

**HAMILTON 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**

**HAMILTON POLICE SERVICE**

**AND**

**CONSTABLE PAUL MANNING #835**

**DISCREDITABLE CONDUCT (Eight Counts)**

---

**DISPOSITION**

---

Before:	Superintendent (Ret.) Greg Walton Ontario Provincial Police
Counsel for the Prosecution:	Mr. David Migicovsky Ms. Jessica Barrow
Public Complainant: Represented by:	Mr. Salvatore Merulla Mr. Douglas Burns
Counsel for the Defence:	Unrepresented Hearing held in absentia
Disposition Hearing Date:	January 21, 2022

## **Background**

In a decision dated November 11, 2021, Constable Manning was found guilty of eight counts of discreditable conduct following a two-day hearing held in absentia. Each count of misconduct related to the posting of material on Twitter. In my decision I concluded:

I find the evidence in this matter to be overwhelming. The *viva voce* evidence is supported by documentary evidence which had been posted by Constable Manning on his Twitter account. I find that each of the tweets meet the definition of discreditable conduct. Each tweet breached Hamilton Police Service Policy and Procedure 2.14, specifically, the use of non-Hamilton Police Service Internet resources to post any materials, information or photographs to the Internet/Social Networking Site that discredits the reputation of the Hamilton Police Service.

Furthermore, as the evidence relates to Count #1, Count #2 and Count #3, I find Constable Manning posted material which he knew or ought to have known was restricted and confidential. He was prohibited from disseminating information which was privileged as per Third-Party Rule.

I am satisfied that Constable Manning's tweets amount to behaviour which would diminish the reputation of the Hamilton Police Service from the perspective of the dispassionate member of the public, fully aware of all of the circumstances. I am confident that the general public would find a police officer behaving in this manner, appalling and likely to discredit the Hamilton Police Service.

The purpose of this disposition hearing is to determine a fitting sanction, one that strikes a balance between community expectations, fairness to Constable Manning, and the needs of the Hamilton Police Service.

## **Position on Penalty**

Mr. David Migicovsky and Ms. Jessica Barrow represented the Hamilton Police Service as prosecutors. The public complainant Mr. Salvatore Merulla, participated in the initial hearing but did not attend this disposition hearing although he was represented by his counsel, Mr. Douglas Burns. Constable Manning did not participate in the initial hearing and did not participate in this disposition hearing personally or via counsel; he was unrepresented, and the matter was held in absentia.

The prosecution submitted that the appropriate sanction in this matter is dismissal. Mr. Burns did not take a position on penalty.

As noted, Constable Manning did not participate in this disposition hearing and consequently, did not make his position on penalty known to the tribunal. However, I proceeded as though he was opposed to a disposition of dismissal.

## **Decision**

The evidence was clear and convincing and as such, I found Constable Manning guilty of eight counts of discreditable conduct. As for an appropriate sanction, I find Constable Manning has nullified his usefulness to the Hamilton Police Service and consequently, he shall resign within seven days of this written decision or face dismissal.

## **Hearing in Absentia**

Before delving into the submissions received from counsel, I must first address the issue of this disposition hearing proceeding in absentia. In my written decision of November 11, 2021, I addressed the same subject. The following commentary from that decision also applies to this disposition hearing:

Exhibit #10 is the Human Rights Tribunal of Ontario decision of *Saad and 1544982 Ontario Inc.*, dated November 1, 2016, which supports the assertion that hearings can proceed in absentia as noted in section 7(1) of the *Statutory Powers and Procedure Act*.

The matter of *Mauro and Thunder Bay Police Service*, OCPC, June 20, 2013, is marked as Exhibit #11. In that matter, following a series of adjournments, the hearing proceeded in absentia and the Commission noted that was the legally correct decision. In *Mauro*, the Commission stated:

It is not reasonable that a hearing would be delayed indefinitely, especially where there is no medical evidence to support that kind of delay. There is a duty on a person before a tribunal to cooperate with a request from the tribunal for appropriate medical documentation or medical explanation as to why the person seeks an adjournment...

The panel finds that the Hearing Officer's request for the medical information to substantiate continued accommodation requests was legally correct.

The panel finds that the Hearing Officer's decision to proceed with the hearing on February 15, 2012, to be reasonable based on the persistent lack of cooperation by the Appellant with the Hearing Officer, and the numerous previous adjournments.

In this instance, I note that Constable Manning has not requested an adjournment, he has simply indicated that he will not participate in the hearing. In his written correspondence, Constable Manning referenced letters from two mental health professionals that the Hamilton Police are in possession of. I note that no such medical information is before this tribunal despite my inquiry and invitation for Constable Manning to make submissions in this regard if he wished the tribunal to be notified of relevant medical circumstances.

In the matter of *Cameron v. Durham Regional Police Service*, 2021 (ON CPC 11), marked as Exhibit #12, the Commission stated:

The appellant undoubtedly suffered from PTSD and an addiction to alcohol. There was no evidence before the Hearing Officer, however, that either condition rendered the appellant unfit to participate in the hearing...

We are not satisfied that the Hearing Officer committed an error of law or denied the appellant procedural fairness in these circumstances. We cannot speculate what the result may have been had the appellant produced a report from CAMH.

I was concerned at the time of the ongoing correspondence and remain concerned at this time about Constable Manning's repeated request to have no further contact with counsel or myself. He indicated that the unwanted communication was making him "unwell." Naturally, I do not wish to adversely impact Constable Manning's mental health, but I must balance the need to hold a fair and transparent hearing with his request to have utterly no involvement in this hearing. For example, I would have preferred to engage in further dialogue about whether he had considered exploring methods of accommodation or if he needed additional time to consider counsel. However, I am satisfied that he fully understood the Tribunal process and his decision to not participate in the hearing was an educated one. To delve further into these areas would disrespect his request for no further contact.

Based on all of the correspondence that Constable Manning engaged in with either Mr. Migicovsky's office or with myself, I am satisfied that he was: fully informed of the allegations he was facing; fully informed of the hearing dates; fully informed that he could make application for an adjournment for medical reasons and the process of how to proceed in that fashion; fully informed that he could seek a motion to have me recused as the hearing officer and/or how to file an abuse of process motion based on the prosecutor's bias. Constable Manning was aware that he could be represented by counsel if he desired, and he was aware that the hearing would proceed in absentia if he chose not to participate. Constable

Manning was informed that he could be accommodated in a number of ways that might allow him to participate in the hearing.

At no time did Constable Manning seek an adjournment or ask to be accommodated in any manner. He provided no details in relation to or in support of, his insinuation that he had an inability to participate in this hearing due to existing medical issues.

I am satisfied that Constable Manning has been notified of the hearing, I am satisfied that he understands accommodations, if necessary, are available to him and that he could be represented by counsel. Understanding all of this and knowing that it was my intent to proceed in his absence, he directed the hearing to proceed in absentia on several occasions.

I am guided by the principles of fairness and natural justice which apply not only to a subject officer, but also to a public complainant and the general public. Mr. Merulla filed his written complaint May 17, 2019; he deserves to have a hearing held into that complaint in a relatively timely manner. Constable Manning offered no reasonable explanation as to why he could not participate in the hearing and presented no reasonable explanation why it ought not proceed in absentia. I see no reason to delay the proceedings, and no reason why the hearing ought not to proceed in the absence of Constable Manning who decided not to participate in the hearing, fully aware of the consequences. Therefore, as per Section 7(1) of the *Statutory Powers and Procedure Act*, I direct that the hearing proceeds in the absence of Constable Manning.

