusive or insulting language to a member of the public, contrary to s. 2(1)(a)(v) of the Code of Conduct. She subjected the evidence to careful scrutiny and concluded that the prosecution had failed to establish this count on clear and convincing evidence.

[68] Having found no procedural unfairness, the Commission dismisses this ground of appeal.

iii. Did the Hearing Officer err in finding the Appellant guilty of discreditable conduct by displaying harassing behaviour towards another officer (count 8)?

[69] The Appellant alleges errors specific to the Hearing Officer’s finding of guilt on count 8 of discreditable conduct, which related to the Appellant’s harassment of a fellow officer. The Notice of Hearing alleged:

> On October 28, 2020, you and two other individuals S.F. and R.F., drove to Morrisburg, Ontario, to attempt to locate Police Constable [J.R.] to pressure her into testifying at the criminal trial of K.B. You attended several addresses in Morrisburg looking for her including her family business, her father’s residence and her mother’s residence. In addition,

> you repeatedly called numbers associated to her demanding to speak with her. At her mother's residence, you were repeatedly asked to leave the property and you refused to do so. In doing so, you displayed harassing behaviour towards P.C. [J.R.] and her family, which caused them to fear for their safety. In so doing, 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

[70] The criminal proceedings in *R. v. Barreau* formed the backdrop to the Appellant attending Constable R.'s residences. As noted, the Appellant voluntarily gave evidence in support of the accused's pre-trial *Charter* application, detailing her experience with the arresting officer in that case. Defence counsel had also subpoenaed Constable R. to testify for the defence and her counsel brought a motion to quash the subpoena. Immediately following this motion, the Appellant and two of the accused's defence counsel drove to Morrisburg to speak to Constable R.

[71] The Hearing Officer reviewed the evidence of the attempted interactions with Constable R. on this day, which included sworn affidavits from Constable R.'s parents, whose homes the Appellant attended, a video of the Appellant visiting the family business, an audio recording of the 911 call from Constable R.'s mother and an OPP occurrence report. The Hearing Officer found the evidence to be "strong, persuasive, clear and convincing". The Hearing Officer concluded: "I am convinced a reasonable dispassionate citizen would find the conduct of Constable Zarabi-Majd inconsistent with the expected standard of a police officer when she refused to leave the … property".

[72] The Appellant raises numerous issues with this conclusion but in essence asks the Commission to reweigh evidence. She asserts that the Hearing Officer erred in imputing an "ill intention" on the part of the Appellant. She points to evidence that the Appellant attended Morrisburg out of concern for Constable R. The Appellant asserts that there was no evidence that the Appellant was aware she was not wanted and submits: "[a]t worst, continuing to ring the doorbell after being told to leave might be viewed as an error in judgment. However, viewed

from the “objective, reasonable person” standard, the conduct was minor in nature.”

[73] The Hearing Officer fully considered the evidence, including the testimony the Appellant gave regarding the incident at a separate proceeding. She correctly instructed herself on the test to find discreditable conduct contrary to s. 2(1)(a)(ix) of the Code of Conduct. We see no error in her conclusion that the Appellant’s behaviour “grossly crossed the line”. The Hearing Officer summarized why the Appellant should have known her attendance was unwelcome and was not a “minor” transgression:

> Short of this, Constable Zarabi-Majd, being a trained police officer, would have known her refusal to leave amounted to trespassing. The fact that the lawyers she was with backed away is in my view indicative that they understood they were not welcome. Despite this, Constable Zarabi-Majd continued to knock and ring the bell before eventually retreating to the car. She then returned to the front door and rang the bell. Again, she insisted on speaking with J.R.. Despite [S.R.] warning her that she would call the police if she did not leave, Constable Zarabi-Majd refused and kept knocking on the door and ringing the bell. Constable Zarabi-Majd’s refusal to leave prompted Mrs. R. to call 911.
>
> I have listened to the 911 audio and find it disturbing to hear the persistent ring of the doorbell as Mrs. R. is speaking with the 911 call taker.

