

**TORONTO POLICE SERVICE DISCIPLINE HEARING**

**IN THE MATTER OF ONTARIO REGULATION 268/10  
MADE UNDER THE POLICE SERVICES ACT, RSO 1990,  
AND AMENDMENTS THERETO;  
AND IN THE MATTER OF  
THE TORONTO POLICE SERVICE  
AND  
CONSTABLE DOUGLAS HOLMES (10301) (He/Him)**

**Charges:**

**Discreditable Conduct - Six Counts  
Insubordination - Three Counts**

**DISPOSITION DECISION**

Hearing Officer: Inspector Susan Gomes (She/Her), Toronto Police Service

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

Defence Counsel: Mr. David Butt (He/Him)

Case Numbers: 19/2019, 31/2019, 38/2022, 55/2022

Hearing Date: 2022.11.21 (Plea)

Decision Date: 2023.02.20 (Decision)

Hearing Date: 2023.05.30 (Penalty Submissions)

Disposition Date: 2024.03.26

Before commencing my decision in this matter, I would like to thank the Public Complainant Oliver Santiago (Case 31/2019 Count 2), Mr. David Butt, Defence Counsel, and Inspector Lisabet Benoit, the Toronto Police Service Prosecutor, for their submissions on penalty and exhibits tendered, as they have assisted me in reaching my decision.

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**

Constable Douglas Holmes 10301 (PC Holmes) commenced his employment with the Toronto Police Service (TPS) in 2008. This matter was comprised of four Notices of Hearing totalling nine counts of misconduct; six for Discreditable Conduct and three for Insubordination. Police Constable (PC) Holmes presently holds the rank of First Class Constable. Prior to reporting off sick on November 15, 2019 he was assigned to uniform duties in 52 Division.

### **Allegations of Misconduct**

Constable Douglas Holmes 10301, being a member of the Toronto Police Service, you are alleged to have committed misconduct in that you did use profane, abusive or insulting language or were otherwise uncivil to a member of the public, contrary to Section 2 (1) (a) (v) of the Schedule Code of Conduct of Ontario Regulation 268/10 and therefore, contrary to Section 80(1) (a) of the Police Services Act, R.S.O. 1990, as amended. The particulars of the allegations (Case 19 – 2019) are:

- a. Being a member of the Toronto Police Service, it is alleged that on Wednesday, August 29, 2018, you were off duty operating a black Corvette

exiting a parking lot on the west side of Simcoe Street. At this time the complainant, G.C., was riding his bicycle southbound on Simcoe Street. G.C. was riding his bicycle the wrong way on the street which prompted a reaction from you as you had to stop abruptly to avoid colliding with G.C. You demanded that G.C. stop and walk back towards you.

- b. When G.C. approached you, there was a verbal interaction regarding the manner in which G.C. was operating his bicycle. In his interview with Professional Standards, G.C. described you as a "complete asshole" and "hyper masculine". G.C. also felt that you made insulting comments about "millennials" and that you were berating his "whole generation for being dicks."
- c. The interaction was witnessed by a civilian, A.B., who called 9-1-1 to report a dispute after observing the altercation between yourself and G.C. A.B. advised that the interaction was intense, that he came outside twice to monitor the situation, and ultimately called 9-1-1 because yourself and G.C. were "screaming at each other." A.B. advised that you were yelling "you are not above the law" and described you as letting G.C. "have it".
- d. As a police officer, you have an obligation and responsibility to control your emotions and de-escalate situations.
- e. During the course of your interaction with G.C., you used insulting language and were uncivil towards G.C. In so doing, you did not act in accordance with Toronto Police Service Standards of Conduct, Service Governance, or the Police Services Act.
- f. In doing so, you committed misconduct in that you did use profane, abusive or insulting language or were otherwise uncivil to a member of the public.

Constable Douglas Holmes 10301, being a member of the Toronto Police Service, you are alleged to have committed misconduct in that you are guilty of a criminal offence that is an indictable offence or an offence punishable upon summary conviction, contrary to Section 2 (1) (a) (ix) of the Schedule Code of Conduct of Ontario Regulation 268/10 and therefore, contrary to Section 80(1) (a) of the Police Services Act, R.S.O. 1990, as amended. The particulars of the allegations (Case 31 – 2019) are:

- g. Being a member of the Toronto Police Service, assigned to 52 Division, you

were attached to the Community Response Unit.

- h. On October 10, 2017, you were working in a uniform capacity. You attended the area of Queens Quay near the Westin Harbour Castle Hotel for the purpose of monitoring a union protest. While there, you observed some bicycles going through the Yonge intersection on a red light.
- i. You witnessed a bicyclist, O.S., proceed through the intersection on a red light and you stopped him and requested identification. O.S. refused to produce identification and asked what would happen if he did not provide identification. You advised he would be arrested. Shortly thereafter, you arrested O.S. and started to handcuff his right hand as he stood straddling his bicycle. You walked behind O.S. to secure his left hand in handcuffs and in the process of the arrest, you pushed O.S. to the ground. O.S. landed on the pavement on his left side, with his bike helmet hitting the brick. O.S. attended St. Michael's Hospital where he was diagnosed with a broken left clavicle and right big toe.
- j. O.S. reported this incident to the Office of the Independent Police Review Director and the Special Investigations Unit invoked their mandate. You were charged criminally with Assault Causing Bodily Harm. Following a two day trial, on February 15, 2019, the Honourable Justice Susan Chapman found that you used excessive force and were guilty of the offence of assault causing bodily harm. She found your evidence to be evasive and cavalier.
- k. In her decision, Justice Chapman stated that she found "beyond a reasonable doubt that you used more force to effect the arrest of O.S. than was reasonable, necessary and/or proportionate to the circumstances".
- l. On April 1, 2019, you received a suspended sentence and a one year probation.
- m. In doing so, you committed misconduct in that you are guilty of a criminal offence that is an indictable offence or an offence punishable upon summary conviction.

Constable Douglas Holmes 10301, being a member of the Toronto Police Service, you are alleged to have committed misconduct in that you did act in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the police

force of which you are a member, contrary to Section 2 (1) (a) (xi) of the Schedule Code of Conduct of Ontario Regulation 268/10 and therefore, contrary to Section 80(1) (a) of the Police Services Act, R.S.O. 1990, as amended. The particulars of the allegations (Case 38 – 2022 Count 1) are:

- n. Being a member of the Toronto Police Service, you were attached to 52 Division. You were off on sick leave at the time of this incident.
- o. On December 22, 2021, you sent disparaging and insulting text messages to another member of the Toronto Police Service.
- p. 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.

Constable Douglas Holmes 10301, being a member of the Toronto Police Service, you are alleged to have committed misconduct in that you were insubordinate by word, act or demeanour, contrary to Section 2 (1) (b) 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. The particulars of the allegations (Case 38 – 2022 Count 2) are:

- q. Being a member of the Toronto Police Service, you were attached to 52 Division. You were off on sick leave at the time of this incident.
- r. On December 22, 2021, you sent three text messages to a supervisor from 52 Division that were inappropriate and insulting.
- s. In so doing, you committed misconduct in that you used inappropriate and insulting language to a supervisor from the Toronto Police Service.

Constable Douglas Holmes 10301, being a member of the Toronto Police Service, you are alleged to have committed misconduct in that you did act in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the police force of which you are a member, contrary to Section 2 (1) (a) (xi) of the Schedule Code of Conduct of Ontario Regulation 268/10 and therefore, contrary to Section 80(1) (a) of the Police Services Act, R.S.O. 1990, as amended. The particulars of the allegations (Case 38 – 2022 Count 3) are:

- t. Being a member of the Toronto Police Service, you were attached to 52

Division. You were off on sick leave at the time of this incident.

- u. On December 30, 2021, you sent an inappropriate and rude email to another member of the Toronto Police Service.
- v. 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.

Constable Douglas Holmes 10301, being a member of the Toronto Police Service, you are alleged to have committed misconduct in that you were insubordinate by word, act or demeanour, contrary to Section 2 (1) (b) 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. The particulars of the allegations (Case 38 – 2022 Count 4) are:

- w. Being a member of the Toronto Police Service, you were attached to 52 Division. You were off on sick leave at the time of this incident.
- x. On December 22, 2021, you sent an email to your Unit Commander at 52 Division that was inappropriate and rude.
- y. In so doing, you committed misconduct in that you used inappropriate and rude language to a supervisor from the Toronto Police Service.

Constable Douglas Holmes 10301, being a member of the Toronto Police Service, you are alleged to have committed misconduct in that you did act in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the police force of which you are a member, contrary to Section 2 (1) (a) (xi) of the Schedule Code of Conduct of Ontario Regulation 268/10 and therefore, contrary to Section 80(1) (a) of the Police Services Act, R.S.O. 1990, as amended. The particulars of the allegations (Case 55 – 2022 Count 1) are:

- z. Being a member of the Toronto Police Service, you were attached to 52 Division. You were off on sick leave at the time of this incident.
- aa. On March 22, 2022, you sent a disparaging and insulting email to another member of the Toronto Police Service.
- bb. 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.

Constable Douglas Holmes 10301, being a member of the Toronto Police Service, you are alleged to have committed misconduct in that you were insubordinate by word, act or demeanour, contrary to Section 2 (1) (b) 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. The particulars of the allegations (Case 55 – 2022 Count 2) are:

- cc. Being a member of the Toronto Police Service, you were attached to 52 Division. You were off on sick leave at the time of this incident.
- dd. On March 22, 2022, you sent an email to a supervisor from Professional Standards that was inappropriate and insulting.
- ee. In so doing, you committed misconduct in that you used inappropriate and insulting language to a supervisor from the Toronto Police Service.

Constable Douglas Holmes 10301, being a member of the Toronto Police Service, you are alleged to have committed misconduct in that you did act in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the police force of which you are a member, contrary to Section 2 (1) (a) (xi) of the Schedule Code of Conduct of Ontario Regulation 268/10 and therefore, contrary to Section 80(1) (a) of the Police Services Act, R.S.O. 1990, as amended. The particulars of the allegations (Case 55 – 2022 Count 3) are:

- ff. Being a member of the Toronto Police Service, you were attached to 52 Division. You were off on sick leave at the time of this incident.
- gg. On March 20, 2022, you sent an inappropriate and rude text message to a retired member of the Toronto Police Service.
- hh. 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.

### **Guilty Plea and Finding of Guilt**

On November 21, 2022 Constable Douglas Holmes 10301, pleaded not guilty to count 1 and guilty to counts 2 through 9. On February 20, 2023 I found Constable Douglas Holmes

10301 guilty of 8 counts of misconduct (6 counts of Discreditable Conduct and 2 counts of Insubordination; charges 1,2,3,4,5,7,8,9).

During the (Plea) Hearing, Counsel Mr. David Butt represented Constable Douglas Holmes 10301 and Prosecutor Inspector Lisabet Benoit represented the Toronto Police Service. Constable Holmes did not appear however his pleas were entered by his counsel Mr. Butt in absentia.

### **Disposition Decision**

After carefully considering all submissions of Oliver Santiago, Mr. Butt and Inspector Benoit, mitigating and aggravating factors, all tendered exhibits and relevant case law, I impose the following sanction under Section 85 (1) (b) of the Police Service Act;

For six counts of Discreditable Conduct and two counts of Insubordination that Constable Douglas Holmes is guilty of; I order Police Constable Douglas Holmes dismissed from the Toronto Police Service within seven days from this date of judgement unless he resigns before that time.

My reasons for this are as follows;

## **PART II: THE HEARING**

### **Exhibits**

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

### **Representation**

Counsel Mr. David Butt represented PC Holmes 10301 and Prosecutor Inspector Lisabet Benoit represented the Toronto Police Service.

PC Holmes did not appear however he was represented by his counsel Mr. Butt as this hearing was held in absentia.



### **Hearing in Absentia**

On November 21, 2022, the Prosecution made application and was granted to proceed in this matter in “Absentia”. Defence Counsel David Butt appeared and advised that his client was fully aware of the charges and he was instructed to proceed by his client, PC Holmes in his absence.

### **Positions on Penalty**

Although both the Prosecution and Defence agreed that PC Holmes should no longer be a police officer, their positions on penalty were not in agreement.

The Prosecution submitted that dismissal is the appropriate penalty.

Defence Counsel disagreed and suggested a demotion would be the most appropriate penalty in this matter.

Public Complainant Oliver Santiago submitted that appropriate actions be taken including termination.

### **Witnesses**

No witnesses were called by the Prosecution, Defence or the Public Complainants.

### **Public Complainants with Standing**

Present virtually was OIPRD Complainant Oliver Santiago who provided submissions. OIPRD Complainant Guriqbal Chouhan was not present.

## **SUBMISSIONS**

### **Prosecution Submissions**

The Prosecutor; Inspector Benoit commenced by introducing both Defence Counsel Mr. David Butt who was present representing PC Holmes and virtually present OIPRD Complainant with Standing; Oliver Santiago who wished to make submissions following hers.

Inspector Benoit opened her submissions by stating her position is that of dismissal as it is the most appropriate penalty in these circumstances.

Inspector Benoit then entered her material of which she would be relying on; her Book of Authorities (Exhibit 15) and Book of Records (Exhibit 16).

In her continued effort of outlining her position Inspector Benoit further stated that PC Holmes has been served proper notice in accordance with Section 85 (4) of the Police Services Act, that the Service is seeking his dismissal and that he should no longer be a police officer with the Toronto Police Service.

The Prosecution introduced two cases that provide a framework and background which establishes the test for dismissal. She asked the Tribunal to keep this test in mind while considering penalty.

The Prosecution went on to say the test for dismissal in police disciplinary proceedings as articulated in Tab A, of Exhibit 15, Court of Appeal Decision of Trumbley and Metro Toronto Police Service is that the respondent officer is not fit to remain an employee. She further stated that the courts have repeatedly adopted the principle that *“the basic objective of dismissing a police employee is not to punish him or her in the evil sense of the word but rather to rid the employer of the burden of the employee who has shown that he or she are no longer fit to remain an employee.”* She submitted that PC Holmes more than met that definition.

The Prosecution then added a second decision; Venables and York Regional Police Service, OCCPS, 2008 found in Exhibit 15, Tab B, the commission asked *“if the nature of the officer’s misconduct spent his potential usefulness as a police officer and whether his actions were so egregious that they raised insurmountable doubts about his future suitability as a police officer”*.

Inspector Benoit further stated that with considerations for penalty, case law provides fifteen different factors which may be relevant for determining appropriate penalty and are

dependant on the factual circumstances of each case. These fifteen factors are outlined in Ceyssens Legal Aspects of Policing as provided in Exhibit 16 at Tab 1.

Of these factors, Inspector Benoit focused on public interest, the seriousness of the misconduct, recognition of the seriousness of the misconduct, disability and other relevant personal circumstances, employment history, potential to reform or rehabilitate the police officer, consistency of disposition, the need for specific and general deterrents and the damage to the reputation of the police service.

Inspector Benoit outlined that the basic objectives of discipline in this framework are to correct unacceptable behaviour, deter others from similar behaviour and assure the public that the police are under control. She further submitted that PC Holmes' misconduct engaged all of these objectives.

### **Public Interest**

Inspector Benoit submitted that public interest must be considered in each case given that one of the objectives of the police disciplinary process is protection of the public. The police have considerable power and discretion over matters that can affect fundamental human rights of members of the public and as a result police officers are held to a higher standard of conduct and the necessary public scrutiny and transparency. Public interest arises where the misconduct has offended or undermined the public confidence in police. Inspector Benoit added that PC Holmes' misconduct not only involves internal members of the Police Service but most importantly two separate members of the public who are OIPRD public complainants. One of whom was present before this Tribunal; Oliver Santiago.

She added that PC Holmes received a criminal conviction for assault bodily harm involving Oliver Santiago. Both complainants have participated in the hearing process over the past several years and have been profoundly impacted by PC Holmes' conduct. They have a right to be heard and expect that PC Holmes be held accountable for his misconduct.

Inspector Benoit further submitted that there is no doubt that PC Holmes' actions have implications on the public trust that the Toronto Police Service as an organization strives to uphold. One of the objectives of the discipline process is to assure the public that the police

are in control. That is why PC Holmes must be held accountable for his behaviour so the public can be confident in our Service and in our discipline process.