I find it necessary to include a series of email exchanges between Constable Manning, the prosecution, and/or myself related to this disposition hearing. These emails illustrate that Constable Manning was aware of my decision finding him guilty of eight counts of misconduct, was aware of this disposition date, and how a hearing in absentia came to be. Constable Manning chose to not participate in this process, and he did not have counsel to communicate with as an intermediary. Despite his repeated requests for me and/or the prosecutor's office to not communicate with him, I was obligated to ensure Constable Manning had a full understanding of the disposition process about to unfold and the options available to him. Consequently, communication with Constable Manning was limited to those emails and correspondences deemed absolutely essential.

Monica Ptaszynski is a legal assistant with Perley-Robertson, Hill & McDougall. Exhibit #22 is Ms. Ptaszynski's affidavit which contains emails and correspondence, some of which will be reproduced in the following overview.

On November 11, 2021, I emailed a vetted copy of my decision to Mr. Migicovsky, to Mr. Burns, counsel for the public complaint Mr. Merulla, and directly to Constable Manning who was unrepresented by counsel. In part, I stated:

Mr. Manning, a small portion of the hearing was held in-camera. This area of the evidence has been redacted and no one is permitted to access it. If you wish to view this information, please let me know and I will make arrangements for you to meet with a member of the Hamilton Police Service for this purpose, but you will not be permitted to receive a copy of it, only view it.

I propose we hold a conference call on Friday (tomorrow) at 9 a.m. or Monday at 9 a.m. depending on the availability of everyone involved, to set a disposition hearing date. Mr. Manning, please let me know if you would like to participate in this call, and whether you plan to participate in the next phase of this matter, the disposition hearing...

Moments after receiving my email, Constable Manning replied:

The thought of sitting with anyone from that police service makes me sick to my stomach. Thanks for the kind offer though.

Mr. Migicovsky included Constable Manning in his “reply to all” in response to my request to schedule a conference call to set a hearing date. Constable Manning replied in the following fashion:

After repeated requests not to contact or email me, added [sic] the blatant lies and omissions you made during your ‘presentations’ you still ignore me and contact me? Your continued harassment without any ‘lawful authority’ is now criminal in my professional opinion. I will be laying a criminal information with the local magistrate.

I replied to Constable Manning on November 12, 2021:

I sent you my decision yesterday. I presume you took no issue with that. I asked you then, if you planned to participate in the next phase of the hearing which included a teleconference with Counsel. You did not respond to that request, consequently, Mr. Migicovsky and I must continue to include you in electronic notifications of scheduling meetings. If you inform the tribunal that you will not be participating in the disposition aspect of the hearing, then you will no longer hear from Counsel. Mr. Migicovsky answered my request as to availability of everyone, yourself included.

Please indicate whether you wish to be notified of the conference call which is to be scheduled next week. Also, please indicate whether you wish to be notified of the disposition hearing dates, and whether you wish to receive the submissions of counsel in advance of that date.

Constable Manning sent the following correspondence in reply:

Your presumption was incorrect. Mr. Migicovsky made numerous comments which were factually incorrect through either misfeasance or malfeasance. He either conspired with Hamilton Police to lie to you or was lied to by Hamilton Police and failed to do his due diligence.

I never “terrorized” Merulla or his family. I sent him one email in 2015, and posted pictures of all his residences in relation to his conflict of interest with the LRT project...

My repeated requests to Migicovsky and his law firm for him to stop contacting me and exacerbating a condition, caused by an IOD, covered by the Human Rights Act were again ignored. I told you to go ahead and do your thing without me. There's nothing in the PSA [*Police Services Act*] that allows agents of Hamilton Police to continuously harass me, and Migicovsky was given fair warning.

You knew I was too unwell to engage from the start. That's why I was signed off “permanently disabled.”

Mr. Migicovsky had more than ample warnings about further contact and chose to ignore or was negligent as to who he was emailing. It caused me further alarm and distress and I didn't sleep all night due to his 11 PM email. I think we both know he has committed the offence of criminal harassment.

I will be filing an appeal with the divisional court, criminal charges against Migicovsky and a third defamation lawsuit against Merulla.

And whilst we're ‘chatting.’ HPS [Hamilton Police Service] never filed paperwork for an increased penalty such as demotion or dismissal, and most certainly never served it on me or the Association.

But then I was never served suspension papers, nor have I seen a signed copy, and still have my badge. Yet they still tell everybody I'm suspended. Guess the rules only apply to the whistleblower, right?

I sent an email to Constable Manning in response:

I am trying to balance your request for limited to no contact with my obligation to keep you informed of this process.

Please let me know how you wish me to proceed... There will be a conference call held sometime next week to schedule a disposition hearing, likely Wednesday at 830. Obviously, I would encourage you to participate in this process but I will be guided by your direction. Subject to your comments, I will let you know once the time of that call is confirmed. If you plan to participate in the hearing, I will select a date that is agreeable to you. If you decide not to participate, the hearing will be held in absentia once again.

On November 12, 2021, Constable Manning replied by stating the following:

Hold in absentia. Leave me alone. I've again requested legal assistance from HPA which like the first time will be refused without reason.

Your decision is based on lies. It offers protection to Merulla, but you don't address his lies in his complaint. I "criminally harassed" him or "fabricated evidence." This will be addressed in small claims court.

Your assertion that the public would be disgusted with my behaviour is clear [sic] unfounded and inaccurate from the feedback I've received so far from never [sic] of the actual public and serving Hamilton officers and civilian staff.

I will file appeal with the divisional courts based on a number of factors. The appeals court is independent, you are paid directly by Hamilton Police therefore you are not.

David had no legal reason to contact me again after repeated warnings. You take care now and settle on [sic] for a battle because I'm going to show the whole corrupt shitshow for what it really is.

On November 16, 2021, I sent an email to Constable Manning making him aware of the conference call which was scheduled for November 17, 2021. Constable Manning replied to me on the same date and a selection of that email read as follows:

I have repeatedly asked you & Migicovsky not to contact me as paid agents of HPS, every time you do it causes me alarm and distress. You have chosen to ignore my well documented appeals. The PSA allows you to proceed without me, it does not permit harassment which I think any reasonable person would agree this clearly is.



Your decision was based on lies. I suppose your clear bias and protectionism of Merulla in your report was a given from the start. But at a date in the future this will all be for a Divisional court to decide on, not one bought and paid for by HPS.

I never received, nor was I informed of a notice for 'increased penalty' and would like to tell you I was surprised at [Chief of Police] Bergen's request for demotion or dismissal, seeing as the notice is a legal requirement for demotion or dismissal. But I'm not surprised. If a notice does appear I would suggest criminal fabrication after the fact. Saying that, I've never been told I'm suspended, never received paperwork stating the same and still have my badge, however, HPS continue to tell the media I am suspended.

Guess the rules apply to everyone, but those who make or enforce them?

Migicovsky is either a liar, or was lied to by HPS. That will be for the Law Society to determine. If he was lied to by the Chiefs office it will be for OCOP's [Ontario Civilian Police Commission] to determine the extent of those omissions, and if the Chief or anyone in his office committed a criminal breach of trust by hiding exculpatory evidence. In all fairness to Frank [Bergen], I would imagine subordinate parties at HPS lied to him telling him I'm "nuts, crazy and delusional."