[74] We find the Hearing Officer fairly reviewed the evidence, and appropriately applied the test for discreditable conduct. It was open to her, in the circumstances of this case, to find that an objective, reasonable person would find the Appellant’s conduct would cause damage to the reputation of the police service.

iv. Did the Hearing Officer err with respect to penalty?

[75] The Respondent sought the Appellant’s dismissal and the Appellant requested “less than” or “other than” dismissal. In an exhaustive 87-page penalty decision the Hearing Officer assessed the evidence as it applied to “commonly held

disposition factors": *Krug v. Ottawa Police Service,* 2003 CanLII 85816 at para. 69.

[76] The Hearing Officer concluded the Appellant's "usefulness as a police officer spent" and ordered her dismissal. The Appellant submits that the Hearing Officer made numerous errors and asks that the penalty be varied to a penalty other than dismissal. In our view, the Hearing Officer fairly applied the relevant dispositional factors, there is no error in principle and no basis for the Commission to vary the penalty.

Nature and Seriousness of Misconduct

[77] The Appellant submits that the Hearing Officer erred in assessing the gravity of the offences. Firstly, she again asks us to revisit the Hearing Officer's characterization of the Appellant's harassment of another officer as "very serious". As detailed above there is no reason to disturb the Hearing Officer's findings of fact with respect to this count. Her conclusions were reasonable and made without error.

[78] The Appellant also takes issue with the Hearing Officer's characterization of the Appellant's posts on social media. The Hearing Officer found as follows:

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

[79] The Hearing Officer went on to note that in her social media posts, the Appellant disclosed confidential police material, (e.g., a picture of an individual

subject to a curfew and flagged as armed and dangerous) and defied an order to stop posting about Constable R. and another officer.

[80] The Hearing Officer concluded that "cumulatively, the nature of Constable Zarabi-Majd's posts, packed full of words that demonstrate complete contempt and disrespect for senior officers and members of the Board, kicks the seriousness of her misconduct far down the field." The Hearing Officer's conclusion that the nature and quantity of the Appellant's posts increased the seriousness of the misconduct was, in the circumstances here, entirely reasonable.

[81] We do not accept the Appellant's suggestion that the Hearing Officer erred by using the terms "libellous" and "slander" to describe the posts. The Hearing Officer is not subject to the same scrutiny for her use of legal terms as perhaps a lawyer or judge would be. It was open, in the circumstances of this case, for the Hearing Officer to use this language to describe the Appellant's tweets. In her posts, the Appellant publicly displayed contempt using a range of obscenities, some directed at the Chief of the TPS. The Hearing Officer found clear and convincing evidence the Appellant launched baseless accusations that could damage the reputation of the TPS and individual officers. In her written submissions to the Commission, the Appellant concedes that "[t]here was certainly language in the tweets attributed to her that could well be considered 'profane, abusive or insulting'". In this context, we do not consider the Hearing Officer's use of these terms as disclosing an error in principle.

[82] In oral submissions the Appellant argued that the penalty of dismissal was "manifestly unfit" submitting there was no criminal act or endangerment of persons in the Appellant's misconduct. A criminal act or endangerment of others by the subject officer is not required for dismissal. Dismissing a police employee rids the employer of the burden of an employee who has shown that they are no longer fit to remain an employee: *Trumbley and Metro Toronto Police Service* (1986) CanLII 146 (ONCA) and *Venables v. York Regional Police*

Service, 2008 ONCPC 8. The Hearing Officer properly noted this and that she was required to impose the least onerous sanction. The Hearing Officer conducted an extensive analysis of the evidence, submissions and case law, properly considering the range of penalty available. It was reasonable for her to conclude, after noting the nature, quantity and "cumulative effect" of the misconducts, that the behaviour was so egregious that the Appellant's usefulness as a police officer was spent.

