



TORONTO POLICE SERVICE DISCIPLINE HEARING

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

IN THE MATTER OF THE

THE TORONTO POLICE SERVICE

AND POLICE CONSTABLE SHAUN HUGHES (9624); (He/Him)

Charge: Discreditable Conduct

DISPOSITION DECISION

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

Prosecutor: Mr. M. Capotosto, Toronto Police Service; (He/Him)

Defence Counsel: Mr. S. Khehra; (He/Him)

Case Number: 83.2022 & 44.2023

Hearing Dates: 2023.12.04

Decision Date: 2024.01.22

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

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

## **PART I: OVERVIEW**

### **Background**

1. Constable Shaun Hughes (9624) commenced his employment with the Toronto Police Service (TPS) in 2007. Constable Hughes presently holds the classification of First Class Constable and is assigned to 41 Division.

### **Allegations of Misconduct**

#### **Case 44.2023**

2. Constable Shaun Hughes (9624), being a member of the Toronto Police Service, you are alleged to have committed misconduct in that you are guilty of a criminal offence that is an indictable offence or an offence punishable upon summary conviction, contrary to Section 2(1) (a) (ix) of the Schedule Code of Conduct of Ontario Regulation 268/10 and therefore, contrary to Section 80(1) (a) of the Police Services Act, R.S.O. 1990 as amended.

### **Plea**

3. On Monday, December 4<sup>th</sup>, 2023 Constable Shaun Hughes (9624), pleaded guilty to a Notice of Hearing and was found guilty of Discreditable Conduct, contrary to the *Police Services Act*.

## **Decision**

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

For Discreditable Conduct in that Constable Hughes is guilty of: a criminal offence that is an indictable offence or an offence punishable by summary conviction - a Demotion from First Class Constable to Second Class Constable for a period of 15 months, after which Constable Hughes can be returned to his previous classification of First Class Constable.

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

Case 83.2022 involving one charge of Discreditable Conduct, will be marked withdrawn at the request of the Prosecution.

## **PART II: THE HEARING**

### **Exhibits**

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

## **Representation**

6. In this matter, Mr. Khehra represented Constable Hughes and Mr. Capotosto represented the Toronto Police Service.

## **Agreed Statement of Facts**

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

*Shaun Michael Hughes is a member of the Toronto Police Service, and was assigned to 41 Division.*

*On July the 17<sup>th</sup>, 2022, PC Hughes was operating his personal motor vehicle in the Town of Scugog when he collided with another vehicle. The driver of the vehicle that was rear ended believed that accused was intoxicated and phoned the police.*

*Police responded and observed PC Hughes standing beside his vehicle. He was unsteady on his feet, and fumbling with a tire jack. He was emanating a moderate odour of alcohol and admitted to consuming alcohol. He was arrested, given his rights to counsel, cautioned, given a breath demand, and then transported to Durham Police Division 15.*

*The accused provided two samples of his breath into an intoxilyzer instrument:*

*Test 1: Registered at 160 mgs of alcohol in 100 ml of blood*

*Test 2: Registered at 140 mgs of alcohol in 100 ml of blood*

*On April 11, 2023 PC Hughes pled guilty before the Honourable Justice B.M. Green at the Oshawa Region Courthouse to impaired driving under section 320.14(1)(a) of the Criminal Code of Canada. PC Hughes was convicted and received a fine of \$1000 and a one year driving prohibition.*

*Both PC Hughes' actions on July 17, 2022 and his guilty plea are contrary to the Standards of Conduct of the Toronto Police Service.*

By being found guilty of a criminal offence, PC Hughes is guilty of discreditable conduct contrary to S.80 (1) (a) of the Police Services Act.

## **Positions on Penalty**

7. The positions on penalty are in congruence. Defence and Prosecution agree by joint submissions in a Demotion in rank from First Class Constable to Second Class Constable for a period of 15 months, after which Constable Hughes can be returned to his previous classification of First Class Constable.