But let's deal with some of the untruths you were told...

The crux of this is I was not mentally well enough because of an IOD to deal with more HPS bullshit, and you went ahead anyway.

On December 14, 2021, I sent an email to Constable Manning stating:

As you know, last month I made a finding of guilty related to your Code of Conduct offences. I am well aware that you have asked that I not contact you about this any further, but I must make you aware of the fact the disposition hearing has been set for Friday January 21, at 10 a.m. Attached, is a transcript of the conference call from November 17, 2021 wherein the disposition hearing date was set. Please let me know if you wish to participate in this portion of the hearing and/or if you will have representation.

Based on an email you sent to me on November 16, 2021, it would appear you have submissions to make that could be relevant to these proceedings. As such, I strongly encourage you to participate. This matter may proceed virtually or in person. If you plan to participate, please indicate which forum you prefer. As I mentioned to you in the past, if you need any type of accommodation to facilitate

your participation in this process, please indicate accordingly. Accommodations can include but are not limited to, start times, frequent breaks, sitting virtually, no uniform presence etcetera...

On December 31, 2021, Mr. Migicovsky sent correspondence to Constable Manning to clarify the issue of notice of increased penalty. Constable Manning sent three emails in reply wherein vulgar language was used to describe Mr. Migicovsky. I asked Mr. Migicovsky to cease communications with Constable Manning, instructing that any further correspondence could be forwarded through me to the officer.

On January 6, 2022, I forwarded correspondence to Constable Manning on behalf of Mr. Migicovsky. Constable Manning replied:

Why are you, as hearing officer, forwarding NOI's for Hamilton Police when they have been directed by two medical professionals not to contact me? You should have refused this point blank.

Please do not contact me again. I will report any further contact from any of you as harassing communications.

I reminded Constable Manning that I had provided guidance to him about how to seek an adjournment for medical reasons. He responded by stating, in part:

For the last time, never contact me again.

Section 7 (1) of the *Statutory Powers and Procedures Act* states:

Where notice of an oral hearing has been given to a party to a proceeding in accordance with the *Act* and the party does not attend at the hearing, the tribunal may proceed in the absence of the party and the party is not entitled to any further notice in the proceedings.

There is no dispute that Constable Manning received a copy of my decision. I sent it to the email address that Constable Manning had been utilizing throughout this process and he was critical of the decision in his correspondence with me. There is no dispute that he was aware of the disposition hearing date and no dispute that he was fully informed on how to seek an adjournment if one was required; I made him aware of this process which was reiterated by Mr. Migicovsky in a letter dated January 6, 2022. In part, Mr. Migicovsky stated:

You have also raised a number of concerns with respect to your mental health. As has previously been communicated to you, you are free at any stage of the process to formally seek an adjournment of the proceedings on the basis of an inability to participate due to mental health restrictions. The process for seeking an

adjournment is to bring a motion with the appropriate supporting medical documentation which sets out your specific restrictions and your inability to participate in a *Police Services Act* hearing notwithstanding any accommodation measures that could be implemented to mitigate the impact of the hearing. Until such time as these steps have been taken, the Service's position is that the disposition hearing should proceed as scheduled.

In the interim, there are additional resources through the Service's Employee Family Assistance Program which could provide you with additional assistance, should you so choose. In particular, you have access to Homewood Health as well as Wounded Warriors. I have attached a copy of the Homewood Health brochure for your information, and Wounded Warriors can be contacted at the following number 1-888-706-4808.

Constable Manning did not request an adjournment, instead he directed the tribunal to proceed in his absence and to cease communications with him.

On January 18, 2022, I received correspondence from the prosecution which included an electronic link to material to be relied upon at Constable Manning's disposition hearing consisting of:

- Affidavit of Monica Ptaszynski - copies of relevant e-mail and letter communications attached.
- Affidavit of Veronica Blanco Sanchez - copies of relevant media articles attached.
- Affidavit of Sergeant Ben Licop - additional Twitter activity of Constable Manning attached.
- Book of Authorities for the Prosecution.
- Letter from Mr. Burns addressed to me dated January 7, 2022.

I forwarded that correspondence to Constable Manning moments later and also included an email that I had delivered to Mr. Burns. I stated to Constable Manning:

In our last correspondence on January 6, 2022, you asked me to not contact you again. I have done my best to respect your request but as I have indicated to you on earlier occasions, I am obligated to keep you informed of certain aspects of this hearing. Such is the case here, I am forwarding to you material which the prosecution will rely upon at your disposition hearing this Friday, January 21, 2022. Attached to this email is a letter I received from Mr. Burns, and my subsequent reply. Embedded within the email below is a link to the prosecution relied upon material.

Constable Manning replied on January 18, 2022:

I'm not even going to open the attached correspondence.

I have asked you time and time to not contact me, but you continue to send me communications which cause me harassment and distress.

I find nowhere in the PSA where you are permitted to contravene the Criminal Code of Canada, but here we find ourselves. I also can find no one who knows which body governs your conduct. Perhaps you know? OIPRD [Office of the Independent Police Review Director], the Law Society and OCPC [Ontario Civilian Police Commission] didn't have a clue. Who do you answer too? ...

Either way your decision is based on falsehoods and I will prove that in an independent court of law.

Exhibit #28 is an email thread wherein I provided to Constable Manning, the link for this virtual disposition to be heard the following day, January 21, 2022. That notification went unacknowledged by Constable Manning.

The decisions to proceed with the hearing and subsequently this disposition hearing in absentia were not taken lightly. I encouraged Constable Manning to participate fully in these processes, but he unfortunately declined. Often in his correspondences with me, he indicated he did not want to participate, while at the same time posing questions or providing commentary that he deemed relevant to the proceedings.

I have considered applicable jurisprudence such as *Mauro* and *Cameron*. I am satisfied that Constable Manning has been provided every opportunity to participate in this hearing. Constable Manning has been made aware that the tribunal could offer various forms of accommodation if necessary and was provided guidance on how to file a request for an adjournment. Constable Manning instead directed the tribunal to hold the hearing in absentia.

As per section 7(1) of the *Statutory Powers and Procedure Act*, I directed that the hearing proceed in the absence of Constable Manning.

## Issue of Notice of Increased Penalty

Section 85(1) of the *Police Services Act* states:

Subject to subsection (4), the chief of police may, under subsection 84(1),

- (a) Dismiss the police officer from the police force;
- (b) Direct that the police officer be dismissed in seven days unless he or she resigns before that time;
- (c) Demote the police officer, specifying the manner and period of the demotion;...

Section 85(4) of the *Police Services Act* states:

The chief of police or board, as the case may be, shall not impose the penalties of dismissal or demotion under subsection (1) or (2) unless the notice of hearing or a subsequent notice served on the chief of police, deputy chief of police or other police officer indicated that they might be imposed if the complaint were proved in clear and convincing evidence.

Section 85(2) of the *Police Services Act* is not applicable to this matter, it specifies penalties associated to a chief of police or deputy chief of police.

On September 24, 2021, I received an email from Mr. Migicovsky, where in part, he stated:

I have been instructed to advise Constable Manning that the Chief of Police is seeking the penalty of demotion or dismissal if the complaint is proved on clear and convincing evidence. Pursuant to section 85(4) of the *Police Services Act*, notice must be served on the officer. I am therefore legally required to advise Constable Manning that this penalty is being sought. I propose to do so by email. In light of your email below, I am however seeking your direction prior to serving Constable Manning. In order to ensure procedural fairness, I would also propose to send Constable Manning a copy of this communication.