Role of TPS Management

[83] The Appellant also submits that, in assessing the seriousness of the twitter posts, the Hearing Officer failed to consider that TPS management contributed to the misconduct. Further, she alleges that the Hearing Officer erred by failing to consider the Appellant's role as a "whistle blower".

[84] In her reasons, the Hearing Officer fully considered the role of TPS management and the context of the Appellant's Twitter posts. The Hearing Officer concluded that there was no direct evidence that the Appellant's employer contributed to the misconduct. She contrasted this to the evidentiary foundation established in the HRTO matter *McWilliam v Toronto Police Service and Angela Costa and TPA*, 2020 HRTO 574 (CanLII). With respect to the suggestion the Appellant was a "whistle blower", the Hearing Officer found any alleged workplace harassment did not justify the misconducts, writing "[t]here are appropriate avenues to report such unwanted behaviour – and posting tweets on social media damaging the reputation of the police service and others is not an option."

[85] Contrary to the Appellant's assertions, the Hearing Officer did specifically consider that in some circumstances the Appellant was not the original author of the material she posted. The Hearing Officer assessed as mitigating the fact that one of the Appellant's posts was a screenshot of a platoon group chat that was "unquestionably demeaning and offensive".

[86] We agree with this description; the other officers' conduct on this chat is disturbing. Their misconduct was not, however, the issue before the Hearing Officer nor is it before this Commission. The Hearing Officer appropriately considered it to be mitigating that the Appellant had reposted offensive material generated by other TPS officers. The Hearing Officer ultimately concluded that the mitigation was limited. First, she held it did not explain the Appellant's "wide-spread protracted Twitter attack on persons other than those in the text exchange". Second, the Appellant refused to participate when the TPS investigated the alleged misconduct arising from the chat. We find the Hearing Officer's assignment of limited weight to this mitigating factor to be reasonable.

[87] On appeal to this Commission, the Appellant points to her application to the HRTO as evidence that reporting the issues she aired in her Twitter posts would be ineffective and damaging to her career. The material relating to the HRTO proceeding, while before the Hearing Officer on an adjournment application, was not made an exhibit or relied on by the Appellant at the penalty proceedings.

[88] Many of the Appellant's Twitter posts raise issues about the TPS work environment. It was reasonable, however, for the Hearing Officer to find that, regardless of the TPS environment, the Appellant's protracted, offensive, often abusive social media campaign was an inappropriate recourse. At the penalty hearing, there was no evidence that the Appellant took meaningful steps to have matters addressed internally prior to making inflammatory and public Twitter posts. In fact, the Appellant refused to participate in internal investigations.

[89] The Appellant now asks the Commission to reweigh the role of TPS management and the impact of this dispositional factor on penalty. That is not our role—we cannot substitute our opinion without first finding that the Hearing Officer erred in principle, something we are not satisfied the Appellant has proved.

Consideration of Rehabilitation/Remediation

[90] The Appellant contends that the Hearing Officer failed to properly assess the Appellant's rehabilitation and erred in finding the Appellant "ungovernable". We do not agree.

[91] The Hearing Officer considered the potential for rehabilitation and found that there was none. Other than the evidence presented at the adjournment proceedings, which the Hearing Officer found wanting, there was no evidence of the Appellant's treatment plan, her adherence to treatment or her prognosis. There was marginal demonstration of insight or remorse. It was open to the Hearing Officer to conclude the following:

> On balance, it is difficult to have any confidence there is potential for Constable Zarabi-Majd's rehabilitation. This is in light of the fact she firmly believes she was duty bound – as a police officer – to act in the manner in which she did. Putting aside the lack of remorse, I note no evidence has been led to suggest Constable Zarabi-Majd has attempted to rehabilitate.