A summary of Mr. Capotosto's and Mr. Khehra's submissions, in support of this position, follows.

## **Witnesses**

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

## **Submissions**

### **Prosecution Submissions**

9. The Prosecutor – Mr. Capotosto began his submissions by entering a Book of Records (Exhibit 4), and a Book of Authorities (Exhibit 5).
10. Mr. Capotosto commenced his submissions by outlining the objectives of discipline, which are to: correct unacceptable behaviour, deter others from similar behaviour, and assure the public that the police are under control.
11. Mr. Capotosto highlighted that there are fifteen considerations governing the determination of an appropriate disposition and they can be found in the 2017 *Ontario Police Services Act*; these principals were submitted at Tab 1, in Exhibit 4. The Prosecution fully considered all of these principles and in the submissions to penalty, noted the following as particularly relevant in this matter.
12. Mr. Capotosto submitted that no doubt Constable Hughes' actions have *public interest* implications as it relates to the public trust. He reiterated the necessity for the public to be assured that the police are under control, and that Constable

Hughes had breached that trust. For this reason Constable Hughes is being held accountable for his conduct and that is what society expects from its Police Service.

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

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

15. The importance of public trust is further addressed by the Prosecutor with reference to Exhibit 4; the submitted Book of Records, at Tab 2 – Oath of Office. Herein, Mr. Capotosto submitted Constable Hughes’ signed and sworn Oath to preserve the peace and prevent offences and discharge his duties as a police officer faithfully, impartially and according to the law when he joined the Toronto Police Service. The Prosecutor submitted that Constable Hughes, by violating the very law that he had taken an oath to uphold, had broken the public trust placed in him and violated his Oath of Office.

16. The importance of public trust was further addressed by the Prosecutor with reference to Exhibit 4, Tab 6; of the submitted Book of Records. Herein, the Toronto Police Service Standards of Conduct was reviewed from the Chief and states, “*Toronto Police Service members are held to a higher standard of conduct than other citizens. This standard is not only an expectation from the community, it is an expectation we place upon ourselves. This higher standard of behaviour is necessary to preserve the integrity of the Service*”. Both prior Chiefs and the current Chief have issued routine orders regarding the consequences of being convicted of a criminal offence. These are found in Exhibit 4, Tab 13 to 15.

17. The Prosecutor highlighted the most recent routine order regarding Impaired Driving that was issued by Chief Demkiw on July 6, 2023. This routine order makes comments regarding maintaining the trust and confidence of our community. The community expects that we not only enforce the laws but also abide by them. This most recent directive provides a warning, one that has been provided many times before, that there is zero tolerance for this behaviour. When prosecuting these types of offences, the dispositions sought will include demotions for multiple years and up to dismissal.

18. The integrity of the Service is constantly called into question especially when we are found to be contravening the very laws we have taken an oath to uphold. PC Hughes’ finding of guilt impacts that integrity. His conduct is inexcusable and not only affects his own reputation, but the reputation of the Toronto Police Service.

19. With regards to the *seriousness of misconduct*, Mr. Capotosto added that Constable Hughes’ conduct is no doubt serious misconduct. That anytime an officer is convicted of a criminal offence, it is serious. The Prosecutor also submitted a further aggravating factor, that this matter involved the use of alcohol and driving, placed the safety of the general public and PC Hughes at risk. In this instance PC Hughes was involved in a collision on a highway, the other involved party made observations that led them to conclude that PC Hughes was intoxicated. Fortunately no one was injured in this accident.

20. There have been warnings, cautions and messages from the Chief specifically about offences around drinking and driving. A criminal conviction results in a one year driving prohibition that impacts the occupational requirements of a police officer. The Prosecutor submitted that the misconduct, which resulted in a Criminal Code conviction, will likely have an impact on the officer's credibility in future prosecutions.