The Prosecutor introduced the Bright, Konkle and the Niagara Board of Inquiry, 1997 case as found in Exhibit 15 at Tab C. This decision speaks to the issue of good character in that it states *“Good character in a police officer is essential to both the public’s trust in the officer, and to a police service’s ability to utilize that officer. The public has the right to trust that its police officers are honest and truthful and absent extenuating circumstances, they will not be officers any longer if they breach this trust.”*

Inspector Benoit went on to say that good character traits are entrenched in our hiring criteria. As is demonstrated in the Police Services Act Section 43 (1) (d) provided in Exhibit 16, Tab 3, that police officers *“must be of good moral character and habits”* and that PC Holmes’ conduct did not meet this standard.

At Tab 6, of Exhibit 16, the Toronto Police Service Standards of Conduct, the Prosecutor stated that in the introduction by the Chief is that police officers conduct is held to a higher standard and specifically states; *“a higher standard of conduct than other citizens. Not only is an expectation from the community, this standard is an expectation we place upon ourselves. This higher standard of behaviour is necessary to preserve the integrity of the Service”* and further that *“the community expects TPS members to conduct themselves and discharge their duties with diligence, professionalism, and integrity and to comply with and be seen to act within the spirit and letter of the law.”* She went on to say that it is evident that PC Holmes’ conduct was not in accordance with those standards.

In her continued efforts of addressing the importance of public interest, Inspector Benoit introduced PC Holmes’ Oath of Secrecy and Oath of Office as included in Exhibit 16, Tab 2. In it PC Holmes swore that upon becoming a police officer in accordance with the Police Act, officers discharge their policing duties faithfully, and impartially and according to the law. The public trust in policing is paramount and all actions taken by police officers must be able to withstand public scrutiny in order to maintain that trust. The public puts trust in the expectation that the police officers will uphold their Oath of Office. She stated that PC Holmes’ conduct both on and off duty has repeatedly failed to do so and that this is a very

aggravating circumstance.

### **Seriousness of the Misconduct**

Inspector Benoit moved on to the next area of consideration for disposition; the seriousness of the misconduct. She stated that it is a fundamental consideration and it necessarily arises in all disposition decisions. The formal hearing process initiated by the Chief in this instance is a reflection of the seriousness of the misconduct at issue. Misconduct individually and collectively represents a serious departure from the expectations of police officers. And the facts underlying misconduct strikes at the core of policing duties and therefore must be assessed on the most serious end of the spectrum of misconduct. The seriousness of the misconduct is determined by us and not just by policy and procedures. We need to decide how shocked and offended we are by his actions. Public trust is of paramount importance to the policing profession and all actions taken by police officers must be able to withstand the scrutiny in order to maintain that trust. The public place that trust in our officers to uphold their Oath of Office and PC Holmes has broken that trust. His actions were contrary to the needs of the public and the Service to ensure the police are under control.

Inspector Benoit then proceeded to discuss the seriousness of each of the offences and then discussed them as a whole. She addressed them in the order of case and charge chronology as was laid out in both the initial Hearing and the related Decision dated February 21, 2023.

### **In case 19 – 2019 Discreditable Conduct (Charge 1)**

On August 29, 2018 PC Holmes was working at 52 Division, on restricted duties as he was already facing a criminal charge of assault causing bodily harm involving Oliver Santiago. After reporting off duty and leaving 52 Division he became involved in a verbal altercation with a cyclist; Guriqbal Chouhan. PC Holmes was insulting and uncivil to Guriqbal Chouhan after identifying himself as a police officer.

### **In case 31 – 2019 Discreditable Conduct (Charge 2)**

On October 10, 2017 PC Holmes investigated Oliver Santiago for running through a red light while operating his bicycle. When Oliver Santiago did not provide identification to PC Holmes, he placed him under arrest and pushed him to the ground. Oliver Santiago received a broken clavicle and other injuries. PC Holmes was investigated by the SIU and

charged with assault causing bodily harm. Following a two day trial, on February 15, 2019, PC Holmes was convicted of assault causing bodily harm involving Oliver Santiago by the Honourable Justice Susan Chapman. On April 1, 2019 PC Holmes received a suspended sentence and a year of probation. PC Holmes appealed the criminal conviction and the sentence which was denied on December 17, 2019.

**In case 38 – 2022 Discreditable Conduct and Insubordination (Charges 3 and 4)**

On December 22, 2021 PC Holmes sent several texts to Detective Rich Petrie, the 52 Division Unit Complaints Coordinator who was tasked with serving documents on PC Holmes. PC Holmes used foul, offensive, inappropriate language to another member of the Toronto Police Service. Anyone, both internal member and member of the public would find that the language used by PC Holmes would be discreditable on the reputation of the Toronto Police Service. Detective Petrie, being a superior officer in rank to that of PC Holmes was insubordinate by calling him a dummy, a puppet, idiot and stating other disparaging remarks to Detective Petrie.

**Further in case 38 – 2022 Discreditable Conduct (Charge 5)**

On December 30, 2021 PC Holmes sent an email to his Superintendent Greg Cole, Unit Commander of 52 Division. In this email PC Holmes is disrespectful, condescending and inappropriate. Most alarming in this email was the statement that Detective Petrie was *“lucky he did not get hurt for trespassing”* and that *“the next time a TPS member gets caught trespassing on (his) property they will not leave as they entered”*. For a member of the Toronto Police Service to send a message such as this is completely unacceptable and if this was known by the members of the public or our community this would not come close to meeting the expectations of the community regarding the behaviour of a Toronto Police Officer.

**And finally in Case 38 – 2022 (Charge 6)** due to an error on the Notice of Hearing he was found not guilty of Insubordination.

**In case 55 – 2022 Discreditable Conduct and Insubordination (Charges 7 and 8)**

On March 22, 2022 PC Holmes sent an email to Professional Standards Investigator Detective Sergeant Katherine Washington. She was assigned several investigations

involving PC Holmes and had substantiated misconduct against him. PC Holmes used distasteful, vulgar and inappropriate language to another member of the Toronto Police Service. Any member of the public or the Service would find this language to be discreditable. His actions were found to be insubordinate given that Detective Sergeant Washington is a superior officer to that of PC Holmes. He goes on to make comments that she is a terrible person and that karma will catch up to her. He continued stating “*you are a low life and it will catch up to you*”. He finishes his communication with her by stating “*take care, you cunt*”.

### **The final charge in case 55 – 2022 Discreditable Conduct (Charge 9)**

On March 20, 2022 PC Holmes texted his former supervisor retired Sergeant Trevor Searles. The text is disparaging, derogatory and inappropriate.

In the Prosecutor’s final submission to seriousness of the misconduct she states the seriousness of the conduct collectively but also individually is aggravating and as such any sanction short of dismissal would be unreasonable. The behaviour demonstrated by PC Holmes is a serious departure of what is expected of a police officer. The facts strike at the core of policing duties therefore must be assessed at the most serious end of the misconduct spectrum. She further noted that relevant case law supports the collective series of events are to be treated more seriously than the single isolated act of a compulsive act as a series of events carried out overtime cannot be considered acts of human frailty. She submitted that this is a significant aggravating consideration. She further submitted that a remedial sanction other than dismissal would not be possible or reasonable in this situation.

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

On the consideration factor of recognition of the seriousness of the misconduct the Prosecutor began with in mitigating the seriousness of the offence, is the recognition of the offence and how serious the misconduct was. The misconduct before this Tribunal is extremely serious. It involves an officer who was convicted of assault causing bodily harm against a citizen he stopped for riding a bicycle through a red light. It involves another angry confrontation outside of a police station when he was off duty with another citizen; a cyclist. It involves numerous incidents of using abusive and insulting communication with members of the Service.

Mitigating seriousness of the offence is the recognition of this misconduct. The Prosecution submitted that this disposition factor is often referred to as remorse and that this does not exist in this case as PC Holmes at no time has acknowledged his misconduct or appeared before the Tribunal and in addition PC Holmes has continued to commit misconduct while waiting to hear the outcome of both the criminal matter and the Tribunal. The incident with Oliver Santiago occurred in 2017, before PC Holmes had the opportunity to deal with that matter in the criminal court or Tribunal there were further acts of misconduct and all of these are a string of numerous separate incidents that result in the disciplinary charges before this Tribunal.

The Prosecution submitted that prior to all of the misconduct that is currently before this Tribunal, in 2012 PC Holmes was found guilty of misconduct in the Tribunal before another Hearing officer. She pointed to Exhibit 16, Tab8 for reference and stated that although dated there has been no expungement of this conviction and 5 years following this conviction, in 2017 he commits further misconduct of which is before this Tribunal today.

In the 2012 case, Inspector Benoit describes the facts. She states that PC Holmes posted a picture of a police officer holding a baton and the words "*I'm gonna kick your ass and get away with it*" on his Facebook account. Inspector Benoit advised that at the time of the 2012 Hearing the picture as she just described was entered as an exhibit then and is requesting this Tribunal to enter it as an exhibit now.

Defence Counsel Mr. Butt objected to the request of submitting the picture. The Prosecution withdrew the request.

### **Employment History**

Inspector Benoit moved onto the disposition consideration factor of employment history. She outlined that it is an important disposition factor in all cases. It can be a mitigating or aggravating consideration closely relating to the disposition consideration of rehabilitation potential.

The Prosecutor informed the Tribunal that PC Holmes joined the Toronto Police Service in



2008 as a police cadet in training. On May 13, 2009 he was sworn in as a police officer. At Tab 10 of Exhibit 16, there is a TPS 950 outlining his complementary activity versus his conduct issues.

At Tab 8 of Exhibit 16, once again she mentions the previous conviction 2012. Her submission there is that all of the misconduct today has all occurred after that decision.

Inspector Benoit drew the Tribunal's attention to a series of documents. At Tab 10 of Exhibit 16, includes all of his positive documentations or letters of appreciation. And at Tab 11 of Exhibit 16 is his performance appraisals. There has been nothing more recent, as she stated earlier that PC Holmes was suspended or on administrative duties from 52 Division and his last day of work at 52 Division or with the Toronto Police Service was November 14, 2019. And as such his most recent appraisal was in 2017 and predates the misconduct in this Tribunal. Therefore her submission is that as a result, the contents of which are in his employment records are irrelevant in telling how he has been as an officer more recently due to the length of time he has been off.

Overall the Prosecutor submitted his employment history is aggravating and further highlights that PC Holmes became a police officer in 2009, he has a previous conviction in 2012, and is now facing multiple incidents of misconduct in this Tribunal.

### **Consistency of Disposition**

Inspector Benoit addresses the next disposition consideration; consistency of disposition. She states that it is one of the most basic principles of the discipline process and flows from the idea that similar misconduct should be treated in similar fashion while recognizing that no two cases are the same.

At Tab D in exhibit 15 she referenced the case of Schofield and the Metropolitan Toronto Police Service, 1982 where it speaks directly to the issues of consistency where it specifically states "*Consistency in the discipline process is often the earmark of fairness. The penalty must be consistent with the facts, and consistent with similar cases that have been dealt with on earlier occasions.*"

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

Inspector Benoit submitted that permitting PC Holmes to maintain his employment with the Toronto Police Service when it is viewed in the context of all of his misconduct would be an inconsistent finding of the standard of professionalism and what is both required and expected of him.

Inspector Benoit presented from Exhibit 15; a series of cases of which she considered to be similar case law and their decisions. Although distinguishable on their facts to some extent on the present case before the Tribunal, they reflect a consistent conclusion from Hearing Officers with cases involving criminal conduct and attract a disposition of dismissal subject to relevant mitigating circumstances.

The Tribunal was specifically brought to cases Manning and the Hamilton Police Service, 2022 at Tab E in Exhibit 15 and Zarabi-Majd and the Toronto Police Service, 2023 at Tab S in Exhibit 16. In the latter case the Hearing Officer ordered PC Zarabi-Majd dismissed following her conviction of eight counts of misconduct. In this instance PC Zarabi-Majd did not have previous misconduct on her employment record but her continued pattern of misconduct clearly made her continued employment with the Toronto Police Service impossible. Inspector Benoit reminded the Tribunal that this decision has been appealed and will be heard at OCPC.

### **Specific and General Deterrence**

The Prosecutor submitted that the correlation between penalty and deterrents, both general and specific, were provided in Exhibit 15 at Tab F; Andrews and the Midland Police Service 2002, OCCPS, where the commission stated *“that the penalties imposed for misconduct must be strong enough to send a clear message to the other officers that such conduct or any conduct of this nature will not be tolerated”*. With respect to the consideration of deterrents it is submitted that general deterrence is of particular relevance in this matter.

Officers of the Toronto Police Service generally need to understand the higher standard of conduct of which they are held. Police officers like no other profession must be held accountable and must understand the significant consequences to breaking the laws that they are duty bound to uphold and enforce.

With respect to specific deterrence, Inspector Benoit brought the Tribunal's attention to case Wildeboer and the Toronto Police Service, OCCPS, 2006 Tab G in Exhibit 16. In this decision the Hearing Officer concluded that specific deterrence was necessary because the police officer's inability to stabilize his personal circumstances effected his decision making and offended both his oath of office and the public trust.

The Prosecutor submitted dismissal is the most serious disposition an officer can receive. Dismissal of PC Holmes would demonstrate that the Service does not tolerate or have use for officers who repeatedly commit acts of misconduct, both minor and more serious in nature. All members must understand that behaviour of this nature cannot and will not be tolerated. It will result in the most serious consequence. As such specific and general deterrence is an aggravating penalty factor that must be taken into consideration.

### **Disability and Other Relevant Personal Circumstances**

In assessing the disability and other relevant personal circumstances disposition factor the Prosecutor posed that the Tribunal must consider whether there is a nexus or connection between a disability and misconduct. The onus is on the employee to determine proof of the disability and demonstrate a nexus between the conduct at issue and the disability.

Inspector Benoit directed the Tribunal to the case of Moraru and Ottawa Police Service, OCCPS, 2008 found at Tab H in Exhibit 15. In it the Commission wrote, "*During the penalty phase of a disciplinary hearing, not unlike the sentencing phase of a criminal trial, it is incumbent on the trier of fact to consider whether PTSD and medically recognized illness influenced the actions of the officer and if so to what extent. Having concluded that Constable Moraru was suffering from PTSD the real issue before the hearing officer was what weight the effect of PTSD should be given as a mitigating factor on assessing penalty*". Her submission is that it is incumbent for the Hearing Officer to engage in an analysis whether the misconduct was in anyway related to disability.

## **Potential to Reform or Rehabilitate the Police Officer**

In addressing the potential to reform or rehabilitate the police officer disposition factor Inspector Benoit submitted that PC Holmes' collective conduct before the Tribunal is egregious and unmitigated. The Toronto Police Service and the community has put an investment in PC Holmes and that investment is no longer one that could be supported based on his disciplinary history.

At Tab F in Exhibit 15; Andrews and Midland Police Service, 2002, OCCPS, the Prosecutor quoted the Commission; *"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 case he would be a candidate for dismissal. The door should be kept open for the officer to be rehabilitated. The penalty should be tailored to provide him with the opportunity to do so"*. She added that PC Holmes clearly does not have an unblemished employment record despite having been arrested and charged with assault in 2018 he continued to work for Toronto Police Service and got involved in another incident with another cyclist in August of 2018.

In Exhibit 15 at Tab M; Williams and the Ontario Provincial Police, 1995, OCCPS, Inspector Benoit quotes the Commission stating *"even where a police officer can demonstrate steps taken towards rehabilitation or successful treatment, dismissal may be appropriate for serious misconduct"* she submitted that even though PC Holmes has sought help following his criminal conviction those steps are too late and the seriousness of the misconduct still support dismissal. (58:57)

The Prosecution submitted that in the case of Karklins and Toronto Police Service 2007, OCCPS, Exhibit 15, Tab N, that both the Divisional Court and the Commission comments *"that there may be singular acts of misconduct that strike to the heart of employment relationship and effectively exhaust an individual's potential usefulness to perform the key duties of a police officer. Such singular acts may raise obvious concerns with respect to character"* and that this is the case with PC Holmes. She further stated that he has exhausted his usefulness to perform key duties of a police officer. PC Holmes cannot

receive mitigation consideration for having committed an honest mistake or for behaviour that was out of character. Out of character consideration cannot be applied to this misconduct which has continued for an extended period of time.