[92] The Hearing Officer did go on to state, "No evidence has been placed before me other than conjecture on the part of counsel to suggest Constable Zarabi-Majd can be or has the potential to rehabilitate. I agree with Mr. Schachter, there is simply nothing here. To this end, I find this a *heavily weighted aggravating factor*" (emphasis added). It is incorrect to characterize the absence of rehabilitation as aggravating. The absence of evidence of rehabilitation does, however, weigh heavily in the analysis. Considering the reasons as a whole, we are not satisfied that the Hearing Officer's treatment of this factor discloses an error in principle rendering the penalty unfit: C*st. James Ebdon v. Durham Regional Police Service*, 2020 ONCPC 5 at paras. 27-28.

[93] The Appellant also suggested that, in assessing penalty, the Hearing Officer failed to view the Appellant's tweets through the lens of her illness. Further, she

submits that there have been no further incidents, the Appellant has ”attorned to jurisdiction” and is not “ungovernable”.

[94] There was simply no evidence before the Hearing Officer that the Appellant’s social media activity related to her PTSD. The medical evidence only indicated that exposure to work related experiences would aggravate her symptoms. As the Respondent notes, the Appellant’s own psychiatrist suggested that, “Her postings on social media have not had a similar negative impact on her medical condition.”

[95] Further it was entirely open to the Hearing Officer to conclude, in these circumstances, that the Appellant was ungovernable. Given the nature and length of the Appellant’s very public acts of discreditable conduct and insubordination, with minimal evidence of remorse or rehabilitation, the Hearing Officer’s finding that the Appellant was ungovernable is reasonable.

[96] The Commission sees no merit in the arguments raised by the Appellant with respect to penalty. The Hearing Officer’s decision is reasonable, relevant factors were considered, and the Appellant has not established that the Hearing Officer committed an error in principle. It is not open to the Commission to reweigh the factors on appeal, and we dismiss this ground of appeal.

v. Is the disciplinary action against the Appellant a proportional limit on her *Charter* rights?

Freedom of Expression and the *Doré* Analysis

[97] As the Commission recently noted in *Brisco v Windsor Police Service*, 2024 ONCPC 24, where administrative action engages a *Charter* right, the decision-maker must consider and apply a “*Doré* analysis”. This analysis requires the decision-maker to balance *Charter* values with the statutory objectives by which the discretion was exercised. This must be a “proportionate balancing”, considering whether the limit on the right is proportionate to the public benefit the limit seeks to achieve: *Commission Scolaire*, supra at para. 73.

[98] At the adjournment hearings, the Appellant raised *Doré* solely in the context of an alleged infringement of her s. 15 equality rights under the *Charter*. In denying the first adjournment, the Hearing Officer agreed that she must "embrace *Charter* values" but ultimately concluded that, in these circumstances, denying the Appellant's request for an adjournment *sine die* was not discriminatory. Section 15 of the *Charter* was not engaged and a *Doré* analysis was not required. The Appellant does not raise a ground of appeal in relation to the application of s. 15 of the *Charter* in the adjournment analysis.

[99] The impact of the discipline proceeding itself on the Appellant's *Charter* right to freedom of expression was not specifically raised by the Appellant in any of the proceedings below or on appeal to the Commission. Nor did the Hearing Officer directly assess impacts on the Appellant's freedom of expression by conducting a *Doré* analysis. After the hearing of this appeal, the Commission solicited submissions from the parties as to the impact of the disciplinary proceedings and the penalty imposed on the Appellant on her *Charter* right to free expression.

[100] In their written submissions to the Commission the parties agree that the Appellant's right to freedom of expression is impacted by the disciplinary proceedings. The Appellant also asserts, without elaborating, that her section 7 and 15 rights were also engaged.

[101] We are satisfied that because the misconduct related in part to Appellant's use of her public Twitter account, it had an impact on the Appellant's s. 2(b) *Charter* right. Following *Commission Scolaire*, the tribunal is therefore obligated to conduct a *Doré* proportionality analysis.