21. On the principle of *recognition in the seriousness of misconduct*, the Prosecutor referred to Christian and Grbich and Aylmer, 2002, OCCPS (Exhibit 5, Tab 2). The Prosecutor drew attention in the decision to the fact that, in Williams and the Ontario Provincial Police, 1995, OCCPS the Commission identified three key elements a Hearing Officer must take into account when imposing a penalty. These are: the *nature and seriousness of the misconduct*, the *ability to reform or rehabilitate* the officer, and the *damage to the reputation of the Police Force that could occur if the officer remained on the Force*. The Prosecution submitted that recognizing the seriousness of the misconduct is vital to the ability to reform or rehabilitate the officer. Constable Hughes has pled guilty in criminal court and again here in the Tribunal. Both of these guilty pleas demonstrate his remorse for his actions and willingness to accept responsibility.

22. PC Hughes pled guilty to Impaired Driving in criminal court on April 11<sup>th</sup> of 2023 before Justice B.M. Green. He received a \$2000 fine and a one year driving prohibition. He entered a guilty plea in this Tribunal today at the first opportunity. A guilty plea has long been regarded as an acceptance of responsibility and acknowledgement of remorse. In the case of Carson and the Pembroke Police, located at Tab E, Exhibit 4, which states '*we have no doubt that a guilty plea should be recognized as a mitigating factor and taken into account along with other factors in determining the appropriate penalty*', PC Hughes's guilty plea demonstrates that he has accepted responsibility for his actions and demonstrates that he is willing to face the consequences and wishes to continue to be a productive member of the Service.

23. In support of the above submission of positive *employment history*, Mr. Capotosto pointed at Exhibit 4, Tab 11, in the Book of Records. Here, Mr.



Capotosto outlined Constable Hughes' complementary activities and awards. He reviewed these accolades, and the officer has a number of positive documentations. There are no negative conduct issues.

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

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

26. Mr. Capotosto further added in regards to the *potential to reform or rehabilitate* by drawing attention to Exhibit 5, Tab 2 where the Commission noted in Christian and Grbich and Aylmer, 2002, OCCPS that, "*every attempt should be made to consider whether or not rehabilitation is possible. A police service and the community in which it is situated makes a significant investment in each police officer. Unless the offence is egregious and unmitigated, the opportunity to reform must be a key consideration*".

27. Further, in regards to the *potential to reform or rehabilitate the officer*, the Prosecutor drew attention to Exhibit 5, Tab 4 where the Commission noted in Andrews and Midland Police Service, 2002, OCCPS, "*The Commission believes*

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

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

29. In terms of *consistency of disposition*, Mr. Capotosto cited from Exhibit 5, Tab 5, in Buckle and Ontario Provincial Police, 2005, OCCPS the principle as found in Schofield and the Metropolitan Toronto Police, where it was stated, “*Consistency in the discipline process is often the earmark of fairness. The penalty must be consistent with the facts, and consistent with similar cases that have been dealt with on earlier occasions.*” The Prosecutor submitted that a disposition of a 15 month Demotion reflects the Service’s and community’s growing intolerance for impaired driving.

30. The Prosecutor then offered two decisions with regards to the Service’s position on sentencing. At Tab 6, in Exhibit 5, in Sievers and Toronto Police Service, 2012, it states, “*The opportunity to reform should be a significant consideration. I have listened to the evidence of the character references, reviewed every case, routine order and communique provided and Sgt Sievers’ evaluations and award recommendations. Demotion in rank is a strong consideration when the officer has little or no value at the current rank to the police service or the community and rehabilitation within the rank is not a consideration. It is also a strong consideration when the facts of the case warrant demotion based on the actions of the officer*”. And at Tab 7, the same Exhibit, in Kingdon and Toronto Police Service, 2015, it states, “*Despite all of the efforts to eradicate drinking and*

*driving among police service members we continue to see officers arrested and brought before the Tribunal. In the case of Sievers, the Hearing Officer stated we are at a crossroads with respect to the disposition of drinking and driving cases. Recent cases show that we are at the top of the continuum for penalty and yet officers continue to repeat the misconduct. We have to question if the recent sentencing history of 20 days has achieved the goal of general deterrence".* The Prosecution submits that both these decisions were prior to Constable Hughes' misconduct and the outcomes of such misconduct should have been known to him.