### **Procedural Fairness Considerations**

For procedural fairness considerations the Prosecution submitted that PC Holmes was afforded procedural fairness which he is entitled to as it relates to the Prosecution submission on sentencing. PC Holmes was served numerous Notices of Hearing. This included the following wording; *“Take notice pursuant to Section 85(4) of the Police Services Act, 1990, the penalty of dismissal or demotion may be imposed if the misconduct or unsatisfactory work performance with which you are charged is proved on clear and convincing evidence.”*

In addition she pointed out that PC Holmes has been represented by Counsel Mr. Butt for the hearing and again today for submissions to disposition of this matter.

### **Damage to the Reputation of the Police Force**

Inspector Benoit submitted that there is no doubt that these incidents have put this Service and its officers in a negative light. PC Holmes’ conduct resulted in a criminal conviction and a very public criminal court process and decision by an Honourable Justice. This in turn directly undermines his usefulness as a police officer should he remain employed. The Toronto Police Service is in a difficult position when weighing consequences of deploying PC Holmes against the reality of any charges laid by him or investigation of which he would be involved in may be compromised by the reputational harm that flows from his misconduct.

The Prosecutor submitted that if one were to search on the internet, PC Holmes would be captured in news articles related to his misconduct involving Oliver Santiago. His actions have reflected poorly on the Toronto Police Service and have affected our reputation.

The Prosecutor turned to the case of Hassan and Peel Regional Police Service, OCCPs 2006, in Exhibit 15, Tab O. In it there is a specific quote *“we see no reason why a Hearing Officer in the absence of direct evidence may not place himself in the position of a reasonable person in the community for the purpose of assessing the degree to which the*

*conduct of an officer has brought harm to the reputation of a police force and the extent to which that harm were to continue if an officer were to remain employed”.*

In the case of Bovell and the Toronto Police Service, 2011 in Exhibit 15, at Tab R, the Prosecutor took the Tribunal to several passages. The first one; *“taken in it’s entirety Constable Bovell’s overall pattern of misconduct is replete with evidence of his disregard for the Services Governance, Priorities and Core Values as well as the Principles and Duties found in the Police Services Act. For over three years he exhibited a protracted and consistent indifference to his Oath of Office and the Standards of Conduct expected of all police officers. Constable Bovell chose, on numerous occasions to disregard his sworn duty as well as the rules of his profession and compromised the integrity and good name of the Toronto Police Service.”* The second one on page 58, *“In any event, while his medical condition may provide a partial explanation it cannot be regarded as a cause and certainly not an excuse for his misconduct as per Constable Reilly and Brockville Police Service, OCCPS March 17, 1997. “* And finally *“Although there was no publicity regarding these incidents of misconduct the reputation of the Service suffered in the view of the involved parties and other witnesses, including co-workers, who were interviewed. Without question, should the extent and nature of Constable Bovell’s misconduct be revealed to the general public, it would cause significant damage to the reputation of the Toronto Police Service. Furthermore, were Constable Bovell retained by the Service and deployed again in the community it would cause irreparable damage to its reputation and be an affront to the expectations of the public regarding the conduct of its police per Constable Williams and Ontario Provincial Police OCCPS September 18, 1995.”*

Inspector Benoit adds that clearly the conduct of PC Holmes has been ongoing with multiple violent or angry outbursts and events. His continued profane, misogynistic and racist emails have been sent to other members of the Toronto Police Service and clearly show that he is unwilling to respect his oath of office or follow any rules of our profession.

Inspector Benoit requests to submit additional correspondence not included in her previously submitted Book of Records (Exhibit 16).

Defence Counsel Mr. Butt objects to this attempt. The Prosecution abandons her request.

No additional document is submitted.

To test an officer's usefulness to a police service the Prosecutor refers to case Guenette and Ottawa-Carleton Regional Police Service, OCCPS, 1998 which is at Tab P in Exhibit 15. Herein she described the three areas of the test to be utilized for consideration of dismissal as an appropriate penalty. First, is the nature and seriousness of the offence, second the ability to reform the officer and lastly the damage to the reputation of the Service should the officer remain. These occurrences constitute serious misconduct as both external members of the public and internal members of the Service were impacted and that PC Holmes' conduct falls within the spectrum of serious and are all at the high end of the spectrum. The ability to reform is minimal to non-existent and the damage to the reputation to the Service would be very high if he were to remain.

To add to her submission on justifying dismissal the Prosecutor refers to case Nesbeth and Windsor Police Service, OCCPS, 2015, Tab Q, in Exhibit 16. This case stands for the proposition that one-off acts of deceit or discreditable conduct can justify dismissal of an officer.

Inspector Benoit further submitted case, Brewer and Toronto Police Service OCPC, 2022, in Exhibit 16, at Tab L, it states *"as a senior officer of almost 35 years of experience I find that the tri-partite test derived from the case law example in Guenette has been met the seriousness of the misconduct and the prospect of the rehabilitation and the potential to the reputation of the Toronto Police Service it would simply be unthinkable and irresponsible for this tribunal to allow him to resume his career as a serving police officer"*.

Inspector Benoit further submitted that any reasonable person within the community would find this conduct of this nature would only serve to damage the reputation of the Toronto Police Service in the eyes of the community members. The damage would only increase if PC Holmes is not appropriately held accountable for his actions which is extremely aggravating. Members of our community and namely Oliver Santiago and Guriqbal Chouhan deserve to be heard in this tribunal and see that PC Holmes is held accountable for his misconduct. PC Holmes has been an officer for approximately ten years. He has multiple incidents of misconduct that have severely damaged the reputation of the Toronto

Police Service.

The Prosecution further submitted that PC Holmes has spent his usefulness as a police officer and his misconduct removes any possibility of future suitability as a police officer. She posed *“If one were to place themselves in a position of an ordinary person in the community and ask if PC Holmes were to remain a police officer would it cause further damage to the reputation of the Toronto Police Service and erosion of public trust? The answer is yes”*.

In her final submissions Inspector Benoit stated that whatever penalty the officer’s Defence Counsel will ask, it will be inappropriate even if it is the next most serious penalty such as a lengthy demotion. That would not satisfy the principles of sentencing. The only suitable penalty is dismissal.

In concluding, the Prosecution finished off as she started. She restated that the object of dismissing a police officer is not to punish him or her, but rather it is to rid the employer of the burden of an employee who has shown that he or she is no longer fit to remain an employee. PC Holmes’ actions clearly demonstrate he is no longer fit to remain an employee.

Inspector Benoit introduced the Public Complainant; Oliver Santiago and invited him to make submissions.

### **Public Complainant Submissions**

Public complainant Oliver Santiago submitted that in light of the grave offence committed by Officer Douglas Jason Holmes specifically the crime of assault causing bodily harm it is imperative that appropriate actions be taken including the termination of his employment.

He further submitted that police officers hold a position of trust and authority within society, charged with the duty to protect and serve the community. When an officer abuses their power and engages in criminal behaviour it not only undermines the integrity of the entire law enforcement profession but also erodes public trust and confidence.



Although Defence Counsel Mr. Butt initially objected to Public Complainant Oliver Santiago making submissions, after hearing Oliver Santiago's submission advised the Tribunal that he had no issue to Mr. Santiago's submissions or its admissibility and that would relieve the Tribunal from providing reasons as to the Tribunal's earlier ruling relating to Oliver Santiago making submissions.

The Tribunal had ruled that Oliver Santiago has standing and is a Public Complainant entitled to make submissions and further that the Tribunal would put the appropriate weight on those submissions.

### **Defence Counsel Submissions**

Defence Counsel Mr. Butt begins his submissions by stating that he and the Prosecutor are absolutely in agreement that Police PC Holmes should never work as a police officer again.

The Defence submitted he will be walking the Tribunal through medical evidence that makes that clear and as a result of the agreement of PC Holmes never working as a Police Officer again, he submitted the Tribunal is in an unprecedented situation.

Mr. Butt submitted that the case law around dismissal and objectives of the discipline process are premised on one fundamental assumption; return or not to duties as a police officer. The underlying assumption on the case law is inoperative in this case and that the Tribunal has to be justly creative as all of the guidelines suggested do not work. He further asks to keep basic principles of fairness in mind and construct a just outcome that is faithful to the evidence that is before this Tribunal.

The Defence submitted that this will be an exercise in thinking creatively in this dynamic. Starting with the penalty stage in pleading guilty, now turn the attention to focus on the person being penalized. If he is penalized properly it is incumbent to understand him in the context of the behaviours. If we do not we cannot formulate a just penalty.

As submitted by Mr. Butt, PC Holmes' story starts with a descent into serious illness of which was caused by his service to the community. That is what his medical records state of which was provided to the Prosecution.

Mr. Butt entered his material of which he will be relying on; his Book of Records (Exhibit 17). This Exhibit is a portion of a 490 page WSIB file. There are 313 pages of WSIB medical records and 177 pages of correspondence relevant to the medical opinions expressed in that WSIB file. These are part of the records kept at WSIB and that they are fairly represented of the entire contents of the file. The first five pages are PC Holmes' patient history letter and the rest are medical reports. This letter is a business record in the file but also a document relied upon and verified by the medical professionals. It comes in a business record and is a patient history. This letter is reliable, admissible, and essential for this Tribunal to hear both sides of competing perspectives so as to not create a one-sided record. PC Holmes sent it as confusion about the administration of the regime as a fact of what he should and shouldn't do.

The Prosecution objected to the entirety of the package getting admitted specifically the first five pages of the records of which Mr. Butt submitted is a patient history record of PC Holmes as it is not dated in any way, either when written or sent to WSIB, and is not signed. It is a statement or explanation from PC Holmes to WSIB.

The Tribunal accepted the entirety of the Defence Book of Records as tendered recognizing they are representative of the larger business records of the WSIB file related to PC Holmes and this matter.

Returning to Exhibit 17, Mr. Butt submitted that to understand the bigger context, it starts with a patient history. The letter outlines the descent to the illness. And in it there are four key themes. The first theme was that there were a number of horrific events that took their toll. The second theme is that there were worker shortages which exacerbated the trauma. The third theme was the workplace culture that discouraged coming forward and then dealing with it by drinking and finally the fourth theme of self medication with alcohol.

Mr. Butt submitted that these four themes of which PC Holmes describes as his personal experience, show as classic precursors to serious psychological illness. PC Holmes' letter describes this pattern. Those four themes are at work and start to define how to understand what is going on here; an arrival of a serious illness.

Mr. Butt moves onto the doctors and what they have to say about it in the records.

That the records can be relied upon as they are reports signed and authored by 4 different people; psychologists Dr. Crangle and Dr. Zakzanis, Dr. Svihra a psychiatrist, and an occupational therapist Emma Russell. They are the assessors who are providing the psychological treatment forming the professional opinions as a result of direct dealing with PC Holmes. They are all associated with the Toronto Western Hospital, University Health Network.

Mr. Butt further describes that there are four reports in total numbering 65 pages. They go into great detail that provide a comprehensive assessment that leads to an opinion.

These four reports take place over a period of time from January to July of 2022. They build on each other. There is an agreement throughout and they are consistent with one another. For example, the psychiatrist, says I agree with what the psychologist says.

Mr. Butt goes on to say that these doctors are not defence experts. These are employer oriented documents prepared with an employer managing work place injury and that accumulatively these reports are extremely reliable.

Mr. Butt directs the Tribunal to the reports. All four reports are necessary to confirm that only having one is not misrepresented. At page 12 the diagnosis is listed; post traumatic stress disorder, major depressive disorder, and alcohol use disorder. All consistent with his history as described. Mr. Butt reminds the Tribunal that people try to manipulate the mental health professionals all the time but it's important to read these documents with that in mind with a careful review. It gives confidence in both the diagnosis and the history of which it is based.

Mr. Butt refers to Exhibit 17, Page 14, in the first report where two important points are laid out; PC Holmes cannot return to work as there are significant barriers that are permanent and that he can do other work and is motivated to do so. By virtue of his illness PC Holmes has been disabled from working as a police officer. There is no improvement to a level to contemplate return to police work but can do other work. PC Holmes is a non-police officer because of work place injury. At page 18, Mr. Butt points out that the opinion is expressed

in the inability to return to work is permanent.

Mr. Butt submitted that understanding why PC Holmes behaved the way he did is an important point. There were guilty pleas. There is no defence to any episodes of misconduct. The behaviour was absolutely unacceptable. There was a persistent pattern of outbursts of anger that lead to terrible things and inappropriate things being said.

Mr. Butt further stated that judgement cannot be rushed. That to understand one must have intellectual and moral discipline and gather all information for clarity. To rush to judgment is not what the reasonable and fully informed member of the public would do. People get angry and rush to judgment all the time, but that is not what the standard setters are for the justice system.

In Exhibit 17, at page 14, Mr. Butt lists off the barriers for return to work “*include nightmares, physiological activity and anxiety and angered outbursts, anger towards management, mistrust with employer, perceived threats and emotional reactivity to trauma related reminders*”. He further states that these are symptoms of his diagnosed illness as described by the employer oriented professionals.

Mr. Butt submitted that to return to every single one of the offending behaviors, they fit that description of PC Holmes’ symptomology. He gets angry and loses control. He engages in emotional reactivity. Relying on what the experts state can shed real light on the offending behaviours and see how the offending behaviours fit the symptom pattern.

The Defence goes on to say that further on page 14 in Exhibit 17, it states “*additional specific work place factors that present as barriers at the Toronto Police Department and that directly relate to his trauma symptoms, include the nature of a highly hierarchical and authoritative work environment and one in which there is legislative control over conduct of officers*”.

The Defence clarifies that he is not criticizing hierarchy, authoritative work environments or legislative control over conduct of officers in the context of policing as they have their place. They are essential aspects of a policing environment but for PC Holmes those specific work place factors have a direct relationship to his trauma symptoms.

The Defence returns to the offending behaviours; the investigator from Professional Standards Detective Sergeant Washington who is a professional. He treated her terribly. PC Holmes did not react to Detective Sergeant Washington personally he reacted to her operations in “an authoritative work environment and one in which there is legislative control over conduct of officers”. She is Professional Standards doing her job. That is precisely the trigger that is identified in the medical reports.

The Defence emphasized the correlation between two independent pieces of information. The doctors who describe the symptoms do not have disclosure of the prosecution brief. These two pieces fit together. The offending behaviours in the Notices of Hearing are independent of the doctor’s opinions but one describes the other.

Mr. Butt, adds that all of PC Holmes’ offending behaviour is reactive not proactive. Officers reach out as a part of the disciplinary process and he responds very badly. He encounters a citizen on the street doing something that he believes is wrong; he responds very badly. He reflects on his history in the Police Service thinks of a Supervisor, is triggered and responds badly by communicating with that Supervisor. This is reactive behaviour to trauma triggers. There has been guilty pleas and not presenting a defence, PC Holmes is responsible for that. To judge it and penalize it appropriately, understanding is necessary.

Mr. Butt went on to say that what the Tribunal heard from the Prosecution was an accurate simplistic exercise of high moral indignation and did nothing to understand what was going on.

At pages 14 through 18 of Exhibit 17, Mr. Butt states that within the document it states that PC Holmes is motivated to do other work. He has cognitive intellectual abilities to do other work, and specifically at page 16 it states “*unable to work in confrontational situations – due to anger outbursts and poor emotion regulation*”. Mr. Butt comments that looking at all the misconduct of which PC Holmes plead guilty to; it is there along with anger outbursts. These are symptoms. This is why PC Holmes is not present in the Tribunal, not because he chose to after being served multiple Notices. The Tribunal is an adversarial proceeding. With the tone of the Prosecution’s submissions, if present somebody who cannot work in a

hierarchical environment with authoritative legislative control over conduct would react with anger outbursts and poor emotion regulation. These symptoms are not good for healing. Mr. Butt further stated that as PC Holmes's lawyer that is why rare consent was given to in absentia proceedings. The first obligation of a justice system is to be fair to the reality to that person who is being judged by that justice system.