To provide context to Mr. Migicovsky's letter, I received correspondence from Constable Manning on several occasions where he expressed his desire to not be contacted by Mr. Migicovsky's office. For example, on September 20, 2021, Constable Manning sent an email to me wherein he stated:

Stop referring to me as Constable! I stopped being a cop when they forced me off the job in 2013. You do what you need as will I.

I don't think there needs to be any further contact now. Please do not contact me again and assure the law firm doesn't either. I have a right to be free from harassment and distress. The PSA doesn't [sic] them a free pass for harassment.

When you find me guilty you can release your public statement and I will do the same.

Consequently, I forwarded that email to Mr. Migicovsky and to Mr. Burns asking that in future, they not contact Constable Manning directly; instead, to forward material to me and I would approve or send the essential information on to Constable Manning. I provided that direction considering Constable Manning's request and because it appeared that emails received from Mr. Migicovsky caused more distress to Constable Manning than those received from others.

I granted Mr. Migicovsky's request to send the Notice of Increased Penalty to Constable Manning. As a result, on September 27, 2021, Ms. Ptaszynski sent an email to Constable Manning and copied to me. The email included my correspondence with Mr. Migicovsky and also a letter from Mr. Migicovsky addressed to Constable Manning advising of Notice of Increased Penalty.

Constable Manning replied by e-mail to Ms. Ptaszynski and stated:

Not going to read. Deleted and blocked. You don't get the concept of no contact when requested you horrible person?

Constable Manning sent the following email to Mr. Migicovsky also on September 27, 2021:

Didn't read your correspondence. No intention of reading anything you send. Just blocked all your stuff on all email address, and I'll block your email address as soon as I send.

I asked your staff repeatedly to stop contacting me, as it is causing distress and directed you and Walton to proceed without me, which the PSA allows you to do. And you choose to ignore the same.

I don't know what legislation you're relying on to criminally harass me but the PSA does not allow you to continuously contact and communicate with me after continuous request to stop.

How do you think you're triggering [sic] me every time you send me an email cc'ing those corrupt fuckers from Hamilton Police?

Last time! HAVE YOUR POLICE SERVICE HEARING AND LEAVE ME THE FUCK ALONE!!! [emphasis added by Constable Manning] ...

On the same date, Constable Manning sent an email to me which read:

So I gave what you said some thought about presenting myself for this sham. A hearing where HPS will refuse to provide anything I ask for in disclosure like notebooks, would further show just how corrupt they are.

I reached out to the Hamilton Police Association for legal assistance and they refused without reason. Their refusal is political, nothing more and I will be launching a small claims for duty of fair representation.

I won't be playing this silly little game of Hamilton's without legal assistance. And I won't be using what little money I have for my family to pay for it myself.

Don't need a response and don't want any further communication. But you need to instruct the 'prosecution' to stop now as this is making me really unwell. I mean really angry! They have no legal justification for continued contact when I've already told you to proceed without me...

I released my decision on November 11, 2021, and a subsequent email exchange followed with Constable Manning. On November 12, 2021, he indicated to me that the Hamilton Police Service had not filed a Notice of Increased Penalty with him nor with his police association. I made Mr. Migicovsky aware of the above noted email exchange. On December 31, 2021, Mr. Migicovsky copied me on an email he sent to Constable Manning which included a copy of the Notice of Increased Penalty dated and served by email September 27, 2021.

Constable Manning replied to me by stating:

Several times I've asked this little prick not to contact me and several times he's completely ignored me.

Constable Manning sent the following email to Mr. Migicovsky also on December 31, 2021:

DO NOT CONTACT ME AGAIN YOU FUCKING LITTLE CUNT! [emphasis added by Constable Manning]

Your submission was based on lies. We had Merulla bang to rights on a bribery charge, so much so we requested the \$25,000 bribe money off both the OPP and Hamilton Police. And I've whistle blown, documented numerous times, from 2009 onwards. You were either lied to or you decided to lie. Either way you're an immoral little shit.

I never had a problem with Merulla. A snake is a snake. I had a problem with Senior Management hiding his crimes as a favor to the Police Service Board chair Bernie Morelli.

Now, contact me again. I fucking dare you! On New Years eve you little dick.

Constable Manning was served Notice of Increased Penalty by way of email on September 27, 2021. The Notice of Increased Penalty was in letter form attached to the email correspondence from Ms. Ptaszynski. Constable Manning replied to Ms. Ptaszynski and to Mr. Migicovsky indicating that he would not open the attachment.

Subsequently on November 12, 2021, Constable Manning indicated that he had not been served a Notice of Increased Penalty. On December 31, 2021, Constable Manning was sent another email with the same letter dated September 27, 2021, attached. The email included my correspondence with Mr. Migicovsky and also a letter from Mr. Migicovsky addressed to Constable Manning advising of Notice of Increased Penalty. The letter read:

In advance of the hearing in the above-noted matter, please note that pursuant to section 85(4) of the *Police Services Act*, the Hamilton Police Service hereby advises that in the event it proves on clear and convincing evidence the allegations as particularized in the Notice of Hearing dated April 23, 2021, and the accompanying Statement of Particulars, it will be seeking a penalty of dismissal or, in the alternative, demotion pursuant to section 85(1) of the *Police Services Act*. Attached please find correspondence between my office and Superintendent Greg Walton wherein I have been directed to communicate the Service's intentions in this regard to you directly.

Constable Manning replied to the correspondence but did not acknowledge whether he had read the letter notifying him of the Notice of Increase Penalty.

I am satisfied that the Notice of Increased Penalty appropriately addressed the legislative requirement as set out in the *Police Services Act*; the Notice was first served on Constable Manning on September 27, 2021, in advance of the hearing dates of October 4 and 5, 2021, and the Notice of Increased Penalty properly informed the officer that his employer would be seeking a penalty of dismissal or demotion. The fact that Constable Manning may have not opened the email attachment does not result in the prosecution's failure to properly serve the officer. Clearly Constable Manning received the email because he replied accordingly. Consequently, the employer's position that dismissal is a fitting sanction is properly before this tribunal.



## Test for Dismissal

Mr. Migicovsky submitted dismissal of a police officer is not a punishment for misconduct, it is an acknowledgement that a point has been reached that an officer can no longer be a useful member of the police service. He submitted that such a point has been reached in the career of Constable Manning.

The matters of *Trumbley v. Metropolitan Toronto Police Force*, 1986 CarswellOnt 2250 (CA), aff'd 1987 CarswellOnt 948 (SCC) can be found at tab 17 of Exhibit #26. The court confirmed that a police discipline matter such as this is a purely administrative process. The court added:

The basic object of dismissing an employee is not to punish him or her in the usual sense of this word (to deter or reform or, possibly to exact some form of modern retribution) but rather, to rid the employer of the burden of an employee who has shown that he or she is not fit to remain an employee.

Mr. Migicovsky submitted that trustworthiness is an essential element of a police officer's character; without it, an officer cannot be a useful member of a police service. In *Ashby and Board of Commissioners of Police for the City of Brockville*, 1990 CanLII 10506, the Commission quoted Judge McFarlane sitting as persona designata:

A policeman's main strength is the trust the public has in his integrity. If the public cannot trust him, he is useless as a policeman.