31. Mr. Capotosto also cited earlier case law decisions and dispositions contained in Exhibit 5, at (Tab 8) Smith and Toronto Police Service, 2009, (Tab 9) Allard and Toronto Police Service, 2012, (Tab 10) Ford and Toronto Police Service, 2016, (Tab 11) Ladurantaye and Toronto Police Service, 2021, (Tab 12) Canning and Toronto Police Service, 2022 (Tab 13) Murray and Toronto Police Service, 2014, (Tab 14), Priebe and Toronto Police Service, 2022, and (Tab 15) Little and Toronto Police Service, 2022 which showed an appropriate range of penalty.

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

33. The Prosecution highlighted the case of Canning and Toronto Police Service from 2022. In this case Constable Canning was involved in an off-duty collision in his own motor vehicle. The Fire Service had to extract the officer from his vehicle. Constable Canning was convicted of Impaired Driving. Constable

Canning pled guilty to discreditable conduct and was given a disposition of a 15 month Demotion. The Prosecution submitted that the circumstances were similar to PC Hughes' conduct.

34. The Prosecution submitted the Toronto Police Service continues to struggle with new cases of misconduct involving Service members who are drinking and driving. The risk to the reputation of the Service, the risk to public safety, and to our members, should this trend not be addressed, cannot be overstated. The Tribunal needs to send a clear message to all members that this type of misconduct will receive meaningful periods of Demotion. We have increased the disposition to 15 months for PC Hughes and hopefully this will be a clear message to our membership that the penalties for this type of misconduct are increasing as needed as a general deterrence.

35. In the area of *specific and general deterrence* I take notice of the correlation between penalty and deterrents, both general and specific from Exhibit 5, Tab 4, in Andrews and Midland Police Service, 2002, OCCPS, where the Commission stated, "*He was also correct that the penalties imposed for misconduct must be strong enough to send a clear message to other officers that such conduct or any conduct of this nature will not be tolerated*" and further that, "*sufficient to punish and to deter while not causing undo or excessive hardship while demonstrating that reoccurrence will not be tolerated.*" Mr. Capotosto submitted that PC Hughes has an impeccable work history, he is remorseful and involved in an incident that is out of character and the Demotion of 15 months will send a strong message.

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

37. The Prosecutor, in addressing the *damage to the reputation of the Service*, submitted that the Service's reputation suffers every time one of our officers

breaches the Oath of Office. Any member of the public, the Durham Regional Police Service, Prosecutor, Judge, and Court Staff who were involved in, or were aware of the circumstances of his arrest, would not see it in a positive light.

38. As such, the Prosecutor submitted that the appropriate disposition was a Demotion from First Class Constable to Second Class Constable for a period of 15 months.

### **Defence Counsel Submissions**

39. Mr. Khehra commenced his submissions by stating that this is a joint disposition for consideration.

40. Defence Counsel submitted that PC Hughes is remorseful and has accepted responsibility. He has 17 years of service, he has always worked in 4 district, specifically 41 Division. He has worked in primary response, the major crime unit, community response and was on a 6 month secondment to the Guns and Gangs Unit. PC Hughes is married and has two children. These events are a one off. This is a day of poor judgement. Defence submitted that he does not expect that PC Hughes will be before the Tribunal again in the future.