Mr. Butt directed the Tribunal to Exhibit 17, page 18, where the independent professionals state where PC Holmes cannot work. These are "*work environments that could result in exposure to traumatic material or events. Should not work in a first responder role or administrative role in which he may hear of or read about traumatic events*" and "*should not work with pre-injury employer*" and in Psychiatrist Dr. Svihra's report he agrees with Dr. Crangle's report "*it is anticipated that these restrictions are permanent*". Mr. Butt reflects on what he stated in the outset of his submissions in that PC Holmes "*is not coming back*". Mr. Butt further states that this becomes a unique challenge in disciplining someone who is not coming back while not ignoring the independent employer oriented medical professionals.

Mr. Butt turned his submissions to Exhibit 17; the second report dated July 7th, 2022. He stated that it is similar to the others in major respects. All reports confirm each other but dates are different and number of sessions are different.

Mr. Butt stated that in the second report on page 35 of Exhibit 17, Psychologist Dr. Crangle writes, "*Mr. Holmes reported improvements in productivity and stability of mood.*" "*...however, Mr. Holmes continues to report reactivity in response to work-related stressors. During this reporting period, he reported ongoing stressors related to his workplace including additional disciplinary charges...*" Mr. Butt submitted that if put together with the Notices of Hearing that PC Holmes is reactive when people investigate him and serve him that the medical evidence states the discipline process is hurting him and that there is an impact on him. And further on page 35 of Exhibit 17, Mr. Butt submitted the impact is, "*in response to these stressors including recurrent nightmares with persecutory content, heightened anxiety...nausea, upset stomach, hives, maladaptive coping, alcohol use, avoidance, excessive sleeping, reduced productivity. His reactivity to these stressors is likely related in part to his psychological status*".

Mr. Butt submitted that is not often that all medical professionals say the same thing and in this instance that the discipline process is hurting PC Holmes physically and mentally. He noted that the standard wording in every notice of investigation that has come into play in recent years has at the bottom a paragraph and paraphrased it says *“we understand this can be stressful, seek help”*.

Mr. Butt added that the January 13<sup>th</sup> report has the same results, same conclusion and on page 47, of Exhibit 17, outlined is the same description of the corrosive impact of the discipline process on PC Holmes.

Mr. Butt submitted that the discipline process is inevitable and necessary and to arrive at the end of it with an appropriate penalty, the uniquely painful impact of the process must be taken into account or the words on every single notice of investigation would be hypocritical which would ignore all those impacts at that back end. The Service can't talk out of both sides of its mouth. People can be forgiven for getting it wrong but not forgiven for being hypocritically wrong.

The Defence Mr. Butt stresses that this process has taken and continues to take an enormous toll and all of the offending behaviours can be understood by the pre-existing work place injury for which PC Holmes bears no moral responsibility. PC Holmes gave his health and resilience to the community.

Mr. Butt brought the attention of the Tribunal to the last report. It is a psycho-vocational assessment by psychologist Dr. Zakzanis. On page 58 of Exhibit 17, Dr. Zakzanis wrote *“recently been contacted by the accident employer (Toronto Police Service) which has exacerbated his nightmares and flashbacks”*. Mr. Butt further submitted that all of the reports speak to how to medicate PC Holmes' symptoms to his baseline functioning. There was an extensive medication regime which speaks to the degree of which PC Holmes is affected by anything Toronto Police related. In Dr. Zakzanis' report, he wrote *“Personality testing suggests Mr. Holmes is generally calm, serious, warm in his interactions with others, practical and conscientious”*. Mr. Butt submitted that, that is Mr. Holmes' base line. It is who he really is but because of his workplace injury he is worlds away. His baseline is evidence this profession has ruined him, recognizing that being a first responder is a life threatening

profession in more ways than one. This is the other way of which it is so seriously threatening. This is not the trope of the heroic officer putting their life on the line, this one gets dismissive comments about people deserving punishment. PC Holmes has endured the descent of which he is fully aware of and is at the same time experiencing huge loss. He used to be that person at his baseline. This is what policing did to him and if not understood, it causes unfair judgment.

M. Butt advised the Tribunal that yesterday he was made aware that PC Holmes had been expelled from participating in retraining and was not surprised as his discipline is ongoing, and relentless. His expressed desire to move on and train to do something different is interrupted.

Mr. Butt submitted that he advocates the medical evidence that PC Holmes is never coming back, never to sit in a scout car again, never to wear a uniform or enter a police facility; because he can't.

Mr. Butt further submitted that the Service has obtained 99 percent of the level of the penalty it wants; PC Holmes to never be a police officer again. Mr. Butt further stated that PC Holmes and he as his lawyer want to give that happily to the Service. No one is suggesting he work as a police officer again however to think creatively is what is required for penalty.

Mr. Butt submitted that the only current connection between PC Holmes and the Service is that 15% of his salary is paid by the Service to top up what is paid out by WSIB. To crunch the numbers it would be a value of somewhere between \$15 000 and \$25 000 annually. Going through this for net benefit of saving \$ 20 000 in this billion dollar budget is petty.

Mr. Butt submitted that the Tribunal can't ignore his misconduct but has to take a sense of proportion and recognize that it is deeply intertwined and explained with his workplace injury. The evidence is comprehensive and clear PC Holmes gave his health in serving the community.

Defence Counsel Mr. Butt submitted that PC Holmes be demoted. A demotion would lessen the Service's 15% financial top up.



Mr. Butt submitted that a reasonable person in the community would agree with PC Holmes not wearing a uniform ever again but would question how he got as ill as he did serving the community and is his misbehaviour related to his illness. They would further question whether the Service has an obligation while at the same time punishing him. Mr. Butt submitted that the reasonable person would land on compromise. Demote and reduce the contribution and the easy fix here going forward is don't do anything that will prompt those awful reactions. Once his deficits are known it becomes morally repugnant to trigger someone with those vulnerabilities.

Mr. Butt concluded his submissions by clearing up a couple of points. The first one being that the Prosecution stated PC Holmes in no way acknowledged the misconduct. PC Holmes pled guilty and consented to a hearing in absentia. The Prosecution failed to connect the dots. The case law indicates pleas are mitigating. The second point was that the Prosecution stated illness is mitigating but said there is no mitigation here. Mr. Butt submitted that the Tribunal was taken through it in great detail to show that there is.

To finally conclude Defence Counsel Mr. Butt stated that as he stated in the in the beginning that to accurately judge PC Holmes' misconduct the Tribunal must fully understand his illness.

Mr. Butt requested that the WSIB records specifically the reports of the medical professionals that was tendered in Exhibit 17, in order to respect PC Holmes' privacy interests and the sensitivity of the documents be sealed.

### **Prosecution Reply**

The Prosecution began by stating that there were a number of points she wished to address.

Inspector Benoit submitted that the Defence went on at great length about a return to work plan for PC Holmes but acknowledged there is another letter from the WSIB of which was not disclosed in his materials but it states that the Return to Work Plan has been closed.

The Prosecutor went on to state that in assessing the factor of disability and other relevant personal circumstances as Mr. Butt has put before the Tribunal, the issue is whether there is a nexus between the disability and all of the misconduct beginning in 2017. The onus is on the employee to demonstrate proof of disability and provide that nexus between the conduct at issue and that said disability. She went onto to point out that at Tab H of Exhibit 15, in the Moraru and the Ottawa Police Service where the Commission wrote, “*during the penalty phase of a disciplinary hearing, not unlike the sentencing phase of a criminal trial, it is incumbent on the trier of fact to consider whether PTSD a medically recognized illness influenced the actions of the officer and if so to what extent. Having concluded that Constable Moraru was suffering from PTSD the real issue before the hearing officer was what weight the effect of PTSD should be given as a mitigating factor on assessing penalty*”.

And further the Prosecution submitted that at Tab I Exhibit 15, in Orser and the Ontario Provincial Police OCCPS, 2018, the Commission wrote “*reasons made clear that the hearing officer took the PTSD issue seriously and engaged in meaningful analysis of the evidence of the role that the PTSD might have played in the misconduct. The hearing officer accepted the appellant suffered from PTSD but was not convinced that the appellant’s misconduct was at any way related to his PTSD diagnosis. His conclusions are reasonable and supported by the record. We owe him deference and find he did not commit an error in principal in the treatment of the PTSD issue*”

The Prosecutor submitted that she brought these cases to the Tribunal’s attention and accepts all of the information that the Defence Counsel has provided to the Tribunal in terms of the records he has provided from the WSIB. It is her submission that the Tribunal provide the proper weight in the analyses to whether the misconduct was in any way related to the PTSD diagnosis.

Inspector Benoit further submitted that disability is an explanation but not a defence. It can explain inappropriate conduct but not excuse it. She then brought the Tribunal’s attention to Exhibit 16 which includes a relevant paper to that point, Misconduct and PTSD – Balancing the Public Trust and Accommodation.

Inspector Benoit speaks to the case of Karklins and Toronto Police Service 2007, OCCPS,

Tab N Exhibit 15, the Divisional Court comments the Commission comments *“that there may be singular acts of misconduct that strike to the heart of employment relationship and effectively exhaust an individual’s potential usefulness to perform the key duties of a police officer. Such singular acts may raise obvious concerns with respect to character”*.

The Prosecutor submitted that PC Holmes, even by his own counsel’s submission has exhausted his usefulness to perform the key duties of a police officer. If he is not dismissed by the Toronto Police Service they are sending a signal to the rest of the Service that if you are before the Tribunal and you have put medical information before the Tribunal and you agree to never work again as an officer, you will not be dismissed.

Inspector Benoit submitted that if PC Holmes wished to avoid going through this process in the Tribunal there was always an option to separate from the Toronto Police Service. The matter before the Tribunal is about misconduct. There are many officers sadly in our organization that she cares deeply about that are dealing with post traumatic stress injuries. This is also about misconduct. The Tribunal heard from Oliver Santiago and the impact that he felt in his dealings with Officer Holmes. This is not about 20 000 dollars of tax payers money.

Inspector Benoit concluded by submitting that this is about protecting the integrity of the Toronto Police Service, the public trust and confidence in the Toronto Police Service and our discipline process.

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

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

The Commission also instructed that there are other factors to be considered in light of particular misconduct which include the public interest in the administration of justice, the recognition of the seriousness of the misconduct, the employment record, general and specific deterrence and the need for consistency.

For factors relevant to penalty dispositions, consideration must be given to the factors as listed in Ceysens and Childs, *Legal Aspects of Policing*, 2017. This list approved by the Commission includes fifteen factors. All are not necessarily considered in every case as each case has their own unique circumstances. The relevant factors in this case were considered.

In this case, PC Holmes violated the public trust by not living up to his oath of office on multiple occasions as he had sworn to do on May 13, 2009 as outlined in Exhibit 16 Tab 2. Specifically, he was uncivil to a member of the public using profane, abusive and insulting language, he was found guilty of a criminal offence of assault causing bodily harm on another member of the public and communicated several times using inappropriate language to four separate Supervisors on different occasions.

The public must have confidence in the ability of the Service to deal with any misconduct on the part of its members and as such the public also has an interest in ensuring that Police Constable Holmes is held accountable for his actions.

All principles surrounding the disposition determination were observed while balancing all that was presented to ensure fairness and an appropriate outcome.

As a result of the Prosecution requesting dismissal, the Tribunal must consider the test required for dismissal in addition to relevant disposition factors. This test can be found in case law. Two cases were provided by the Prosecutor which establishes the test.

In the Court of Appeal Decision of Trumbley and Metro Toronto Police Service (Tab A, of Exhibit 15), *“the basic objective of dismissing a police employee is not to punish him or her in the evil sense of the word but rather to rid the employer of the burden of the employee who has shown that he or she are no longer fit to remain an employee.”*

In Venables and York Regional Police Service, OCCPS, 2008 found in Exhibit 15, Tab B, the commission asked *“if the nature of the officer’s misconduct spent his potential usefulness as a police officer and whether his actions were so egregious that they raised insurmountable doubts about his future suitability as a police officer”*.

The Tribunal engaged the test for dismissal while considering all relevant factors in determining the appropriate disposition. Careful thought was given while analyzing each factor, appreciating that a request for dismissal is reserved for the most serious of misconduct and has the most substantial consequences.

In considering the **public interest** disposition factor, the Prosecutor submitted that public interest arises where the misconduct has offended or undermined the public confidence in police.

PC Holmes’ misconduct included both; members of the public and the Toronto Police Service. The members of the public Oliver Santiago and Guriqbal Chouhan were two separate members involved in two separate events with PC Holmes resulting in the first two counts of the misconduct before this Tribunal. Both of these citizens were OIPRD public complainants and have been very involved in this matter before the Tribunal. Oliver Santiago made submissions before this Tribunal. PC Holmes received a criminal conviction for assault causing bodily harm involving Oliver Santiago. This in itself would lessen the public’s confidence in the police, not to mention the additional six counts of misconduct involving superior officers.

Inspector Benoit submitted that at Tab 6, of Exhibit 15, the Toronto Police Service Standards of Conduct, in the introduction by the Chief, is that police officer's conduct is held to a higher standard and specifically states; "*a higher standard of conduct than other citizens. Not only is an expectation from the community...this higher standard of behaviour is necessary to preserve the integrity of the Service*" and further that "*the community expects TPS members to conduct themselves and discharge their duties with diligence, professionalism, and integrity and to comply with and be seen to act within the spirit and letter of the law.*" PC Holmes has repeatedly failed to live up to these standards.

I accept Inspector Benoit's submission that good character traits are necessary in a police officer as laid out in the Toronto Police Service's hiring criteria; as is demonstrated in the Police Services Act Section 43 (1) (d) provided in Exhibit 15, Tab 3, that police officers "*must be of good moral character and habits*" and that PC Holmes' conduct did not meet this standard.

In further support of good character the Prosecutor introduced the Bright, Konkle and the Niagara Board of Inquiry, 1997 case as found in Exhibit 15 at Tab C states "*Good character in a police officer is essential to both the public's trust in the officer, and to a police service's ability to utilize that officer. The public has the right to trust that its police officers are honest and truthful and absent extenuating circumstances, they will not be officers any longer if they breach this trust.*"

Contrary to good character traits, PC Holmes' character gets exposed in 2012 upon his first misconduct finding in a previous Tribunal matter and further with troubling work appraisals from 2015 to 2017 and then ultimately finding himself before the Tribunal again in this matter. All of these circumstances spread out over his career, in one way or another speak to his poor decision making and unprofessionalism.

I find public interest an aggravating consideration for disposition.

In considering **seriousness of the misconduct**, all eight counts of misconduct committed by PC Holmes were taken into account. All eight counts are non-administrative types of misconduct. They all deal directly with PC Holmes' personal interactions with either

members of the public or members of the Toronto Police Service. The most serious of the misconduct are the first two counts (1 and 2) as they directly involve and impact two members of the public in two separate events dating back to 2017. The first count in 2018, while off duty and already on restricted duties due to being charged with a criminal offence of assault causing bodily harm, PC Holmes was insulting and uncivil to a cyclist. The second count, in 2019 PC Holmes was found guilty of assault causing bodily harm, after a two day trial. PC Holmes had broken a cyclist's clavicle and toe while using excessive force than was necessary to affect an arrest after the cyclist rode through a red light on a bicycle trail and not providing identification. As found in Exhibit 16, at Tab 9.

The remaining six counts are related to separate events over a period of time from 2021 to 2022 of communicating in an unprofessional, inappropriate, offensive manner to four superior officers of the Toronto Police Service on different occasions. Each of these counts again are not administrative type misconduct where one may not follow a process rule but rather where there is direct contact made with persons who in these instances are varying levels of supervisors.