[102] The Appellant has presented no basis upon which the Commission might conclude that her section 7 or 15 rights are engaged in this regard, and we find that they are not. Therefore, a Doré analysis with respect to these *Charter* values is not required.

[103] We have considered the Hearing Officer's multiple decisions where she fully assessed the Appellant's expressive activity in the context of the statutory objectives of the PSA. We have also considered the parties' written submissions on the application of the Charter value of freedom of expression to these proceedings. We find, in light of in light of the PSA's statutory objectives, the disciplinary action against the Appellant, including the finding that her conduct was misconduct as well as the penalty, is a proportionate limit on the Appellant's Charter protected freedom of expression.

Statutory Objectives of PSA

[104] The parties agree that the legislative purpose of the PSA is to enhance public confidence in policing: *Browne v. Ontario Civilian Commission on Police Services*, 2001 CanLII 3051 (Ont. C.A) at para 67. The Appellant suggests that s. 1 of the PSA is also "instructive". This section sets out the principles with respect to how police should provide services to the public in Ontario. In terms of the objective of the complaints and, by extension, disciplinary process, the Commission recently referred to the Divisional Court's holding in *Figueiras v. (York) Police Services Board*, 2013 ONSC 7419 (CanLII) at para. 54 that its fundamental purpose is "to ensure transparency and enhance public confidence in the process."

Proportionality

[105] Balancing statutory objectives with the limits placed on the Appellant's freedom of expression is a highly contextual analysis: *Doré*, *supra* at para 54. In the circumstances of this case, we conclude that the Hearing Officer's findings of misconduct and the penalty ordered constitute a reasonable limit on the Appellant's expressive rights. The limit on the Appellant's free expression is outweighed by the public good achieved by promoting the PSA objectives through the discipline process.

[106] We agree with the Respondent that any assessment of the proportionality of limits placed on the Appellant's freedom of expression must take place in the context of the regulatory framework at issue, and the actual factual findings of the Hearing Officer. The PSA prohibits various forms of misconduct in the Code of Conduct. This includes the charges of discreditable conduct and insubordination. As recently noted in *Brisco, supra*, the PSA limits when off duty officers can be found guilty of misconduct. It provides that an officer shall not be guilty of misconduct "if there is no connection between the conduct and either the occupational requirements for a police officer or the reputation of the police force" (s. 80(2)). The PSA provisions, which address a police officer's occupational requirements and the service's reputation, are aimed at furthering the PSA's objectives of maintaining public confidence in policing.

[107] In her reasons the Hearing Officer detailed the PSA provisions as well as specific TPS policies and standards of conduct with respect to TPS officers' public comments and internet use. These standards set out the expectations for civility, confidentiality, and professionalism in the TPS. The Appellant was aware of these limits on her expression when she took the oath to become an officer.

[108] Here, it is not the Appellant's general right to expression on social media that was limited by the misconduct proceedings. Rather, what was limited was her expression of content that violates the TPS regulations. In her reasons for finding misconduct, the Hearing Officer concluded:

> I found multiple persons were the target of her relentless offensive, libelous, hurtful, obscene and degrading tweets. I put myself in the shoes of a reasonable, fully informed dispassionate member of the community and find that Constable Zarabi-Majd's tweets were on course to not only damage, but to destroy the reputation of the TPS as a whole, its senior members, and the Board. The public would find this is not the expected or acceptable conduct of a police officer.

[109] With respect to the Hearing Officer's finding of misconduct specific to the Appellant's posts about the TPS Chief, the expressive activity was summarized as "calling him a dangerous enabling coward", "fucking thug", accusing him of protecting sexual predators, "hiding behind his daughter" and telling him to "stop wasting fucking taxpayers' money on your back pocket lawyers". The Hearing Officer concluded that these comments "bear the potential of diminishing the public's confidence in the Chief's ability to control his officers" and would bring significant discredit to the reputation of the TPS. The Hearing Officer also found that, among other things, posts by the Appellant disclosed confidential police material and defied an order to stop posting about two specific TPS officers. These officers had indicated that their wellbeing was impacted by the Appellant's expressive activity on Twitter.