41. Mr. Khehra submitted that on the day in question, PC Hughes had been golfing with some friends. He had been drinking and did not have intentions of driving. The plan was to spend the night at his friend's house. PC Hughes is a type 1 diabetic. His tracking device became disconnected. Not having this monitor at night caused PC Hughes concern because of past experiences. That was the rationale behind why PC Hughes drove. He regrets that decision. In regards to rehabilitation, PC Hughes advised he is prepared to do whatever the Tribunal feels necessary. He does not feel that he has any sort of addiction issues. This was simply a case of poor judgement.

42. Defence submitted that PC Hughes has excellent evaluations. He requested that the Defence materials be marked exhibits. Defence Personal File was marked Exhibit # 6 and Defence Book of Authorities was marked Exhibit # 7.

43. In referencing Exhibit # 6, PC Hughes works hard and has great evaluations and commendations for great police work. This incident is one bump in the road of a career.

44. Defence submitted that the cases submitted by the Prosecution set out the basic principles. The joint position of 15 months falls within the parameters of those principles. Defence submitted that the only aggravating factor in this case is a minor collision.

**Opportunity to address the Tribunal for Constable Hughes:**

45. Constable Hughes was provided the opportunity to address the Tribunal and chose to address the Tribunal. Constable Hughes made the following noteworthy comments: *Constable Hughes apologized to everyone involved, and the Service for his actions that evening. He apologized for the effect that it has had on his family. He stated that we would never see him again in the Tribunal.*

**Prosecution Reply:**

46. Nil.

**Analysis and Decision:**

47. 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.

48. The Commission has also instructed that there are other factors to be considered, in light of particular misconduct, which includes the recognition of the seriousness of the misconduct, the employment record, the public interest in the administration of justice, general and specific deterrence and the need for consistency. Exhibit 4, Tab 3 - the *PSA*, s 43(1) (d) notes, “(a police officer) is of good moral character and habits”. The actions of PC Hughes fall short of the habits that are expected of police officers.
49. Constable Hughes violated the public trust by committing the criminal offence of Impaired Driving. He failed to meet the standard of conduct expected of him and even though the misconduct occurred while he was off-duty, there is a clear occupational requirement for police officers; to prevent criminal driving offences, involving the consumption of alcohol, and not to commit them.
50. Members of the Durham Regional Police Service responded to a call for service by a citizen of a vehicle collision. This citizen, the other party involved in the collision, thought that Constable Hughes may be impaired. Officers attended and formulated grounds and arrested Constable Hughes for Impaired Driving.
51. The public must have confidence in the ability of the Service to deal with any misconduct on the part of its members and as such, the public also has an interest in ensuring that Constable Hughes is held accountable for his actions.
52. There is no doubt that the misconduct was serious as evident by the circumstances leading to Constable Hughes’ arrest and criminal conviction. Constable Hughes operated a motor vehicle after having consumed an amount of alcohol, and became involved in a collision.
53. I do take note, at Exhibit 3, the Agreed Statement of Facts – that Constable Hughes exercised his option to plead guilty to the criminal offence he was charged with at the earliest opportunity and also in this Tribunal. The transcript of the PC Hughes’ guilty plea and sentencing in criminal court located at Exhibit 4 Tab 9, provides insight into the position of Justice B.M. Green. Justice Green’s

comments were brief but did relay an incident where serious injuries occurred in another matter where the accused had low blood alcohol readings.

54. Defence Counsel provided background information regarding a medical condition of PC Hughes. PC Hughes has type one diabetes which is monitored through a device. On this occasion his monitoring device was not functioning properly. He had had serious side effects in the past involving his diabetes. PC Hughes had planned not to drive as he had consumed alcohol. With the malfunction of his monitoring device and concern, Constable Hughes chose to drive after consuming alcohol. There were several options available to Constable Hughes, none of which involved driving. Regardless, he chose to drive and became involved in a rear-end collision resulting in minor injuries to the involved parties (Exhibit 4, Tab 9). Although PC Hughes' choices on that day were not in line with the Toronto Police Service Core Values, located at Exhibit 4, Tab 5, surrounding the misconduct, his post incident conduct falls squarely in line with the Core Value of Reflect and Grow.