In each of these events, PC Holmes reaches next level of inappropriate communication as he is threatening in his words in either stating he will cause bodily harm or wishing ill will upon his intended recipients. In Counts 3 and 4, an email found in Exhibit 5, Detective Petrie notifies his Commanding Officer that he doesn't feel comfortable with PC Holmes returning to 52 Division and was so effected by PC Holmes' disturbing emails that he confirmed with the Armament Office that PC Holmes' Service issued firearm was there in safe keeping and communicated to his peers in future attempts to serve PC Holmes Notices, that there are concerns regarding their safety in the attempt to serve. In addition and adding to Detective Petrie's concerns was the email PC Holmes' had sent directly to his Commanding Officer (count 5) at Exhibit 9, Tab 1; Detective Petrie "was lucky he didn't get hurt for trespassing on his property and that the next TPS member who gets caught trespassing on his property would not leave the same way as they came". And finally in counts 7, 8 and 9 at Tabs 2 and 4 of Exhibit 9, PC Holmes writes veiled threats to two superior officers that "karma" will catch up to them.

I accept the Prosecutor's submission that "*seriousness of the conduct collectively but also*

*individually is aggravating”.*

Inspector Benoit further noted that *“relevant case law supports the collective series of events are to be treated more seriously than the single isolated act of a compulsive act as a series of events carried out overtime cannot be considered acts of human frailty”*. In Wildeboer and Toronto Police Service, OCCPS, 2006 found at Tab G of Exhibit 15, the Commission noted that *“it is also evident that this was not an isolated incident, but rather a course of conduct. Constable Wildeboer made thirteen separate C.P.I.C queries on six separate occasions over the course of 10 months”*.

I find that the accumulation of the misconduct over more than a four year period of time committed by PC Holmes is of a serious nature and can not be considered as an act of human frailty and as such place them at the more serious end of the discipline scale.

I find that the seriousness of the misconduct to be an aggravating factor.

In considering the **recognition of the seriousness of the misconduct**, the Tribunal has already found the misconduct of PC Holmes to be of the more serious kind as outlined in the seriousness of the misconduct disposition consideration.

The Prosecution submitted that remorse plays a part in recognizing that level of seriousness. She submitted that PC Holmes did not express remorse in this case as he has not acknowledged his misconduct or appear before the Tribunal during this process. In addition he continued to commit misconduct while waiting the outcomes of both the criminal matter and the Tribunal citing the event with Oliver Santiago occurring in 2017 and then committing a further act of misconduct with Guriqbal Chouhan in 2018 and finally the additional six counts between 2021 and 2022. In addition the Prosecution submitted that PC Holmes' previous Tribunal conviction in 2012 of which has not been expunged although “stale” was only 5 years earlier than the 2017 misconduct. In this misconduct conviction PC Holmes posted a picture of a police officer holding a baton and the words *“I’m gonna kick your ass and get away with it”* on his Facebook account.

The Defence argued that PC Holmes has pleaded guilty to his misconduct in this Tribunal



through him and further that he has represented PC Holmes in absentia in the Tribunal on the instruction of his client, PC Holmes. Mr. Butt submitted that through the pleas he has shown remorse and in answer to the 2012 conviction Mr. Butt argued that the conviction was 11 years ago and is blatantly “stale” and says nothing about the present situation.

I have reviewed exhibit 7, “List of Appearance Dates up to November 21, 2022”. The first recorded appearance date on this list is May 8, 2019. There are a total of 15 recorded Tribunal Appearance dates relating to this matter. It is noted that on one “to be spoken to” appearance dated September 10, 2019 a notation of “officer made first App” is made. This date is the fourth appearance date as listed. In the other 14 appearance dates there are three separate dates with notations “officer not in tribunal”. Of the 11 other appearance dates there are no notations of whether PC Holmes attended or not, and some indicate defence counsel was present. There were five appearances that indicate medical substantiation was requested and not provided and one of which indicated PC Holmes was too sick to attend. There were a total of three separate Defence Counsels on record during this time frame and none of whom were Mr. Butt. Defence Counsel Mr. Butt represented PC Holmes on the November 21, 2022 appearance date of which these proceedings then carried out in “absentia”.

This Tribunal heard and found PC Holmes guilty on February 21, 2023 of eight of the nine counts of misconduct. During this hearing PC Holmes through Defence Counsel Mr. Butt pleaded guilty to only eight of the nine counts of misconduct. In Count 1 on August 29, 2018 PC Holmes after reporting off duty, and just outside of 52 Division - his work place, interacted with a member of the public; Guriqbal Chouhan. During this interaction PC Holmes used profane, abusive, insulting language, called him an “idiot” and stated “all millennials are dicks and this is a whole generation of fuck-ups”. PC Holmes pleaded not guilty to this, although Mr. Butt agreed to the Prosecution’s submission of entering the vetted transcript of Guriqbal Chouhan (Exhibit 11). In addition, as it relates to Mr. Chouhan, PC Holmes did not list the event as a source of stress with Mr. Chouhan as he did with Oliver Santiago in his letter to the WSIB. PC Holmes did not plead guilty to all of his misconduct.

Further, this Tribunal acknowledges that it is this misconduct that occurred on August 29, 2018 that PC Holmes committed while waiting the outcome of the criminal matter of assault

causing bodily harm on citizen, Oliver Santiago, which occurred October 17, 2017. By the date of August 29, 2018 PC Holmes had already had six criminal court dates as listed in Exhibit 16, Tab 9. In addition PC Holmes amassed six more misconduct charges totalling seven charges from four separate events since the first charge and event date of October 17, 2017. These events of misconduct are not a series of events that occurred so closely in time that by the time the misconduct was recognized and the discipline process engaged one might not have recognized that their actions were not in keeping with the public's expectations of a police officer or the Service's expectations of their members. These events starting with the first one in 2017, deviated from those expectations and some recognition should have registered, allowing for reflection and growth. This is not the case here in this string of misconduct. This misconduct has spanned over a four year period. PC Holmes failed to align himself with the Service's core values in all of these circumstances even though he had plenty of opportunity to do so and recover from the first event on October 17, 2017 particularly immediately following his arrest in 2018. Seven months later PC Holmes is involved in his next misconduct event interacting with the second member of the public.

The Tribunal notes that for the misconduct stemming from the event dated October 17, 2017, Count 2, PC Holmes participated in a two day criminal trial where he was found guilty of assault causing bodily harm on February 15, 2019 by Justice S. Chapman. On April 1, 2019 PC Holmes was sentenced to a suspended sentence and one year probation. On December 17, 2019 PC Holmes appealed the conviction and sentence. The appeal was subsequently dismissed by Justice G. Robinson upholding both the conviction and sentence.

On the continued vein of recognition of the seriousness of the offence in each of counts 3, 4, 5, 7, 8 and 9 PC Holmes in some way acknowledges his disability in each of the communications as he is typing. Each time there is a written acknowledgement that in itself should give pause to consider what has been typed or continues to be typed out in each of the communications. PC Holmes' communications range from hours to days in responding to an action as well as being separated by distance. All of the actions he is responding to are ones that are not up close and personal nor face to face. Some were as a result of an earlier telephone or electronic communication, attending his home to leave documents in

his absence, reading a written report, directing others to make attempts to serve Notice or reflecting on previous dealings of poor work performance evaluations from many years ago. PC Holmes' communications were done by either email, text message or a telephone call. All of this combined provided opportunity for a pause and reflection, if any communication was required at all.

For counts 3 and 4 in Exhibit 9 at Tab 3 PC Holmes texts Detective Petrie after he left Notice documents at his home. PC Holmes texted that Detective Petrie is "pathetic" and a "dummy" and that he was very ill on that Monday they had an agreement however he took medication that caused him to sleep on and off and when he finally awoke Detective Petrie had already been at his home. He then continued to berate him while saying that he was going to cooperate with him however since he is a "puppet" and an "idiot" he was going to lay a complaint against him instead.

For count 5 in Exhibit 9 at Tab 1, PC Holmes sends his Commanding Officer an email after he had directed members to serve Notice on him in addition to being the Unit Commander of 52 Division. PC Holmes recognizing his situation and disability advises that he is on medical leave, he has PTSD and that TPS "virtue signals" about mental health but the TPS "acts like petulant children".

For counts 7 and 8 in Exhibit 9 at Tab 2, PC Holmes sends an email to Detective Sergeant Washington after reading her synopsis of her substantiating misconduct against him. He acknowledges his disability while saying that she is trying to charge him on his mental health issues of yelling and swearing but that is why he is off work and that she can charge him all she wants as it won't make a difference as he is permanently restricted from returning to TPS in any capacity.

Finally for count 9 in Exhibit 9 Tab 4, on March 20, 2022 PC Holmes sends a text message and a follow up phone call to his previous supervisor of whom he has had no contact with for five years and who had been retired for a year at the time of the text message. He communicated that he is partially to blame for his PTSD, he gave him a poor review and that he negatively impacted his criminal court case.

In my review of Exhibit 16, Tab 10 TPS 950 "Information from Personnel File" form confirmed by the 52 Division Unit Commander on May 16, 2023, listed in the "Conduct Issues" section is the hearing decision on case 08/2011 as outlined in the Prosecutions submissions. In addition at Tab 8 of Exhibit 16 is the Hearing Decision on case 08/2011. PC Holmes while being represented by Defence Counsel Mr. Butt was found guilty on January 17, 2012 after a three day hearing of discreditable conduct as it related to the posting of the image on his Facebook account. For this charge PC Holmes received a forfeiture of one day as penalty. Although "stale" as both the Prosecution and Defence eluded to, there are similarities in the dated misconduct and that of the misconduct in this matter particularly in the first two counts dated August 29, 2018 (Count 1) and February 15, 2019 (Count 2). These similarities being the corrosion of the public's confidence in the police but also that they deal directly with and had a negative impact on the public effecting the public's trust.

In Exhibit 17, at Tab 1, PC Holmes writes a letter to WSIB to clarify information in his claim for benefits stemming from him calling in sick November 15, 2019. By this time he knew he was facing the two counts of misconduct before the Tribunal however he only speaks to the one from his criminal conviction. In the letter he states; *"There is a Police Act Charge against me "being found guilty of a criminal offence" which is before the tribunal in April. I this is only a minor thing in the big picture. I already know the outcome will be a monetary loss."* PC Holmes further lists off a series of events that have caused him distress. He includes this same event; *2017 October-The cyclist that didn't identify himself, resisted arrest was taken to the ground and received a fractured clavicle. I was charged months later and then convicted for doing what I was asked and trained to do. It was troubling that they besmirched my character and painted me as the opposite of what I am. Having the service turn their back on me and then the City is a big letdown considering all the sacrifices I made."* Although his intent in including this one event for two different points informed his WSIB claim, it also speaks to him at that time downplaying it's seriousness as well as his continued discontent and disagreement with the criminal conviction.

I find some limited mitigation by virtue of the pleas however in the totality as outlined it is mostly aggravating.

In moving to considering **employment history** as a disposition factor the Prosecution

submitted that it is an important disposition factor in all cases. It can be a mitigating or aggravating consideration closely relating to the disposition consideration of rehabilitation potential. I agree with the Prosecution's submission.

Inspector Benoit reminded the Tribunal that PC Holmes had been hired in 2008 and was sworn in as a Constable on May 13, 2009. She brought the Tribunal's attention to Exhibit 16, Tab 10 which outlines his complimentary and conduct activities. And further, that at Tab 11 of Exhibit 16, PC Holmes' performance appraisals can be found. She commented that there are not many given that PC Holmes was suspended and or on administrative duties from 52 Division and that his last working day was November 14, 2019. His last appraisal was for the year 2017 which predates the misconduct in this Tribunal and stated that they are irrelevant overall in summarizing his current work performance due to the length of time he has been off. Inspector Benoit submitted that PC Holmes' employment history is an aggravating factor.

In my review of Exhibit 16 Tab 10, in the "Complimentary Activity" column there are twelve documentations for PC Holmes. They started in 2009 through letters of commendation and awards. Nine recognized good police work in various investigations such as robberies, assaults, attempted murder and locating a wanted person as well as responding to a medical emergency. Three were community focused with one of them in 2012 where he was recognized for volunteering at a "Bell Let's Talk" event raising awareness for mental health. Also found at Tab 10 is the note in the "Conduct issues" column where the previous Hearing Decision, case 08/2011 is mentioned and then supported by the actual Decision at Tab 8, all of which this Tribunal has already outlined in the consideration of the recognition of the seriousness of the misconduct factor.

Further in Exhibit 16 at Tab 11, are PC Holmes' annual performance appraisals dating from November 24, 2011 to April 4, 2017. There are five in total. I find them relevant in this matter.

The first appraisal period dated November 24, 2011 to November 24, 2012, two separate supervisors speak to re-integrating and refocusing after his recent misconduct and is making an effort. The second level supervisor writes "*Constable Holmes has managed to stay*

*positive through a troubling and unique set of circumstances of his probation and re-classification. Jason has struggled through some tough times and unfortunate events in his early career that we can now move on from and look forward to a developing career.”* This particular time frame was just after the Tribunal Hearing for his misconduct and included the disposition date of May 23, 2012 finding him guilty of misconduct in case 08/2011. He is recommended for reclassification to Third Class. On February 1, 2013 PC Holmes acknowledges counselling on this appraisal period by signing off on the appraisal itself.

The second appraisal period dated September 1, 2012 to September 1, 2013 continues to speak of his re-integration as a result of the previous misconduct, acquiring further training in progression around building his knowledge and skills and that he is also looking forward to upcoming Scenes of Crime Officer (SOCO) training. He is recommended for reclassification to Second Class. On September 11, 2013 PC Holmes acknowledges counselling on this appraisal period by signing off on the appraisal itself.

The third appraisal period dated September 1, 2013 to September 1, 2014 speaks to his completion of all of his prescribed training within 52 Division, he has shown leadership among the junior members of his platoon, a team player, self-motivated and has become a SOCO for his platoon. He is recommended for reclassification to First Class. On October 20, 2014 PC Holmes acknowledges counselling on this appraisal period by signing off on the appraisal itself.

The fourth appraisal period dated April 4, 2015 to April 4, 2016 speaks to his reliability and trustworthiness and that he has an interesting and unique sense of humour, he is confident and works with little supervision, he works well with his coworkers and is encouraged to maintain a solid work load and high level of professionalism at all times. On October 26, 2016 PC Holmes acknowledges counselling on this appraisal period by signing off on the appraisal itself. Of note, this appraisal was completed by then Sergeant Searles 6363, the same supervisor who receives a text message related to count 9 in this matter before the Tribunal.

The final and fifth appraisal period dated April 4, 2016 to April 4, 2017 his first and second level supervisors write that he has taken on leadership roles, is frequently used as the

platoon's SOCO and further that he is encouraged to maintain and strive towards high standards of professionalism, to improve professionalism when interacting with members of the Service and the public, he will succeed if he remains focused and diligent while performing his policing duties and also would like to see him take positive steps towards enhancing his decision making skills. On August 3, 2017 PC Holmes acknowledges counselling on this appraisal period by signing off on the appraisal itself. This appraisal was also completed by Sergeant Searles 6363.

The Tribunal notes that two months later on October 10, 2017, after his signing off of his last appraisal period on August 3, 2017 PC Holmes engages in misconduct where he breaks the clavicle and toe of Oliver Santiago a member of the public, while arresting him for failing to identify himself while operating a bicycle.

I find his overall employment history to be aggravating.

In considering **consistency of disposition** Inspector Benoit submitted that "it is one of the most basic principles of the discipline process and flows from the idea that similar misconduct should be treated in similar fashion while recognizing that no two cases are the same".

At Tab D in Exhibit 15 Inspector Benoit referenced the case of Schofield and the Metropolitan Toronto Police Service, 1982 where it speaks directly to the issues of consistency and where it specifically states "*Consistency in the discipline process is often the earmark of fairness. The penalty must be consistent with the facts, and consistent with similar cases that have been dealt with on earlier occasions.*"

In Exhibit 15, Inspector Benoit included a series of cases which she considered to be similar. She stated that "although distinguishable on their facts to some extent on the present case before the Tribunal, they reflect a consistent conclusion from Hearing Officers with cases involving criminal conduct and attract a disposition of dismissal subject to relevant mitigating circumstances." She specifically brought the Tribunals' attention to two cases; Manning and the Hamilton Police Service, 2022 and Zarabi-Majd and the Toronto Police Service, 2023.