*Fortner and Goderich Police Force*, August 18, 1975 (O.P.C.) can be found at tab 7 of Exhibit #25. In that matter, the Commission noted:

Our whole Police system involves a relationship of trust in Police Constables and Officers beyond that demanded of citizens generally. Police have special powers, and, in consequence, the highest standards of conduct are imposed. Indeed, the system cannot function properly unless trustworthiness exists in the eyes of the Force, the public and the Courts before which Police are frequently called to give evidence.

Mr. Migicovsky submitted the usefulness of Constable Manning as an officer has been spent because of the misconduct he committed and the subsequent actions following a finding of guilt. Mr. Migicovsky cited the matter of *Toronto (city) Board of Education v O.S.S.T.F., District 15*, [1997] 1 SCR 487, found at tab 3 of Exhibit #27, in support of the assertion that post offence behaviour is relevant in the determination of an officer's ability to reform. The Court stated:

It is true that the third letter is, to some extent, "subsequent-event evidence" since it was written after the dismissal of Mr. Bhadauria. However it has been decided

that such evidence can properly be considered “if it helps to shed light on the reasonableness and appropriateness of the dismissal.” In this case, it not only would have been reasonable for the arbitrators to consider the third letter, it was a serious error for them not to do so.

Mr. Migicovsky submitted that in *Galassi v. Hamilton (City) Police Service*, [2005] OJ No. 2301, aff’d 2008 ONCPC 8, the court expanded on the Toronto decision, noting:

In determining the suitability of an individual to continue as a police officer, it was reasonable for the Hearing Officer to consider the Appellant’s whole employment record, including performance evaluations and disciplinary record, even if the conduct giving rise to the discipline occurred after the conduct which led to the current proceeding... the [misconduct] were a factor to consider in determining the possibility of rehabilitation and the suitability for continued employment with the Police Service.

Therefore, it is the totality of the circumstances, not solely the seriousness of misconduct that must be taken into consideration when considering whether Constable Manning has retained his usefulness to the Hamilton Police Service.

## **Reasons**

Mr. Migicovsky submitted Constable Manning harassed a member of the public and made disparaging and unprofessional comments about his employer, all in a very public setting. Mr. Migicovsky submitted Constable Manning breached his oath of secrecy on multiple occasions and because his usefulness as a police officer has been spent, dismissal is the fitting sanction. Mr. Burns on behalf of the public complainant, did not take a position on penalty. Constable Manning did not participate in this disposition hearing and therefore made no submissions on penalty.

Exhibit #25 is volume one, Exhibit #26 is volume two and Exhibit #27 is volume three of the prosecution’s Book of Authorities. At tab 21 of Exhibit #26 is the matter of *Williams and Ontario Provincial Police*, 1995 CanLII 15417 (ON CPC) wherein the Commission stated:

The assertion that Constable Williams can be useful or an asset to the Ontario Provincial Police after a finding of misconduct is argued by his counsel with reference to a number of prior decisions. For this to be the case though, three elements must be considered with reference to these cases: 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 would occur should the officer remain on the force.

In some instances, the seriousness of misconduct can be so egregious as to cause irreparable harm to the police service if the officer were to remain employed. In those instances, the potential to reform is surpassed by the seriousness of misconduct. Mr. Migicovsky submitted this is one of those instances; the seriousness of misconduct is so egregious and caused damage to the reputation of the Hamilton Police Service to such an extent, that Constable Manning's usefulness has been annulled. Mr. Migicovsky submitted that Constable Manning cannot be rehabilitated, a fundamental character flaw exists which prohibits him from continuing as a police officer.

In *Venables and York Regional Police Service*, October 3, 2008 (OCCPS), the Commission stated:

...the Hearing Officer's decision appears to have then turned on the question of whether or not the seriousness of the misconduct, and the potential damage to the reputation of the Service if Constable Venables were to remain an officer, outweighed his potential for rehabilitation. Put another way, had the nature of his misconduct spent Constable Venables' potential future usefulness as a police officer?

I do not necessarily agree with the position taken by Mr. Migicovsky; I do not find that the seriousness of misconduct is so egregious that no other potential mitigating factors could possibly result in a disposition other than dismissal. The misconduct in question is exceptionally serious, especially the repeated breaches of Constable Manning's oath of secrecy. I am not suggesting that ultimately, dismissal might not be the approximate sanction, but I do not find that a sanction of this magnitude is so blatantly obvious based on the seriousness of the misconduct alone, that no other sanction ought to be contemplated.

Therefore, in keeping with *Williams*, it is incumbent upon me to assess the degree of seriousness of misconduct, to consider Constable Manning's ability to reform or rehabilitate, and to consider the damage to the reputation of the Hamilton Police Service that would occur should he remain employed as a police officer. Furthermore, additional penalty factors exist which may also be relevant to my assessment of a fitting sanction.

At tab #23 of Exhibit #26 are excerpts from Paul Ceyssens' Legal Aspects of Policing specific to *Police Services Act* Code of Conduct dispositions. Mr. Ceyssens concluded:

...It is a "fundamental proposition" that a disposition must be proportionate to the misconduct, with "due regard to those special considerations applicable to service force." Proportionality requires a careful examination of a standard list of disposition "considerations" (or disposition "factors") that are mitigating or aggravating or neutral, depending upon the facts of each particular matter...

Proportionality is arguably the most complex of the five principles that govern the process of crafting an appropriate disposition, and requires three decisions:

- First, a decision-maker must identify which disposition considerations are relevant to the matter in question.
- Second, a decision-maker must determine whether each relevant disposition consideration is mitigating, aggravating or neutral in the circumstances.
- Third, the decision-maker must appropriately balance or weigh the identified relevant disposition considerations in accordance with the factual background of the matter, and the competing interests. Thus, a decision-maker must give proper weight to the relevant factors in a particular case, and a proper balance is of utmost importance... there is no requirement to give all factors equal weight, no requirement that any one factor be given more weight than another...

This approach has been accepted and continues to be relied upon by *Police Services Act* tribunals in Ontario to determine an appropriate and fitting sanction. In *Clough and Peel Regional Police Service*, 2014 ONCPC 12, the Commission stated:

The Commission has often referred to Legal Aspects of Police, supra, for a list of factors, either mitigating or aggravating, to assist it in determining whether the penalty imposed by a hearing officer is reasonable.

To determine the appropriate sanction in this matter, I will rely upon those proportionality considerations that Mr. Migicovsky presented in support of his position. While I have included specific headings as a guide, some analysis applies equally well to other penalty factors, but I will make an effort to limit repeating commentary.

### Public Interest

In Legal Aspects of Policing, Mr. Ceyssens states:

Public interest arises as a disposition factor in three principal situations:

- Where the misconduct has offended or undermined the public interest or public confidence, or would do so;
- Where the misconduct generated a demonstrable risk; and
- Where there is a need to demonstrate confidence in the police force, its members, or its discipline process.

I agree with Mr. Migicovsky's submission that all three components cited by Ceyssens, apply to this case. Mr. Migicovsky cited Legal Aspect of Policing:

Charron, J, in her dissenting judgement in *Montreal (City) v Quebec (Commission des droits de la personne et des droits de la jeunesse)*, articulated the relevant principles succinctly:

Police have considerable power and discretion over matters that can affect the fundamental rights of the members of the public whom they encounter. Police work requires individuals not only to exercise a significant degree of judgment and integrity, it is also a position that requires the utmost public trust.