55. Previous messages from the Chief and prior hearing decisions which described the circumstances and penalties assessed against members who committed drinking and driving offences have also been provided to the entire Service membership, to indicate that there is zero tolerance and to inform members of the penalties. The most recent warning from Chief Demkiw, located at Tab 14, Exhibit 4 was released on July 7, 2023 after these events took place. Regardless, the message has been consistent that there is zero tolerance and members' non-compliance will be dealt with seriously. PC Hughes had the opportunity to know the consequences of his actions.

56. As noted in Carson and Pembroke Police Service, OCCPS, 2001 a guilty plea should be recognized as a mitigating factor. Constable Hughes has not tried to blame others for his actions and has accepted responsibility for them. This step he has taken demonstrates that he has recognized the seriousness of the misconduct and is willing to accept the consequences.



57. This event no doubt will have an effect on Constable Hughes. His finding of guilt under the *PSA* will remain with him for a lengthy period of time. He has likely lost and will continue to miss out on professional opportunities until this matter is well behind him, and he has restored his reputation. He will have to report this misconduct when he is called upon to testify in court. His driving prohibition will impact the way in which the Service is able to operationally deploy PC Hughes. All of those effects are as a result of the actions of Constable Hughes, for which he must bear the responsibility.

58. Though I have not been made aware of any media attention, this event has caused some damage to the reputation of the Service. Any member of the public (including the involved parties), the Durham Regional Police Service employees, the tow truck personnel, paramedics, the Justice and the court staff who was involved in, or was aware of the circumstances of his arrest, would not see it in a positive light. This Tribunal is a public forum and I note that no known members of the media were present during this proceeding. If this matter is reported on in the future by the media, it will likely cause further damage to the reputation of the Service.

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

60. I have reviewed the information from Constable Hughes' personnel file in Exhibit 4, at Tab 11. Constable Hughes has been recognized on approximately 5 occasions for his involvement in investigations throughout his career, and received a Corporate Excellence Award. I also reviewed Defence Exhibit # 6, their submission of Constable Hughes' personnel file. The information contained in Exhibit #6 mirrored the information submitted by the Prosecution in Exhibit 4, Tab 11 and Tab 12. The source documents in Exhibit 4, at Tab 11, for the awards he had received provided further details. It was evident that Constable Hughes had made many positive contributions to the various divisional/service priorities.

61. In Exhibit 4, at Tab 12, I reviewed Constable Hughes' annual performance appraisals dating from 2019 to 2023. In the appraisals, his supervisors commented on the type of work he produces. All of his evaluations are of a positive nature. In his most recent evaluation his supervisor made the following comments "*I have found him to be dedicated, hard working and self motivated*". PC Hughes' personnel file is mitigating.
62. Past behaviour is often an indication of what can be expected from a person in the future. Constable Hughes has a positive employment history and has been recognized for his contributions. Constable Hughes has accepted responsibility for his actions. He entered an early guilty plea in Criminal Court and pleaded guilty in the Tribunal.
63. As discussed in Andrews and Midland Police Service, 2002, OCCPS, an officer with a prior unblemished employment record should be provided with the opportunity to be rehabilitated. In this case, coupled with his prior positive employment record, the actions he has taken since this event, and the observations of those supervisors in a position to observe his behaviour, Constable Hughes has demonstrated that he has the potential to reform or be rehabilitated.
64. I am satisfied that deterrence specific to Constable Hughes has been addressed through his acceptance of responsibility, his early guilty pleas, both in this Tribunal and in Criminal Court, and his willingness to accept a penalty. In regards to general deterrence, the outcome of these proceedings will be published on TPS Routine Orders, the decision will be published on the TPS Intranet and the decision will also be posted on the TPS External Website. Those documents are available to the Public and the entire Service membership, and will reinforce the previous messaging in regards to the potential consequences for this type of misconduct.
65. The Commission discussed the need for fairness and consistency in the discipline process in Buckle and Ontario Provincial Police Service, OCCPS, 2005, penalties must be consistent with prior similar cases. The Prosecutor provided a number of historical cases in support of the joint penalty position. The

Prosecutor sought a penalty of a 15 month reduction in rank classification and Counsel Mr. Khehra joined Mr. Capotosto on this position.