In my review of both cases, keeping in mind that the Zarabi-Majd case is currently on appeal I found that there were some similarities to this matter in that in the number of counts of misconduct in each were comparable, continued pattern of misconduct were factors and dismissal was sought.

To the Prosecutor's point that no two cases are alike, what is markedly different here in this matter to that of the two is that neither of them had a criminal conviction or a prior misconduct issue dated or otherwise like PC Holmes does.

On the basis of considering consistency Defence Counsel Mr. Butt submitted that the Tribunal is in "an unprecedented situation" and "the case law around dismissal and objectives of the discipline process are premised on one fundamental assumption; return or not to duties as a police officer. The underlying assumption on the case law is inoperative in this case". Mr. Butt asked the Tribunal to "think creatively....as all of the guidelines suggested do not work." Mr. Butt did not provide the Tribunal with relevant case law for consideration.

I agree with the Prosecutor's submission "that the facts before this Tribunal show a pattern of behaviour by an officer who consistently and repeatedly failed to follow the rules and obligations imposed upon him.....It has repeatedly been accepted that officers are held at a higher standard both in their professional and personal lives." And further that "permitting PC Holmes to maintain his employment with the Toronto Police Service when it is viewed in the context of all of his misconduct would be an inconsistent finding of the standard of professionalism and what is both required and expected of him".

In considering the factor of **specific and general deterrence** the correlation between penalty and deterrents, both general and specific, were provided in Exhibit 15 at Tab F; Andrews and the Midland Police Service 2002, OCCPS, where the commission stated "*that the penalties imposed for misconduct must be strong enough to send a clear message to the other officers that such conduct or any conduct of this nature will not be tolerated*".

Inspector Benoit submitted that general deterrence is of particular relevance in this matter. Officers of the Toronto Police Service generally need to understand the higher standard of



conduct of which they are held. Police officers like no other profession must be held accountable and must understand the significant consequences to breaking the laws that they are duty bound to uphold and enforce.

As a broader general deterrence, the Tribunal acknowledges that the outcome of this proceeding will be published on TPS Routine Orders and a summary of this decision will also be published on the TPS Intranet Disciplinary Hearings Office webpage under Hearing Decisions. These postings will be available for viewing to all Service members. They will spell out potential consequences for this type of misconduct and reiterate the intolerance for such behaviour.

With respect to specific deterrence, in the case Wildeboer and the Toronto Police Service, OCCPS, 2006 Tab G in Exhibit 16, the Prosecutor submitted that dismissal of PC Holmes would demonstrate that the Service does not tolerate or have use for officers who repeatedly commit acts of misconduct, both minor and more serious in nature. All members must understand that behaviour of this nature cannot and will not be tolerated. It will result in the most serious consequence. As such specific and general deterrence is an aggravating penalty factor that must be taken into consideration.” I concur with her submission.

On the consideration of **disability and other relevant personal circumstances** disposition factor the Tribunal must consider whether there is a nexus between a disability and other relevant personal circumstances and the misconduct. The onus is on the employee to determine proof of and demonstrate a nexus between the conduct at issue and the disability. This is drawn from the case of Moraru and Ottawa Police Service, OCCPS, 2008 found at Tab H in Exhibit 15. In it the Commission wrote, *“During the penalty phase of a disciplinary hearing, not unlike the sentencing phase of a criminal trial, it is incumbent on the trier of fact to consider whether PTSD and medically recognized illness influenced the actions of the officer and if so to what extent. Having concluded that Constable Moraru was suffering from PTSD the real issue before the hearing officer was what weight the effect of PTSD should be given as a mitigating factor on assessing penalty”*.

Further on the issue of this factor Inspector Benoit submitted that at Tab I, Exhibit 15, in Orser and the Ontario Provincial Police OCCPS, 2018, the Commission wrote *“reasons*

*made clear that the hearing officer took the PTSD issue seriously and engaged in meaningful analysis of the evidence of the role that the PTSD might have played in the misconduct. The hearing officer accepted the appellant suffered from PTSD but was not convinced that the appellant's misconduct was at any way related to his PTSD diagnosis. His conclusions are reasonable and supported by the record. We owe him deference and find he did not commit an error in principal in the treatment of the PTSD issue”.*

Inspector Benoit submitted that she only accepts the treatment reports and the psycho-vocational assessment summary report found in the WSIB records provided by Defence Counsel to the Tribunal however it is the Tribunal who provides the proper weight in the analyses to whether the misconduct was in any way related to the PTSD diagnosis. Disability is an explanation but not a defence. She further submitted it can explain inappropriate conduct but not excuse it as stated in Exhibit 15 at Tab J, Misconduct and Post-Traumatic Stress Disorder – Balancing the Public Trust and Accommodation, 2012, Ontario Chiefs of Police conference presentation paper.

Mr. Butt submitted as a result of the agreement with the Prosecution that PC Holmes will never work again as a Police Officer, the Tribunal is in an unprecedented situation. The case law around dismissal and objectives of the discipline process are premised on one fundamental assumption; return or not to duties as a police officer. The underlying assumption on the case law is inoperative in this case.

Mr. Butt asked the Tribunal to think creatively in this case and if PC Holmes is penalized properly it is incumbent to understand him in the context of the behaviours to reach a just penalty.

Mr. Butt submitted that understanding why PC Holmes behaved the way he did is an important point. There were guilty pleas. There is no defence to any episodes of misconduct. The behaviour was unacceptable, there was a persistent pattern of outbursts of anger that lead to terrible things and inappropriate things being said.

Mr. Butt presented his book of Records (Exhibit 17) submitting that it contained WSIB business records. Those records include medical reports by two separate psychologists, a

psychiatrist and a “patient history” (letter) of PC Holmes. He further submitted that this patient history has been relied on by the medical authorities and was verified in their diagnoses. This Exhibit is only 73 pages of what was 490 pages in its entirety. These are employer oriented documents prepared with an employer managing work place injury and that accumulatively these reports are extremely reliable.

Mr. Butt submitted that PC Holmes’ letter is written by him as a result of “confusion about the administration of the regime as a fact of what he should and shouldn’t do”. The letter has four key themes. The first theme; a number of horrific events that took their toll. The second theme; there were worker shortages which exacerbated the trauma. The third theme; workplace culture discouraged coming forward. The fourth theme; self medication with alcohol.

Mr. Butt submitted that the four reports are signed and authored by four different professionals who had direct dealings with PC Holmes; two psychologists a psychiatrist, and an occupational therapist. They go into great detail that provide a comprehensive assessment that leads to an opinion. There is a diagnosis listed; post traumatic stress disorder (PTSD), major depressive disorder, and alcohol use disorder. Mr. Butt submitted that all are consistent with PC Holmes’ history as described in his letter.

In Exhibit 17, Mr. Butt pointed out “PC Holmes cannot return to work as there are significant barriers that are permanent.” He further submitted that some of the list of barriers for return to work are the same symptoms of his diagnosed illness and to return to every single one of the offending behaviors, they fit that description of PC Holmes’ symptomology.

I have carefully reviewed Exhibit 17 at great length. In it’s entirety it is quite detailed and to Mr. Butt’s point, it does create a picture of PC Holmes’ experiences during the period of time that is relevant to this Tribunal. I have summarized it to assist in my analysis. I have included what Mr. Butt has spoken to and in addition I also identify the limitations of the information contained within given the vetted nature of Exhibit 17.

Exhibit 17 consists of 73 pages of WSIB documents which contain six separate reports/documents. Each page of these documents reflects a typed number of 31389570

in the upper left hand corner. This number is reflected in the treatment reports as the “claim number”. The documents are listed as provided in the Index of Exhibit 17;

- Tab1 - Letter from Douglas (Jason) Holmes to WSIB
- Tab2 - Psychiatric Treatment Report: July 20, 2022
- Tab3 - Psychology Treatment Report: Progress 5, July 7, 2022
- Tab4 - Psychology Treatment Report: Progress 4, April 21, 2022
- Tab5 - Psychology Treatment Report: Progress 3, January 13, 2022
- Tab6 - Psycho-Vocational Assessment Summary Report, March 31, 2022

I have accepted this exhibit as business records of the WSIB. These 73 pages of records form part of what is a larger WSIB file (490 pages) of PC Holmes as submitted by Defence Counsel. They are vetted by Mr. Butt. They are based on the employer and employee relationship with a work place injury claim, an identified work place injury and a corresponding return to work (RTW) plan inclusive of psychological and psychiatric treatment to assist in PC Holmes returning to work. These reports completed by medical professionals are as a result of the medical professionals coming together for the purposes of WSIB’s intention to have PC Holmes return to work. The Tribunal has not received any additional documentation outside of what is found in Exhibit 17.

The letter found at Tab 1 is typed, five pages in length, is undated, unnumbered, written to “whom it may concern” and is signed off by D. Jason Holmes. The opening paragraph suggests that the letter is being written to the WSIB to clarify an issue identified in filling out the initial claim related WSIB requisite forms.

PC Holmes wrote that what he was trying to say on the original form was that he called in to work sick on November 15, 2019 after being unable to cope appropriately with triggered anxiety related to his upcoming legal proceedings which stem from work. He was feeling ill those days in November however was able to get through using previous coping skills learned through therapy. He was released from therapy earlier in the summer of 2019 and now had to find new therapists/Doctors. He attempted to return to work on the 10<sup>th</sup> day after absence and was unable to do so after attending the station.

He then wrote that there is much more in his WSIB claim of which he did not include in the

initial form and proceeds to list out how he got to the date of November 15, 2019.

He lists off 12 different work related events that start in 2013 that have impacted his health; medical calls resulting in infant and adult deaths, calls where he believed his life was in peril, suicides, exposed to HIV, the arrest of Oliver Santiago resulting in him being arrested, charged and found guilty of assault causing bodily harm of which he felt betrayed by both the Service and the City as they “besmirched” his character and “painted him as the opposite” of who he is. He was drinking alcohol everyday since December of 2017 and sought medical attention in February 2018 for anxiety and alcohol consumption with both Dr. Madonic, his family physician and Dr. Moller of CAMH. Dr. Madonic mentioned that his symptoms sounded like PTSD however suggested he seek treatment first for the alcohol consumption. He participated in many therapy sessions mostly at CAMH, was medicated and completed treatment in “the summer of 2019” as he no longer had an alcohol dependency.

He speaks of experiencing unsupportive supervisors, his perception of stigma around mental health issues, cultural norm to consume alcohol to cope and staffing shortages.

He signs off hoping that what he has provided in the letter will explain his WSIB claim and that he is hopeful to get support.

The four psychology and psychiatry treatment reports found at Tabs 2 through 5 are UHN Altum Health documents and the “worker” identified is Douglas Holmes with a preferred name of Jason. The Date of Accident is listed as November 15, 2019. The claim number is 31389570. All reports have a standardized format where categories are created using boxes with free form response capabilities as well as check boxes for marking. These categories are treatment and goals to date, current concerns and symptoms, risk assessment, medication and substance use update, updated diagnoses, prognosis, treatment plan, functional abilities for return to work planning and return to work recommendations. Each report starts with a section outlining consent and confidentiality and includes that PC Holmes was informed of the purpose and nature of treatment.

The three psychology treatment reports are written by Dr. Crangle. In each report she writes that there is good therapeutic rapport between her and PC Holmes. All sessions included in these reports are held virtually and bi-weekly.

In the collective four reports, there is reference to a multidisciplinary Mental Health Comprehensive Assessment and subsequent Report dated March 18, 2021. This date is one year and four months after November 15, 2019. From that assessment PC Holmes was diagnosed with post traumatic stress disorder (PTSD), major depressive disorder and alcohol use disorder and was recommended to participate in a series of individual psychological treatment sessions as well as psychiatric follow-up for medication management with Altum Health to return to work. The Tribunal was not in receipt of this assessment or report. All four reports make reference to a “ruptured” relationship with a “previous psychologist”. The Tribunal is not in receipt of any reports or documents authored by that psychologist or identifying that doctor. There are ten months worth of assessing and related reporting unaccounted for. Mental Health Specialty Program – Psychology Treatment Report; Progress #1 and #2 are not within Exhibit 17. From the date of November 15, 2019 and March 18, 2021, there is no mention or documentation of treatment or any medical attention sought.

Located at Tab 5; starting chronologically with the oldest one first and closest to the date of March 18, 2021, this Altum Health report is 12 pages in length and is entitled Mental Health Specialty Program – Psychology Treatment Report; Progress #3. Date of the report is January 13, 2022. The Treatment intake date is listed as June 5, 2021. There have been 21 sessions of treatment. This report covers off the treatment period of November 4, 2021 to January 13, 2022 totalling five treatments. The Tribunal is not in receipt of the previous reports covering the 16 earlier sessions.

There was reference to a Mental Health Specialty Program – Psychology Treatment Report dated October 28, 2021 recommending additional sessions. The Tribunal was not in receipt of this report.

The report outlined treatment and goals with moderate improvements. It identified a diagnosis of PTSD, major depressive disorder, and alcohol use disorder.

During this reporting period PC Holmes reports there were family issues, denied excessive alcohol consumption, reported reasonable and manageable feelings of grief and sadness

and managed anger in response to a subsequent family conflict reasonably well as well as an interruption with medication due to confusion in dispensing and availability of a psychiatrist. In addition “he continues to report reactivity in response to work related stressors. He had reported that a disciplinary hearing had been held in his absence and that efforts to serve him papers had escalated, someone had come into his backyard to knock on the back door in order to serve him, daily visited by uniformed officers and perceived these actions as being retaliatory as he had submitted a complaint the previous week”. He also “reported difficulty coping in response to these stressors including recurrent nightmares with persecutory content, heightened anxiety including somatic sensations (nausea, upset stomach, hives), maladaptive coping (alcohol use) and avoidance (excessive sleeping, reduced productivity). His reactivity to these stressors is likely related in part to his psychological status, mistrust in others, over generalized negative beliefs about the world, reminder of past events. His reactivity to these stressors is also likely due in part to his prior experiences of interactions and mistrust with the Police Department.”

Prognosis for RTW in previous occupation is poor. It is not anticipated that ongoing trauma treatment is likely to result in meaningful change to RTW abilities or ability to work with pre-injury employer. A list of barriers for returning to work with TPS is provided. There are nine in total; nightmares, physiological reactivity and anxiety, anger outbursts, anger towards employer management, mistrust with employer and perceived threat, perception of toxic work environment, emotional reactivity to trauma related reminders, nature of a highly hierarchical and authoritative work environment and legislative control over conduct of officers.

Restrictions resulting from the barriers include; should not work in first responder role or administrative role in which may hear or read about traumatic events, restriction from return to pre-injury employer, not work in an environment with high likelihood of confrontation and the restrictions are anticipated to be permanent.

The second Altum Health report at Tab 4 is 12 pages in length and is entitled Mental Health Specialty Program – Psychology Treatment Report; Progress #4. Date of the report is April 21, 2022. The Treatment intake date is listed as June 5, 2021. There have been 26 sessions of treatment. This report covers off the treatment period of January 27, 2022 to

April 21, 2022 totalling five treatments.

The report identified a diagnosis of post traumatic stress disorder – improving, major depressive disorder – improving and alcohol use disorder - improving. It outlined treatment and goals with continued moderate improvements.

During this reporting period he reported improvements in productivity, mood, anger outbursts, and challenged over accommodated negative beliefs about others although continues to report reactivity in response to work related stressors including additional disciplinary charges and receiving new information about previous encounters with police officers, leaving him feeling betrayed, harassed and persecuted by TPS. His reported coping responses and reactivity was identical to what was laid out in Progress Report #3 (Tab 5).

Prognosis for RTW in previous occupation continues to be poor. Barriers and restrictions are the same as in Progress Report #3 (Tab 5). It is anticipated that these restrictions are permanent.

He presented with increased resolution towards return to work in a new occupation and increased certainty of his inability to return to TPS, has actively participated in meetings, a vocational assessment and research on possible next steps.