Constable Manning had a significant following on Twitter, members of the public by the thousands were following his tweets at the time of his misconduct. Constable Manning informed the public that he was a serving member of the Hamilton Police Service and a former undercover officer. Regardless of the why he did so, having a serving police officer with that level of expertise, lends credibility to his critique of his employer in the eyes of the community. Fortunately, in Canada, the public has a great deal of trust in police officers and expects them to exude integrity at all times, but behaviour of this nature casts a poor light on the reputation of the Hamilton Police Service. When a serving member of a police service, especially one with the level of experience and seniority as Constable Manning, speaks out so brazenly against his employer, it attracts the attention of the public and negatively affects the reputation of the employer.

I accept Mr. Migicovsky's submission that Constable Manning's behaviour offended and undermined confidence in the Hamilton Police Service. Having identified himself as a serving member of the Hamilton Police Service, he referred to Mr. Merulla on Twitter as "the biggest cocksucker in the City," and a "simple twat." These comments do not meet the expectations of the public respecting professionalism and decorum of a police officer.

One of the objectives of the police complaint system is to ensure the public has confidence in policing and the complaint system itself. I accept Mr. Migicovsky's submission that the result of some of Constable Manning's tweets undermined public confidence not only in the Hamilton Police Service, but also the police complaint system. Constable Manning tweeted that he would not participate in his compelled interview with investigators for example and referred to this hearing as a sham. Furthermore, after receiving notice of the police complaint, he posted on Twitter a picture of the Office of the Independent Police Review Director complaint and stated:

You can all go fuck yourselves!

The public has an interest in ensuring police officers maintain a remarkably high standard of conduct. Public trust is eroded when an officer fails to meet those expectations and consequently, the public must have confidence that an officer will act professionally at all times, demonstrating the essential characteristics of a police officer, honesty and integrity.

On Twitter, Constable Manning referred to the public complainant as “that simple twat” and “the biggest cocksucker in the city.” He also suggested that he was conducting an investigation into the public complainant’s wife. Behaviour such as this can only result in undermining the public’s confidence in the police service. The public’s trust was fractured further by Constable Manning’s release of confidential and restricted information, his repeated breaches of internal policy, and by acting in such an unprofessional manner.

The public’s trust in their police service is fragile, but it is essential to the Hamilton Police Service in order to meet community policing objectives. The public’s relationship with their police service must be built on respect and professionalism, an unachievable objective if the public cannot trust its officers to exhibit strong values such as ethical judgment. Constable Manning breached the public’s trust and consequently, the public expects his employer to hold him accountable. Discipline of this nature is necessary to maintain or in this instance, re-instill public trust; the public must be assured that misconduct of this nature will attract an appropriate sanction.

Mr. Migicovsky noted, Sergeant Coveyduck testified that Constable Manning’s tweets created a safety risk to persons involved in the respective investigations, including police officers and the public at large. In one of Constable Manning’s Twitter posts, he suggested that violence was likely to befall the public complainant because two of his previous associates had been shot. The release of the confidential information in this case also has potential to compromise the success of potential future criminal investigations into the same or similar target group, resulting in an adverse affect on public interest.

I find Constable Manning’s conduct offensive to the general public, he held himself out as a martyr, but in so doing, he breached his oath of office and put the reputation of policing and that of his employer at risk. He further offended public interest with his post-offence behaviour, essentially continuing the nature of his misconduct. Behaviour of this nature necessitates a sanction which corresponds to the seriousness of the misconduct.

I find public interest to be a significant aggravating factor.

### Employment History

Employment history can be a significant factor for consideration as it is often linked to the potential an officer has to rehabilitate. However, it is of limited assistance in this matter; Constable Manning has not worked for the last nine years due to medical reasons followed by suspension from duty. This gap in work experience creates a void in annual performance assessments. Understandably, I was not provided annual reviews to consider due to the historical context they would provide.

Mr. Migicovsky submitted that prior to these allegations, there had been no alleged misconduct. For this reason, and due to his 17 years of seniority with the Hamilton Police Service, I consider employment history to be a slight mitigating factor.

I have alluded to Constable Manning's post offence conduct which could potentially impact employment history. However, I will address this in other penalty considerations such as his ability to rehabilitate.

### Nature and Seriousness of Misconduct

In Legal Aspects of Policing, Mr. Ceyssens noted:

Seriousness of the misconduct is a fundamental consideration, and necessarily arises in all disposition decisions.

Mr. Migicovsky submitted the matter of *Fox v. Chief of Police*, Royal Newfoundland Constabulary, 1995 CanLII 10522 (NL SC) where the court stated:

It follows, therefore, that in any case where it is properly proven that a police officer has broken the rule of confidentiality, he or she can expect dismissal.

Mr. Migicovsky submitted that based on *Fox*, Constable Manning should expect to be dismissed from his employment as he repeatedly broke the rule of confidentiality when he posted on Twitter, restricted Third-Party police intelligence documents.

In my decision, I found that Constable Manning disseminated Third-Party Rule documents which is confidential material of the highest restriction level. The purpose of applying this level of restriction to police intelligence information is to protect the safety of the public and also, police officers. Undercover officers in particular could be significantly vulnerable if information about their identity or even the existence of an investigation was divulged. This risk would not apply solely to investigations ongoing at the time of the release of information, but future investigations could also be compromised.



The first three counts of discreditable conduct relate to Constable Manning disseminating Third-Party Rule documents on his Twitter account, information he was duty bound to protect. Constable Manning was not permitted to possess this restricted information at the time that the documents were tweeted and was never permitted to disseminate the information.

I have vast experience as a major case manager and supervised numerous complex investigations where Third-Party records were managed. I am confident that all members assigned to those and all major cases, such as Project Scopa, are well versed in how to handle privileged intelligence information, undercover police officers even more so. Constable Manning, a former under cover officer himself would be acutely aware of the potentially perilous ramifications of releasing confidential Third-Party rule information.

There could be no illusion by Constable Manning that the confidential information he released in this instance might not be sensitive or might not create safety concerns for the public and police officers. I have no doubt that Constable Manning would be absolutely certain that he was not authorized to release Third-Party records to the public. Similarly, Constable Manning would have been acutely aware that all of his tweets contained in the Notice of Hearing, would tarnish the reputation of his employer. Constable Manning's background and degree of knowledge concerning the sensitivity of restricted police intelligence increases the seriousness of his misconduct.

I agree with the submission of Mr. Migicovsky that it is not the wording of the offence that matters, it is the facts of the misconduct that necessitate a corresponding sanction. The public dissemination of confidential material via Twitter by Constable Manning, a person who identified himself as a serving member of the Hamilton Police Service and a former undercover officer who once worked on the case in question, is a clear violation of trust; the public's trust in the Hamilton Police Service, the trust of his colleagues, and the trust of his employer.

Counts one, two and three are very serious in nature. The remaining counts of misconduct are less so, but they are still considered substantial misconduct. In general, counts four through eight relate to: Constable Manning calling Mr. Merulla "the biggest cocksucker in the City," and "a simple twat;" posting photographs of Mr. Merulla's residence and that of his family, suggesting he was conducting an investigation into Mrs. Merulla; suggesting to the Hamilton Police Service and the Office of the Independent Police Review Director, "you can all go fuck yourselves;" insinuating Mr. Merulla was linked to organized crime; and, publicly disseminating the street address of the investigating officer.