66. The Prosecution submitted the following cases to support the joint submission: Smith and Toronto Police Service, 2011; Allard and Toronto Police Service, 2012; Sievers and Toronto Police Service, 2014; Kingdon and Toronto Police Service, 2015; Ford and Toronto Police Service, 2016; Ladurantaye and Toronto Police Service, 2021; Murray and Toronto Police Service, 2014; Priebe and Toronto Police Service, 2022; Little and Toronto Police Service, 2023 and Canning and Toronto Police Service, 2023. Defence Counsel submitted the following cases for the Hearing officer to consider: Koech v. Toronto Police Service, 2021; Bennett v. Ottawa Police Service, 2012; Bromfield v. Hamilton Police Service, 2009; Yakimishyn v. Peel Regional Police Service, 2008; and Kelly v. Toronto Police Service, 2005. In reviewing all of the cases from both the Prosecution and the Defence, it was apparent that even though many outcomes bore a number of similarities to others, there was no consistent penalty that was imposed. Each was considered on its own merit, and penalties imposed were in a range that was dependent on all of the mitigating and aggravating factors specific to that case. The two following cases assisted more than the others in determining a disposition.

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

68. The case of Canning and Toronto Police Service from 2023 has similarities with the matter before me. In this matter, Constable Canning was off duty and became involved in a motor vehicle collision, causing extensive damage to both vehicles. Constable Canning had consumed alcohol and collided with a parked car causing extensive damage. Constable Canning pled guilty to Driving with over 80 mgs of alcohol in 100 ml of blood. He received a \$2300 fine and a one year driving prohibition. Constable Canning pled guilty in the Tribunal to discreditable conduct was given a disposition of a 15 month demotion. The case assists in determining an appropriate disposition.

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

- Involved a member of the public,
- Involved a collision,
- Involved property damage or physical injury,
- Involved an attempt to obstruct justice, flee or attempt to obtain special favour by virtue of being a holder of public office,
- Involved a breath reading that was excessive,
- Involved alcohol present in the vehicle,
- Involved reckless driving as a factor,
- If the behaviour was before or after the "Chief's Order of Concern and Warning."

and

If there is a history of serious misconduct.

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

71. In this case, a criminal conviction occurred, and there are significant aggravating factors to the discreditable conduct, including: Firstly, a motor vehicle collision with a member of the public occurred, resulting in damage to both vehicles. Secondly, the collision involved rear ending which shows the lack of attention to

driving or recklessness of the driving. Thirdly, members of the Emergency Services attended and treated PC Hughes for minor injuries, and fourthly, the behaviour was after most but not all of the Chief's Orders of Concern and Warnings.

72. A penalty must be appropriate to the circumstances, and a penalty imposed in one case may not be appropriate in another similar case, based on the disposition factors that are present. In the matter before me, the misconduct of Constable Hughes was no doubt serious and the circumstances surrounding his actions presented an unwarranted risk to the public. In this case, a penalty of a Demotion is appropriate based on a consideration of all of the disposition factors. The penalty I am imposing is within the range of penalties for other cases involving similar misconduct.

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

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

75. PC Hughes took the opportunity to address the Tribunal. He apologized for his actions. PC Hughes indicated that he would not be before the Tribunal again. This statement from PC Hughes clearly demonstrates his regret for his actions.

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

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

77. Constable Hughes is being ordered to attend treatment as recommend by Toronto Police Service - Wellness Unit. This is to assist him in his rehabilitation and the management and decisions made surrounding his type one diabetes.