The WSIB Psycho-Vocational Assessment Summary Report at Tab 6, dated March 31, 2022, is 16 pages in length and is signed off by the assessor psychologist Dr. Zakzanis. The assessment occurred on March 24, 2022. It identified twelve suitable occupation options. PC Holmes reported that he is uncertain of his readiness to participate in vocational rehabilitation at this time and would like some time to consider the suggested vocational options.

The third Altum Health report at Tab 3 is 12 pages in length and is entitled Mental Health Specialty Program – Psychology Treatment Report; Progress #5. Date of the report is July 7, 2022. The Treatment intake date is listed as June 5, 2021. This report covers off the treatment period of May 26, 2022 to July 7, 2022 totalling four treatments.



The report identified a diagnosis of post traumatic stress disorder – improving, major depressive disorder – improving and alcohol use disorder - improving. It outlined treatment and goals with continued moderate improvements.

During this reporting period PC Holmes reported he moved, did not experience repeated workplace stressors, met with colleagues and described improvement overall including with coping and reactivity.

Prognosis for RTW in previous occupation continues to be poor. Barriers and restrictions are the same as in Progress Report #3 (Tab 5) and #4 (Tab 4). It is anticipated that these restrictions are permanent.

PC Holmes has increased resolution towards returning to work in a new occupation and has increased certainty of his inability to return to TPS. Is managing RTW work transition planning well, selected a program for transition and is arranging academic upgrading. The last two sessions of treatment are to be postponed until initiating next steps of work transition. PC Holmes to contact Altum Health upon starting school and when ready to resume sessions.

The fourth Altum Health report at Tab 2 is 13 pages in length and is entitled Mental Health Specialty Program – Psychiatry Treatment Report: Discharge. Date of the report is July 20, 2022. The Treatment intake date is listed as April 26, 2021. There have been eight sessions of treatment. This report covers off the treatment period of April 26, 2021 to July 20, 2022 totalling eight treatments. The sessions occur with a variable frequency and are held virtually. It is authored by psychiatrist Dr. Svihra. Dr. Svihra was responsible for prescribing medication. At the time of this report he was prescribed medication for PTSD and depression, alcohol cravings and sleep disturbance. Dr. Svihra wrote that he was one of many who participated in the multidisciplinary Mental Health Comprehensive Assessment of PC Holmes dated March 18, 2021. As indicated previously the Tribunal is not in receipt of this report.

This report identified a diagnosis of post traumatic stress disorder – improving, major

depressive disorder – improving and alcohol use disorder – improvement.

During this reporting period PC Holmes reported similar to all reports made to and completed by psychologist Dr. Crangle. He also reported a 50% increase in his overall functioning and a lessening of the use of alcohol.

Prognosis for partial functional recovery is anticipated with continued medication maintenance treatment coupled with psychological treatment.

This report is entitled Discharge. There is an agreement that PC Holmes' family physician will presume necessary prescriptions. A plan for discontinuing in the future is discussed however not until stability is present. PC Holmes is discharged from psychiatrist Dr. Svihra's care on July 20, 2022.

I accept the letter at Tab 1 is written by PC Holmes to the WSIB some time after November 15, 2019; the date of his first day sick. It is PC Holmes self reporting to the WSIB and not a medical professional; when and what experiences he believes have lead to reporting off sick on November 15, 2019. As presented, and with no supporting evidence to suggest otherwise, it is an administrative document to be used in assessing first steps in a work place injury submission to the WSIB. He is articulating what he believes is necessary for the purposes of claiming benefits under the Workplace Safety Insurance Act. As far as exactly when it was written and submitted to the WSIB remains unclear. Of note, in his disclosure contained within, PC Holmes mentions that he was drinking alcohol everyday since December of 2017, this would have been two months after the Oliver Santiago incident and further he mentions he sought medical attention in February 2018 which would have been a month after being arrested and charged for assault causing bodily harm on Oliver Santiago.

The next date referenced in exhibit 17 is March 18, 2021 when a Mental Health Comprehensive Assessment and Report took place. Again not having received a copy of this report the Tribunal does not have evidence to suggest that this letter was used, referenced or formed part of that Assessment and same can be said for the psychological or psychiatric treatment reports within Exhibit 17 WSIB file documents. The closest comments, observations or opinions expressed by any of the medical professionals

speaking of prior events experienced by PC Holmes is their use of terms such as “reminder of past events” and “workplace experiences”. There is no direct correlation made with the letter and those reports nor is there any other documentation that explain what these past events or workplace experiences are or when they occurred.

All of the Altum Health treatment reports provided in Exhibit 17, indicate that the date of the work place injury - date of accident was November 15, 2019 and further that on March 18, 2021, PC Holmes was diagnosed with PTSD, major depressive disorder and alcohol use disorder. This diagnosis is two years after his first two counts of misconduct. Of note, there is no evidence before the Tribunal that alcohol consumption or impairment is apparent in any of the acts of misconduct in this matter.

Since the diagnosis on March 18, 2021, a plan was created to get PC Holmes returned to work inclusive of psychological and psychiatric treatment. The treatment sessions continued for one year and five months to July of 2022.

During the combined reporting periods in the Altum Health psychology treatment reports found in Exhibit 17 (November 4, 2021 to July 7, 2022) there was general self reporting from PC Holmes expressing stress and associated symptoms related to life and work and specifically with further notifications/service of or outstanding disciplinary action.

The specific period of November 4, 2021 to January 13, 2022 (Report #3, Tab 5) PC Holmes reported officers attended his home to serve documents and how he felt. It did not speak to what actually ensued in his actions as a result of Dr. Crangle acknowledging that his disability caused PC Holmes to respond by physically sending insulting, threatening, offensive emails and text messages to two separate superior officers over a period of twenty days as laid out in the Notices of Hearing related to the misconduct in counts 3, 4, and 5.

Dr. Crangle wrote; (PC Holmes) “reported difficulty coping in response to these stressors including recurrent nightmares with persecutory content, heightened anxiety including somatic sensations (nausea, upset stomach, hives), maladaptive coping (alcohol use) and avoidance (excessive sleeping, reduced productivity). His reactivity to these stressors is likely related in part to his psychological status; mistrust in the others, over generalized

negative beliefs about the world, reminder of past events. His reactivity to these stressors is also likely due in part to his prior experiences of interactions and mistrust with the Police Department.”

The specific period of January 27, 2022 and April 21, 2022 (Report #4 Tab 4) PC Holmes reported “improvements in productivity, mood, anger outbursts, and challenged over-accommodated negative beliefs about others although continues to report reactivity in response to work related stressors including additional disciplinary charges and receiving new information about previous encounters with police officers, leaving him feeling betrayed, harassed and persecuted by TPS”. His reported coping responses and reactivity was identical to what was laid out in Progress Report #3 (Tab 5). It did not speak to what actually ensued in his actions or Dr. Crangle acknowledging that his disability caused PC Holmes to respond by physically sending insulting, threatening, offensive emails, text messages and making a phone call to two separate superior officers over a period of three days as laid out in the notices of hearing related to the misconduct in counts 7, 8, and 9.

Each treatment report in Exhibit 17 indicates there are overall improvements and are incremental as each reporting period concludes. They speak to the improvements in succession.

The Tribunal recognizes that the treatments/assessment that these reports speak to are focused on returning PC Holmes back to work and that the medical professionals reporting are not focused on directly reporting or assessing the actual actions of misconduct of PC Holmes against his disability. There is no evidence before this Tribunal that speaks to this. The psychologist reports in each of her three assessment reports that there is a good therapeutic rapport between her and PC Holmes. It is clear that she and the others have advocated for what is best for PC Holmes in attempting to set him up for success in returning to work.

I accept that PC Holmes unfortunately, is living with the identified disability of three disorders; post traumatic stress disorder, major depressive disorder and alcohol use disorder and has been at the very least since the date of diagnosis as provided in the treatment reports in Exhibit 17 of March 18, 2021. And furthermore that PC Holmes’

disability may have to some degree contributed to his behaviour as it relates to this misconduct however through my analysis of what was presented and argued I do not find that his disability caused his misconduct. There is no excuse for PC Holmes' misconduct. His actions were a choice. He made many choices of which have consequences.

I find some limited mitigation by virtue of the acknowledged disability however in the totality as outlined this factor is mostly aggravating.

Although not addressed by the Prosecution, and given the reference in PC Holmes' Letter from Exhibit 17 Tab 1 to WSIB, I have included two additional factors worth mentioning; effect on the police officer and police officer's family and systemic failure and organizational/institutional context. These are included to confirm that careful consideration was at play throughout the entire analysis and that PC Holmes' disclosure in his Letter was heard.

PC Holmes outlined that he "has lost a lot through all of this including personal relationships" and that his relationship with his family is strained. Although there has been no supporting evidence to the loss outside of his disclosure in the letter the Tribunal acknowledges his commentary be noted. Regardless that it is through the choices made by PC Holmes that he has created this effect of loss, it is still a challenging time.

As far as systemic failure and organizational/institutional context PC Holmes speaks to failed supervisors, personnel shortages and a workplace culture discouraging coming forward with mental health issues. No evidence to support this disclosure was provided. On the contrary to failed supervisors, one supervisor who held him to account in his two annual appraisals between 2015 and 2017 was the recipient of inappropriate communications as found in count 9 of this matter.

As far as the workplace culture discouraging coming forward as it relates to mental health, through my almost 34 years of policing with the Toronto Police Service and appreciating that predating PC Holmes' hiring in 2008, the Toronto Police Service had significant policies in place for many years relating to critical incident stress events and how the Service would support members, there may have been some members reluctant to participate for one

reason or another or be supportive of others. It is not until 2012, as outlined in Exhibit 15 at Tab J, Misconduct and Post Traumatic Stress Disorder: Balancing the Public Trust and Accommodation, that front-line workers suffering from PTSD were fast tracked in their claim for benefits through the Workplace Safety and Insurance Act. This naturally caused a surge of cultural awareness in all professions involved in emergency service response and in particular at the Toronto Police Service through various programs.

In addressing the **potential to reform or rehabilitate** disposition factor Inspector Benoit submitted that PC Holmes' collective conduct before the Tribunal is egregious and unmitigated.

The Prosecution submitted that in the case of Karklins and Toronto Police Service 2007, OCCPS, Exhibit 16, Tab N, it stated "*that there may be singular acts of misconduct that strike to the heart of employment relationship and effectively exhaust an individual's potential usefulness to perform the key duties of a police officer. Such singular acts may raise obvious concerns with respect to character*" and that this is the case with PC Holmes. She further stated that he has exhausted his usefulness to perform key duties of a police officer. PC Holmes cannot receive mitigation consideration for having committed an honest mistake or for behaviour that was out of character.

PC Holmes' misconduct before this Tribunal has spanned over a period of four years. The actions that lead to Counts 1 and 2 were fairly close in time and occurred between 2017 and 2018. In August of 2018 while waiting for trial on the outstanding criminal charge stemming from his arrest seven months earlier and participating in six criminal court appearances, PC Holmes engaged in the next act of misconduct with a second cyclist.

The last set of misconduct; counts 3, 4, 5, 7, 8, 9 all occurred in quicker succession and started in 2021 and arose out of four separate events ending in 2022. Counts 3 and 4 rise out of being served notice/documents of Tribunal dates related to counts 1 and 2. And further counts 5, 7, 8, and 9 are amassed as a result of additional attempts of Tribunal notification and written communication related to those attempts and past discipline actions against PC Holmes. Six counts of misconduct are all related to PC Holmes responding to his employer attempting to hold him accountable for his previous inappropriate behaviour.

All six are related to the first two counts. They accumulate accordingly as PC Holmes consciously rejects, by communicating his displeasure in the process by which is necessary for the misconduct to be addressed.

In the case of; Andrews and Midland Police Service, 2002, OCCPS, (Tab F in Exhibit 15), the Commission stated; *“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 case he would be a candidate for dismissal. The door should be kept open for the officer to be rehabilitated. The penalty should be tailored to provide him with the opportunity to do so”*.

PC Holmes' does not have an unblemished employment record. His previous recorded misconduct starts when he was found guilty in January 2012 after a three day hearing as it related to the posting of an image on his Facebook account. In my earlier consideration of his employment history I found it to be an aggravating factor. There were five annual appraisals tendered in Exhibit 16, spanning over the years between his first conviction of misconduct in 2012, leading up to the year of the first event in 2017 that lead to his second count of misconduct in this matter. Of those five appraisals, the last two reflected corrective counselling related to his behaviour specifically dealing with lack of professionalism and making decisions. Such comments by the same supervisor; Sgt Searles were “encouraged to maintain a solid work load and high level of professionalism at all times” and “he will succeed if he remains focused and diligent while performing his policing duties and also would like to see him take positive steps towards enhancing his decision making skills”. These reflect that two years prior to the events of misconduct in this Tribunal, starting in 2015, PC Holmes' was again acting unprofessional and making less than favourable decisions. PC Holmes, in being counselled for these two back to back annual appraisals, could have taken steps to align with his Oath of Office, and core values expected of a police officer.

In the case of Williams and the Ontario Provincial Police , 1995, OCCPS Exhibit 15 at Tab M, the Commission stated “even where a police officer can demonstrate steps taken towards rehabilitation or successful treatment, dismissal may be appropriate for serious misconduct” Inspector Benoit submitted that even though PC Holmes has sought help

following his criminal conviction those steps are too late and the seriousness of the misconduct still support dismissal.

In my review of Exhibit 17 at Tab 1, PC Holmes, in his letter clarifying the WSIB claim submission, provided some details around first seeking medical attention in February 2018 for increased anxiety and alcohol consumption after having to turn himself in January 2018 and getting charged with assault causing bodily harm. I summarized the details of this self-reported medical attention in my consideration for disposition of disability and other relevant personal circumstances. The end date of this treatment was “the summer of 2019” as he no longer had an alcohol dependency. The Tribunal is not in receipt of any corroborating medical documentation to this treatment or is it reflected in the WSIB treatment reports tendered. The next date reflecting any type of medical attention sought is captured in the WSIB documentation which was March 18, 2021. This is the date of the Mental Health Comprehensive Assessment and subsequent Report of which again, the Tribunal is not in receipt of. This date is roughly a year and a half later after “the summer of 2019” treatment end.

Although PC Holmes did seek some treatment in 2018 after his arrest, he was released from it mid 2019 and then did not resume any treatment again until March of 2021. It was then two years after the first two counts of misconduct, PC Holmes was diagnosed with PTSD, major depressive disorder and alcohol use disorder. While in this treatment for several months with reported improvements he amassed six more counts of misconduct. In these acts of misconduct he acknowledged his disability in four separate communications to superior officers however disregarded the consequences of his behaviour commenting that it didn't matter how many times he gets charged, he is permanently restricted from returning to TPS in any capacity, as if to excuse his misconduct.

If find PC Holmes' potential to reform or rehabilitate to be an aggravating factor.

Reflecting on the prognosis for returning to work as captured in Exhibit 17, WSIB reports, all three of the psychological treatment reports find there is a consistent indication that the prognosis for “RTW in previous occupation is poor”. All barriers and restrictions for returning to work remain the same for each one. There is no reported improvement in the restrictions



and barriers areas of the reports over the independent assessments' period of time. Dr. Crangle comes to these conclusions from her psychological assessments solely based on returning PC Holmes to work, independent of knowing his entire employment history or the details of the misconduct before this Tribunal. Her conclusion is similar in that PC Holmes' potential to reform or rehabilitate his previous role as a police officer is not possible. His restrictions resulting from the barriers include; should not work in first responder role or administrative role in which he may hear or read about traumatic events, restriction from return to pre-injury employer, not work in an environment with a high likelihood of confrontation and the restrictions are anticipated to be permanent.

As far as returning to work elsewhere Dr. Crangle reported increases in PC Holmes' resolution towards return to work in a new occupation and increased certainty of his inability to return to TPS. He has managed RTW transition planning well, actively participated in meetings and a vocational assessment where twelve suitable occupations were identified, he researched possible next steps, has selected a program for transition and has arranged for academic upgrading.

For **procedural fairness** considerations the Prosecution submitted PC Holmes was served numerous Notices of Hearing that included the following wording; "*Take notice pursuant to Section 85(4) of the Police Services Act, 1990, the penalty of dismissal or demotion may be imposed if the misconduct or unsatisfactory work performance with which you are charged is proved on clear and convincing evidence.*"

There were a total of nine Notices of Hearing served on PC Holmes. All stating the same wording around dismissal being a consideration.