Misconduct that is repetitive, reasonably, ought to be considered more serious than behaviour of an isolated nature. Constable Manning committed eight counts of misconduct between April 2019 and September 2019. It was deliberate behaviour that attacked the credibility of the public complainant, and the integrity of the Hamilton Police Service. Constable Manning's tweets were demeaning and came with consequence; they undermined public confidence in policing and in the police complaint system. The public complainant is a long-serving councillor in the City of Hamilton. I suspect Constable Manning's assertion that Mr. Merulla was linked to members of organized crime also adversely affected his reputation in the community.

In his correspondences, Constable Manning alluded to the fact that he was a whistleblower, that he tweeted this information out of a sense of duty and good faith. In an email addressed to me on September 20, 2021, Constable Manning stated:

If whistleblowing on the continuous cover-up of corruption and criminality of our elected official and police officers is misconduct then I am certainly guilty of the same, but will continue to make those disclosure until I am no longer mentally or physically able...

In his email to me dated October 4, 2021, he stated:

I believe it is not only in the public interest to release information of corruption, but to actively pursue offenders in the courts no matter their standing in society. Hamilton Police SMT [senior management team] think differently, and time and time again have hidden crimes committed by public officials and police officers.

No evidence beyond correspondences of this nature was tendered before this tribunal to support the whistleblower assertion. I ruled the whistleblower defence did not apply, but I do accept that it is possible that Constable Manning actually believed his behaviour was an attempt to hold the Hamilton Police Service and politicians accountable. However, even if Constable Manning was of this mindset, there was no justification for breaching his duty of confidentiality; he could have tweeted his concerns without including confidential Third-Party records. He could have voiced concern without breaching internal policy, and without posts being harassing in nature, laced with profanity and unprofessionalism.

Mr. Merulla did not provide a victim impact statement. During his testimony at the hearing, it was apparent that he and his family were "massively affected" by Constable Manning's tweets implicating him with organized crime. He stated that his personal reputation and his family's quality of life was adversely affected.

Constable Manning suggested violence to Mr. Merulla in the future was plausible, and he posted photographs of the residence of Mr. Merulla and of his family. Mr. Merulla testified that he and his daughter felt terrorized by the behaviour of Constable Manning. Mr. Merulla stated that Constable Manning's accusations of him being linked to organized crime members consumed his life at the time. I find this troubling behaviour.

The matter of *Kobayashi and Waterloo Regional Police Service*, 2015 ONCPC 12 can be found at tab 11 of Exhibit #25. In that matter, officers disseminated photographs of members of the public and members of the police service accompanied by degrading and/or discriminatory comments. The Commission noted:

The Hearing Officer did not say that the photographs were serious or harmful to the morals of the community simply because some of them were sexual or showed nudity. The seriousness of the photographs and the harm to the community related not just to what they depicted, but also the fact that many of them were taken while the officers were on duty, without the consent of the subjects and included captions which were offensive, discriminatory and ridiculed the subjects of the photographs, citizens these officers were supposed to be serving and protecting. The appellants took an oath to serve the public, and they put aside this oath to degrade members of the public through the photographs and captions, violating the trust that the public places in police. It was this violation of the public trust which also made the photographs harmful to the morals of the community.

The facts differ in this matter from *Kobayashi* but the above noted assessment of breach of public trust is applicable. Constable Manning disregarded his oath of secrecy, and his conduct offended the public's trust in policing; he released highly sensitive and privileged police intelligence reports. He also publicly harassed a member of the public repeatedly and publicly undermined the reputation of his employer.

In my decision of November 11, 2021, I outlined my findings under the heading of "analysis," and I used the term "appalling" to describe Constable Manning's behaviour. While several of the individual comments he made meet that definition, when Constable Manning's conduct is considered in totality, appalling is certainly the most fitting description.

Consequently, I find the nature and seriousness of this misconduct to be a significant aggravating factor for consideration. The seriousness of misconduct is at the extreme end of the continuum to qualify for a penalty of dismissal.

### Recognition of the Nature and Seriousness of Misconduct

The lack of a guilty plea is not an aggravating feature, nor is the fact that Constable Manning decided to not participate in this hearing process. Constable Manning merely does not receive mitigation that would be afforded an officer who enters a plea of guilty or offers a sincere apology demonstrating remorse for the behaviour in question.

While he did not apologize for his behaviour, Constable Manning did admit to having ownership of the @mobinfiltrator Twitter handle. In his email to me on October 4, 2021, he stated:

I fully admit I released two target photographs on Twitter via my handle @mobinfiltrator. One was handed to me by the Ontario Provincial Police, the second by an officer from the Royal Canadian Mounted Police when I worked at the Combined Force Special Enforcement Unit...

There is no evidence suggesting that Constable Manning recognizes the seriousness of his misconduct. Constable Manning has not demonstrated an understanding that he may have made a mistake, that using Twitter may not have been the proper forum to voice his concerns, or that the essence of his tweets was excessive, unprofessional and a risk to public safety. Instead, even in the aftermath of my decision, Constable Manning remained focused on holding his employer accountable for what he perceived to be inappropriate conduct; illustrated in part by his Twitter posts of additional restricted police intelligence information.

The lack of recognition of the seriousness of his misconduct is not an aggravating feature for consideration in the determination of an appropriate sanction concerning Constable Manning, but he receives no mitigation for this penalty factor.

### Disability and Extenuating Personal Circumstances

In his correspondences to me, Constable Manning alluded to a medical condition, but he refused to elaborate on it beyond noting it was related to his mental health. I am unaware of the specific details and therefore, I do not have sufficient information to suggest there is a nexus between the misconduct and an illness. I am unable to consider disability and extenuating personal circumstances as a mitigating factor.

### Effect on Police Officer and Police Officer's Family

Constable Manning did not participate in this hearing and consequently I did not hear from him on this issue. However, I accept that dismissal will pose a significant financial burden on Constable Manning and his family. This can only be considered a substantial mitigating feature.

### Damage to the Reputation of the Employer and Effect of Publicity

Damage to the reputation of the Hamilton Police Service as a result of Constable Manning's misconduct and the effect of publicity are two separate penalty factors but because they are intrinsically linked in this matter, I will address them collectively.

The very nature of the allegations contained in the Notice of Hearing suggest that Constable Manning was seeking publicity; all of the allegations and subsequent findings related to him posting inappropriate material for public consumption on Twitter. His behaviour was unprofessional and discreditable and was reported as such.

In her affidavit marked as Exhibit #24, Veronica Blanco Sanchez, stated that on Monday, January 4, 2022, she conducted a search of resources available on the internet by using the online search engine Google, as well as the social media websites Facebook, Twitter, and Reddit. Ms. Sanchez conducted a further search on electronic news sources made available to the public through the University of Ottawa library. Ms. Sanchez conducted a search on the above resources using the names "Paul Manning", "Constable Paul Manning", "Cst. Manning", "Paul Manning Hamilton Police", "Paul Manning Hamilton", "Paul Manning Police", "Constable Manning Hamilton", "Officer Manning", "Paul Manning discipline", "Paul Manning police discipline", "Paul Manning hearing".