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

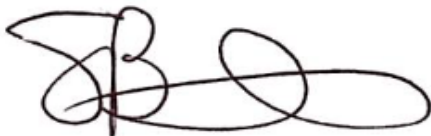
**Disposition:**

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

For Discreditable Conduct in that Constable Hughes is guilty of: a criminal offence that is an indictable offence or an offence punishable by summary conviction, a Demotion from First Class Constable to Second Class Constable for a period of 15 months, after which time he can be returned to his former classification of First Class Constable.

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

Charge # 1 of Discreditable Conduct in Case 83.2022 is marked withdrawn at the request of the Prosecution.

A handwritten signature in black ink, appearing to be 'SB' followed by a long horizontal stroke and a loop.

Shane Branton  
Superintendent  
Hearing Officer

January 22<sup>nd</sup>, 2024

**Appendix 'A' - List of Exhibits 44/2023**

**Constable Shaun Hughes (9624)**

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

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

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

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

2017 Ed., Ontario police Services Act by Ceysens & Childs (Tab 1)

Toronto Police Service Oath of Office- Constable Hughes (Tab 2)

Ontario Police Services Act s. 43(1)-Criteria for Hiring (Tab 3)

Ontario Police Services Act s. 42(1)-Duties of Police Officer (Tab 4)

Toronto Police Service – Core Values (Tab 5)

Toronto Police Service Standards of Conduct, Chief Saunders (Tab 6)

Ontario Police Services Act, 2017, Employment History, pp 305-354 (Tab 7)

Police Discipline Chapter (Tab 8)

Transcript of Criminal Proceedings (Tab 9)

Certified Copy of Information (Tab 10)

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

Performance Appraisals (Tab 12)

Routine Order September 27, 2012 (Tab 13)

Routine Order April 5, 2013 (Tab 14)

Routine Order July 6, 2023 (Tab 15)

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

Bright, Konkle and the Niagara Board of Inquiry, OCPD, 1997-01 (Tab 1)

Christian and Grbich and Aylmer Police Service, OCCPS, 2002 (Tab 2)

Carson and Pembroke Police Service, OCCPS, 2001 (Tab 3)

Andrews and Midland Police Service, 2002, OCCPS (Tab 4)

Buckle and Ontario Provincial Police Service, OCCPS, 2005 (Tab 5)

Sievers and Toronto Police Service, 41/2013, 2014 (Tab 6)



Kingdon and Toronto Police Service, 18/2014, 2015 (Tab 7)  
Smith and Toronto Police Service, 13/2009, 2011 (Tab 8)  
Allard and Toronto Police Service, 41/2011, 2012 (Tab 9)  
Ford and Toronto Police Service, 4/2016, 2016 (Tab 10)  
Ladurantaye and Toronto Police Service, 3/2021, 2021 (Tab 11)  
Canning and Toronto Police Service, 12/2023 and 84/2022, 2023 (Tab 12)  
Murray and Toronto Police Service, 14/2014, 2014 (Tab 13)  
Priebe and Toronto Police Service, 13/2022, 2022 (Tab 14)  
Little and Toronto Police Service, 35/2021, 2022 (Tab 15)

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

Awards Recommendation- Team work recognition (Tab 1)  
Awards Recommendation- Team work recognition (Tab 2)  
Awards Recommendation- Team work recognition (Tab 3)  
Awards Recommendation- Corporate Excellence Award (Tab 4)  
Awards Recommendation- Ontario Fitness Pin (Tab 5)  
Awards Recommendation- Team work recognition (Tab 6)  
Performance Appraisal 2023 (Tab 7)  
Performance Appraisal 2022 (Tab 8)  
Performance Appraisal 2021 (Tab 9)  
Performance Appraisal 2020 (Tab 10)  
Performance Appraisal 2019 (Tab 11)

**Defence Case Book (Exhibit 7)**

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