PC Holmes was provided the opportunity to make full answer and defence and was represented by experienced counsel through out these proceedings.

**Damage to the reputation of the police force** as well as **effect of publicity** disposition consideration factors are engaged in this matter.

Inspector Benoit submitted that PC Holmes' conduct resulted in a criminal conviction stemming from a very public criminal court process which garnered public exposure via the

media. In addition, the criminal conviction will put the Service in a predicament when considering deployment options where PC Holmes were to either lay charges or investigate as this could compromise both.

PC Holmes' through his own letter to the WSIB as outlined in Exhibit 17, acknowledged he saw his own name "in the news".

The Prosecutor submitted two cases. One case of Hassan and Peel Regional Police Service, OCCPs 2006, in Exhibit 15, Tab O, "*we see no reason why a Hearing Officer in the absence of direct evidence may not place himself in the position of a reasonable person in the community for the purpose of assessing the degree to which the conduct of an officer has brought harm to the reputation of a police force and the extent to which that harm were to continue if an officer were to remain employed*".

The second case of Bovell and the Toronto Police Service, 2011 in Exhibit 15, at Tab R where it stated; "*Although there was no publicity regarding these incidents of misconduct the reputation of the Service suffered in the view of the involved parties and other witnesses, including co-workers, who were interviewed. Without question, should the extent and nature of Constable Bovell's misconduct be revealed to the general public, it would cause significant damage to the reputation of the Toronto Police Service. Furthermore, were Constable Bovell retained by the Service and deployed again in the community it would cause irreparable damage to its reputation and be an affront to the expectations of the public regarding the conduct of its police per Constable Williams and Ontario Provincial Police OCCPS September 18, 1995.*"

This Tribunal was held in a public forum and allowed for virtual attendance. On the date of the hearing in this matter I noted that a well known journalist reporting for a popular newspaper was on-line.

In the first two misconduct events in this matter PC Holmes is directly dealing with members of the public; Oliver Santiago and Guriqbal Chouhan. Oliver Santiago was the victim of the assault causing bodily harm. Both of these citizens became OIPRD complainants and were impacted profoundly by PC Holmes' actions. They both participated in the Tribunal

and attended many if not most appearances. Oliver Santiago made submissions in this Tribunal.

Oliver Santiago submitted that in light of the grave offence committed by PC Holmes specifically the crime of assault causing bodily harm it is imperative that appropriate actions be taken including the termination of his employment.

He further submitted that police officers hold a position of trust and authority within society, charged with the duty to protect and serve the community. When an officer abuses their power and engages in criminal behaviour it not only undermines the integrity of the entire law enforcement profession but also erodes public trust and confidence.

In both cases regardless of one being off duty and the other being on duty they take place in a public setting where additional eye witnesses were involved observing, providing statements and or calling 911 in response to the escalation of the altercations.

Internal reputational damage was incurred in this matter. In the last of the six misconduct events, four serving or retired Toronto Police Service members were involved directly with PC Holmes, being the recipients experiencing his inappropriate communications. In addition one member, Detective Petrie himself received reputational damage as a result of PC Holmes speaking to others negatively about Detective Petrie stating in his text sent to Detective Petrie found in Exhibit 16 Tab 3; "Fyi I let the people know at 52 you are not to be trusted and are a piece of shit. Thought you would be decent since your brother was such a fuck up and apparently you were not liked by your old mcu...so that means you are a bitch".

On the issues of damage to the reputation of the police force as well as effect of publicity I find these to be aggravating factors on disposition.

To return to the **test for dismissal** the Prosecutor drew out "an officer's usefulness" as found in Guenette and Ottawa-Carleton Regional Police Service, OCCPS, 1998 which is at Tab P in Exhibit 15. There are three areas for consideration; nature and seriousness of the misconduct, ability to reform the officer and the damage to the reputation of the police

service if the officer should remain.

These three areas have already been addressed by this Tribunal in the articulation of their own consideration factors on penalty. All three were found to be aggravating.

To readdress all of these areas I revisit a series of cases submitted by the Prosecution.

For nature and seriousness of the misconduct I return to the cases of Nesbeth and Windsor Police Service, OCCPS, 2015, Tab Q, in Exhibit 15, “*one-off acts of deceit or discreditable conduct can justify dismissal of an officer*”, and the Court of Appeal Decision of Trumbley and Metro Toronto Police Service (Tab A, of Exhibit 15), “*the basic objective of dismissing a police employee is not to punish him or her in the evil sense of the word but rather to rid the employer of the burden of the employee who has shown that he or she are no longer fit to remain an employee.*”

In this case there are eight counts of misconduct and two of which include abusive behaviour with members of the public; one verbally and the other resulted in a criminal conviction for assault causing bodily harm.

This misconduct is serious. Both individually and collectively they are egregious. They occur both on and off duty. PC Holmes’ misconduct occurred over a protracted period of time demonstrating a pattern. They include both members of the public and superior officers directly. This is at the higher end of the serious spectrum. They all relate to PC Holmes interacting personally with each of them. The contact made with Oliver Santiago, resulted in a physical interaction where PC Holmes was charged, tried and found guilty of assault causing bodily harm. A criminal conviction where the victim, who sustained physical harm and an injury is a member of the public, is serious in and of itself.

Oliver Santiago stated himself in his submission that in light of the “grave offence” committed by PC Holmes specifically the crime of assault causing bodily harm it is imperative that appropriate actions be taken including the termination of his employment.

PC Holmes has shown that he is no longer fit to remain a police officer of the Toronto Police Service.

For ability to reform the officer, I return to the case of Venables and York Regional Police

Service, OCCPS, 2008 found in Exhibit 15, Tab B, the commission asked “*if the nature of the officer’s misconduct spent his potential usefulness as a police officer and whether his actions were so egregious that they raised insurmountable doubts about his future suitability as a police officer*”.

PC Holmes’ negative employment record begins in 2012, three years after he swore his Oath of Office as a police officer, with a finding of misconduct. In the five years following leading up to this misconduct he has two annual appraisals that fall sequentially before the date of the 2017 event that brings us to count 2 of this misconduct. They both reflect corrective counselling by a supervisor related to his behaviour specifically dealing with professionalism and making decisions.

In 2018 and then over a period of four years PC Holmes accumulates eight counts of misconduct of which sees him here before this Tribunal. During this time period and after he was arrested and charged in January of 2018 for assault causing bodily harm on a member of the public, PC Holmes reports in his letter to the WSIB that he seeks medical attention for stress related symptoms and starts treatment for alcohol dependency.

While receiving treatment, seven months after his arrest, PC Holmes is involved in another event of misconduct while facing the criminal charge, immediately after reporting off duty. In the summer of 2019, he gets released from treatment as he no longer had an alcohol dependency.

On November 15, 2019 he reports off sick as a result of experiencing stress related symptoms related to his previous misconduct and the disciplinary process that followed. Sometime there after he claimed benefits through WSIB. Then two years later in March of 2021 he is diagnosed with post traumatic stress disorder, depressive disorder and alcohol consumption disorder and starts psychological and psychiatric treatment as a plan to return to work. The November 15, 2019 date is identified as the date of accident as it relates to the WSIB claim. During this time and participating in treatment with reported improvements, PC Holmes accumulates six additional counts of misconduct while making reference to his disability in such a way as if to excuse his behaviour reflected in each of these counts.

PC Holmes has spent his potential usefulness as a police officer and further, his actions were so egregious that they raised insurmountable doubts about his future suitability as a police officer.

For damage to the reputation of the police service if the officer should remain, I return to the case of Hassan and Peel Regional Police Service, OCCPs 2006, in Exhibit 15, Tab O. In it there is a specific quote *"we see no reason why a Hearing Officer in the absence of direct evidence may not place himself in the position of a reasonable person in the community for the purpose of assessing the degree to which the conduct of an officer has brought harm to the reputation of a police force and the extent to which that harm were to continue if an officer were to remain employed"*

The first two counts of misconduct in this Tribunal has garnered much public attention. Both events rose eyewitnesses who had cause for concern at the level of negative interaction between PC Holmes and a member of the public. In one of the events a citizen maintained monitoring of the situation until ultimately calling 911. The criminal court proceeding and conviction was both publicly accessed and reported on in the media.

Oliver Santiago submitted that police officers hold a position of trust and authority within society, charged with the duty to protect and serve the community. When an officer abuses their power and engages in criminal behaviour it not only undermines the integrity of the entire law enforcement profession but also erodes public trust and confidence.

The last six counts of misconduct all dealt with direct communication with internal superior officers. Some of the messaging was threatening in nature causing one Detective to follow up with PC Holmes' access to his service issued firearm, disseminate officer safety awareness to his peers as well as request that upon PC Holmes' anticipated return he not come back to their shared workplace. Not only do these particular counts of misconduct add to the collective seriousness but it also adds to the potential internal reputational harm if PC Holmes is not held to account for his behaviour. PC Holmes' disability may have to some degree contributed to his behaviour as it relates to this misconduct however I do not find that his disability caused his misconduct. There is no excuse for PC Holmes' misconduct. As a result of PC Holmes' collective behaviour resulting in this misconduct the

reputation of the Toronto Police Service has already been damaged. It only stands to increase if PC Holmes is not appropriately held accountable for his actions.

I have carefully considered each submission as it relates to positions on penalty. All three submissions are similar in that PC Holmes should no longer be a police officer.

The Public Complainant, Oliver Santiago and the Prosecutor have submitted that PC Holmes should be terminated.

Defence Counsel submitted that although PC Holmes should never work as a police officer again he should be demoted to remain on disability compensation through the WSIB and the Toronto Police Service. This demotion would afford a cost savings to the Toronto Police Service as well as fulfill the Service's intent on having PC Holmes no longer operate as a police officer.

Mr. Butt has asked this Tribunal to be justly creative while keeping basic principals of fairness in mind and construct a just outcome that is faithful to the evidence that has been presented. And further to make a concerted effort in appreciating or understanding PC Holmes.

This Tribunal has done just that. There has been cautious consideration on all that has been; submitted, presented, including all relevant factors in considering disposition and further thorough examination of the WSIB business records as tendered. There is an understanding of PC Holmes and his disability as it was accepted and recognized as having some contribution to the misconduct in this matter however it was found not to have caused the misconduct acted out by PC Holmes. The Police Services Act sets out the complaints disciplinary proceedings and the related discipline principles. There isn't much room for creativity, if at all. To reach a just penalty it must be proportionate to the misconduct, appropriate to the circumstances and be properly balanced.

The totality of the misconduct in nature, volume and duration does not align with demotion. This exercise is not about saving the Toronto Police Service money. It is about upholding the Oath, serving the community appropriately, maintaining the public's trust and confidence in the police and holding PC Holmes accountable for his actions.

At the conclusion of the Hearing Mr. Butt requested that the reports authored by the medical professionals within Exhibit 17, the WSIB documents be sealed from public access. His reasons for the request focused on the privacy rights of PC Holmes. Mr. Butt did not ask the Tribunal to go in-camera when addressing these records in his submission. He submitted that the open aspect of the Tribunal was respected and he only hit the highlights of the documents to make his submissions in fairness to PC Holmes. The salient points of the documents were brought out in the Tribunal including PC Holmes' disability. There are additional personal and sensitive components to the reports that are of a privacy concern for PC Holmes. The Prosecution took no position on this issue. The Public Complainants would still have an avenue to unseal if desired. As such, the medical reports within Exhibit 17 were sealed.

I have carefully considered all submissions of Oliver Santiago, Mr. Butt and Inspector Benoit, reviewed both mitigating and aggravating factors, all tendered exhibits and relevant case law and I have determined an appropriate disposition.



**PART IV: DISPOSITION**

After carefully considering all submissions of Oliver Santiago, Mr. Butt and Inspector Benoit, mitigating and aggravating factors, all tendered exhibits and relevant case law, I impose the following sanction under Section 85 (1) (b) of the Police Service Act;

For six counts of Discreditable Conduct and two counts of Insubordination that Constable Douglas Holmes is guilty of; I order Police Constable Douglas Holmes dismissed from the Toronto Police Service within seven days from this date of judgement unless he resigns before that time.

Susan Gomes - Inspector

Hearing Officer

Tuesday March 26, 2024

## Appendix 'A'

### List of Exhibits 19/2019, 31/2019, 38/2022, 55/2022- PC Douglas Holmes (10301)

- Exhibit 1a: Letter of Designation Hearing Officer Superintendent R. Hussein
- Exhibit 1b: Letter of Designation Hearing Officer Superintendent R. Hussein
- Exhibit 2: Letter of Designation Prosecutor Inspector L. Benoit
- Exhibit 3: Motion Application – Remove Counsel from the Record – Norton
- Exhibit 4: List of Appearance Dates up to January 11, 2022
- Exhibit 5: Affidavit of Detective Rich Petrie
- Exhibit 6: Book of Authorities - Prosecution
- Exhibit 7: List of Appearance Dates up to November 21, 2022
- Exhibit 8: Letter of Designation Hearing Officer Inspector S. Gomes
- Exhibit 9: Book of Evidence - Prosecution
- Exhibit 10: Book of Authorities – Order for in Absentia Hearing - Prosecution
- Exhibit 11: Transcript of Public Complainant Guriqbal Chouhan
- Exhibit 12: Certified Copies of Criminal Conviction, Information and Superior Court Appeal Dismissal
- Exhibit 13: Letter of Designation Hearing Officer Inspector S. Gomes
- Exhibit 14: Letter of Designation Prosecutor Inspector L. Benoit
- Exhibit 15: Book of Authorities – Prosecution
- Trumbley and Metro Toronto Police Service Tab A
  - Venables and York Regional Police Tab B
  - Bright, Konkle and Niagara Board of Inquiry Tab C
  - Schofield and Metropolitan Police Service Tab D
  - Manning and Hamilton Police Service Tab E
  - Andrews and Midland Police Service Tab F
  - Wildeboer and Toronto Police Service Tab G
  - Moraru and Ottawa Police Service Tab H
  - Orser and Ontario Provincial Police Tab I
  - Misconduct and PTSD – Balancing the Public Trust and Accommodation Tab J

- Brewer and Toronto Police Service Tab K
- Brewer and Toronto Police Service OCPC Decision Tab L
- Williams and Ontario Provincial Police Tab M
- Karklins and Toronto Police Service Tab N
- Hassan and Peel Regional Police Service Tab O
- Guenette and Ottawa-Carleton Regional Police Service Tab P
- Nesbeth and Windsor Police Service Tab Q
- Bovell and Toronto Police Service Tab R
- Zarabi-Majd and Toronto Police Service Tab S

Exhibit 16: Book of Records – Prosecution

- 2017 Ontario Police Services Act by Paul Ceysens and Scott Childs, pp 314-317 Tab 1
- Oath of Office, Police Constable Douglas Holmes (10301) Tab 2
- Ontario Police Services Act, section 43(1) Tab 3
- Ontario Police Services Act, section S.42(1) Tab 4
- Toronto Police Service, Core Values Tab 5
- Toronto Police Service Standards of Conduct, Introduction by Chief Mark Saunders Tab 6
- Ontario Police Services Act, 2017, Employment History,p 350-354 Tab 7
- Toronto Police Service and Holmes Decision dated May 23, 2012 Tab 8
- Order of Justice Roberts dated December 17, 2019 Tab 9
- TPS 950 Awards/ Letters/Conduct of PC Holmes (10301) Tab 10
- TPS Performance Appraisals PC Holmes Tab 11

Exhibit 17: Book of Records – Defence

- Letter of Douglas (Jason) Holmes to WSIB Tab 1
- Psychiatric Treatment Report – 20 July 2022 Tab 2
- Psychology Treatment Report: Progress #5 – 7 July 2022 Tab 3
- Psychology Treatment Report: Progress #4 – 21 April 2022 Tab 4
- Psychology Treatment Report: Progress #3 – 12 January 2022 Tab 5
- Psycho-vocational Assessment Summary Report – 21 March 2022 Tab 6