[110] In assessing the misconduct and penalty the Hearing Officer also considered the volume and very public nature of the Appellant's Twitter communications. In her reasons for penalty the Hearing Officer notes the Appellant had 25,000 tweets, over 6,000 followers, an unrestricted account and a "massive public audience". Further, as established at the misconduct hearing, all expressive comments were made by the Appellant while holding herself out as a TPS officer (listing it in her bio and wearing a TPS hat in her profile picture). In the circumstances here, the limits placed on the Appellant's expressive freedom by the discipline proceedings were proportional.

[111] The discipline proceedings were targeted at repeated, very public, egregious expressive activity. The Hearing Officer's conclusion that the conduct was likely, in the eyes of a reasonable member of the community, to bring discredit to the reputation of the respondent police service or that the Appellant without lawful excuse, disobeyed a lawful order, strikes a proportionate balance between the objectives of the Act and the Charter values at play. In contrast leaving the Appellant's expressive activity on Twitter unsanctioned would, in our view, risk seriously undermining public confidence in the TPS.

[112] In considering the proportionality of the objectives of the PSA and the limits on her freedom of expression, the Appellant asks the Commission to consider that the Appellant was trying to notify the public of "perceived injustices" and "significant violations of human rights, if true...". As already noted, the Hearing Officer specifically found in her disposition decision that any alleged workplace harassment did not justify the misconduct. We agree. Even if there existed a basis for raising awareness of the TPS work environment, it would not justify the form and nature of the Appellant's response.

[113] In her submissions with respect to proportionality the Appellant again asks the Commission to reweigh the evidence and find the Appellant had no alternative to her Twitter campaign, she was the victim of TPS wrongdoing, and her PTSD coloured her Twitter conduct. As set out above, the Hearing Officer found insufficient evidence to support any of these assertions. These were reasonable conclusions open to the Hearing Officer and have no impact on the *Doré* analysis.

[114] Lastly, the Appellant asks the Commission to consider that these proceedings create a chilling effect, as explained in *Lauzon v. Ontario (Justices of the Peace Review Council)*, 2023 ONCA 425 (CanLII) at paragraph 151. The Appellant submits the misconduct proceedings and the penalty of dismissal will impact the reporting of harassment in policing. She submits they send "a powerful message that there is no room for criticism of the functioning of the police service and those in positions of power."

[115] In the circumstances, the Commission does not find that this matter would result in a "chilling effect" on the expressive rights of others. The PSA, the Code of Conduct and TPS regulations clearly set out limits to how officers can express themselves. The Commission does not accept that these proceedings, limited to these exceptional circumstances, will have a negative systemic effect on officers' expressive rights other than limits imposed in the PSA and TPS

standards. Nor will it impact the reporting of harassment through appropriate channels.

[116] We are satisfied, in the circumstances of this case, the findings of misconduct were necessary to protect public confidence in policing. We are also satisfied that the penalty chosen by the Hearing Officer is proportional in the circumstances, as required by *Doré*. The Hearing Officer gave detailed reasons why dismissal was required, including the harm caused and because the Appellant's use to the TPS had ended. This is linked to the PSA objective of maintaining confidence in policing, as well as distinct concerns about the impact of the Appellant's misconduct on the reputation of the TPS. We do not view the penalty as a disproportionate limit on the Appellant's Charter rights and would not disturb the disposition on this basis.

ORDER

[117] Pursuant to s. 87(8)(a) of the PSA, the Commission confirms the findings of guilt and the penalty imposed by the Hearing Officer.

Released: April 4, 2024

_____
Laura Hodgson

_____
Emily Morton

_____
Colin Osterberg