The search resulted in Ms. Sanchez locating nine unique articles referring to Constable Manning's *Police Services Act* hearing and discipline process by the Hamilton Police Service since the first appearance on April 23, 2021. Six of the articles were re-published by six other media sources. In her affidavit, Ms. Sanchez attached the following items either in full, or in part:

Articles freely available to the public:

1. "The cop, the councillor and the mobsters" by Brad Hunter, Toronto Sun (4 October 2021) online:
2. "Hamilton police officer faces charges for actions against a city councillor" by Samantha Craggs, CBC News (14 February 2020), online.
3. "Decision expected in case of Hamilton officer tweeting allegations about a city councillor", by Samantha Craggs, CBC News (5 October 2021), online and

reposted on CBC Hamilton's Twitter page.

4. "Hamilton police officer Manning guilty of 8 counts of discreditable conduct, hearing finds", by Samantha Craggs, CBC News (11 November 2021), online. Reposted on CBC Hamilton's Facebook page. Reposted on CBC Hamilton's Twitter page. Reposted on World Republic News.
5. "Hamilton police disciplinary hearing delayed," The Hamilton Spectator (28 April 2021), online and reposted on The Hamilton Spectator's Facebook page.

Articles available only by subscription:

1. "Police prosecutor says Paul Manning breached duties, harassed city councillor Sam Merulla", by Nicole O'Reilly, The Hamilton Spectator (5 October 2021), online. Reposted on The Hamilton Spectator's Facebook page. Reposted on The Toronto Star.
2. "Was a Hamilton city councillor investigated in connection with the Mob?", by Susan Clairmont, The Hamilton Spectator (5 October 2021), online and reposted on Opera News 005.
3. "Disgruntled Hamilton cop Paul Manning found guilty of discreditable conduct", by Susan Clairmont, The Hamilton Spectator (11 November 2021), online. Reposted by Guelph Mercury Tribune. Reposted on the Toronto Star.
4. "Disciplinary hearing for cop accused of harassing Hamilton councillor set for October" The Hamilton Spectator (26 June 2021), online. Reposted on The Hamilton Spectator's Facebook page. Reposted on the Hamilton Spectator's Twitter page. Reposted on InsideHalton.com. Reposted on the Toronto Star.

The Toronto Sun story included a photograph of Pasquale Musitano with his brother Angelo, (known organized crime associates) followed by a photograph of the public complainant. All the stories refer to Constable Manning's assertion that Mr. Merulla was aligned with members of organized crime. The Toronto Sun noted Constable Manning's absence at his hearing:

So it was fitting, on Monday morning before the hearing, the British-born detective tweeted that no, he would not be attending.

And he launched a broadside into the proceedings themselves, calling the participants "heavily conflicted and a stacked deck." "In fact, reason enough for me to refuse to become involved in this charade" ...

The CBC article cited the same quotes. As noted earlier in this decision, undermining this disciplinary process undermines the reputation of the Hamilton Police Service, suggesting that it is an unfair process. In another media article, Constable Manning was quoted as referring to this tribunal as "bought and paid for."

Constable Manning's *Police Services Act* matter received substantial media attention in and around the Hamilton and Greater Toronto area by some of the most accessible and reputable media outlets. Media attention of this magnitude compounds the issue. Constable Manning's tweets associated to the Notice of Hearing, reached thousands of people in the community. His post-offence Twitter posts reached a far greater audience with his followers on Twitter in excess of 17,000. The media reports then further amplify the potential damage to the reputation of the police service, with the capacity to reach the broader public with their reporting of Constable Manning's misconduct.

In Legal Aspects of Policing, Ceyssens noted:

Tribunals have interpreted "damage" to capture both reputational harm arising from the original misconduct, and harm that would occur to the reputation of the police force if the respondent police officer were to remain a member.

In my decision of November 11, 2021, I concluded:

I am satisfied that Constable Manning's tweets amount to behaviour which would diminish the reputation of the Hamilton Police Service from the perspective of the dispassionate member of the public, fully aware of all of the circumstances. I am confident that the general public would find a police officer behaving in this manner, appalling and likely to discredit the Hamilton Police Service.

I would have arrived at the same conclusion had the audience been only a small number of people, but at the time of his misconduct, approximately 4,100 people were following Constable Manning on Twitter. That is a significant number of people who then had the ability to re-post that material making it available to the people following them on Twitter. The considerable number of people who would have viewed Constable Manning's Twitter posts increases the extent of the damage done to the reputation of the Hamilton Police Service. This appears to have been Constable Manning's goal all along based on the nature of the commentary he posted.

I am concerned about the public's perception of the Hamilton Police Service and the police disciplinary process if Constable Manning were to remain employed. The public could not be expected to have confidence in a police service that did not dismiss an officer, lacking the ability to rehabilitate, who repeatedly and publicly breached his oath of secrecy by disseminating confidential police information, consequently putting the safety of others at risk.

As I will outline in the subsequent penalty factor below, there is no indication that Constable Manning intends to stop this behaviour. To impose a sanction less than dismissal would send an indefensible message to other members of the Hamilton Police

Service and to the public; that to attack and tarnish the reputation of the Hamilton Police Service deliberately and substantially is excusable.

I find that the damage to the reputation of the Hamilton Police Service and the effect of publicity are substantial aggravating factors for consideration.

### Ability to Rehabilitate

In *Legal Aspects of Policing*, Ceyssens referenced the matter of *Favretto v Ontario Provincial Police Commissioner*, 2004 CanLII 34173 (ON CA). Ceyssens noted:

In the commission's view, the key issue concerned whether or not the employee can be rehabilitated to the extent that he could be an asset to the employer and the general community as police officer...

In determining whether an employee can be an asset to their employer and the public, the likelihood of recurrence must be considered, particularly when the seriousness of misconduct is so substantial. Ceyssens also referred to the matter of *McPhee and Brantford Police*, OCPC, 3 August 2012:

...rehabilitation aggravated the disposition, based upon the fact that some of the misconduct occurred "almost immediately after receiving verbal and written admonishments and being penalized by forfeiture of time off for similar behaviour." The commission concluded that the respondent police officer "displayed a dismissive and cavalier attitude towards his discipline" and the hearing officer correctly decided that the actions "constituted an overt display of a repudiation of the employment relationship and made it very difficult to consider the possibility of rehabilitation or reform."

The circumstances in this matter differ from *McPhee*. In that matter, the officer was disciplined for misconduct and then, committed similar misconduct which was the subject of the disciplinary hearing. In this instance, Constable Manning committed post offence behaviour that virtually mirrored the misconduct he was found guilty of. He also behaved similarly leading up to the hearing date.

It would be improper to use Constable Manning's pre-hearing, and post offence conduct toward the concept of progressive steps of discipline. However, I find Constable Manning's behaviour relevant to my analysis of his ability to reform or rehabilitate. Similar to *McPhee*, Constable Manning displayed a dismissive and cavalier attitude toward this discipline process. In *Nesbeth and Windsor Police Service*, 2015 ONCPC 23, the Commission noted:

The appellant argued that the Hearing Officer unreasonably concluded that her



“post-event conduct” negated her potential for rehabilitation and outweighed important mitigating factors such as letters of good character, employment history, progressive discipline and effect on her and her family. We disagree. In the circumstances if this case the post-event conduct was precisely what made this a case of serious misconduct that warranted dismissal.

Constable Manning faced eight counts of misconduct related to him posting inappropriate material and restricted police information on Twitter. In the days leading up to that hearing date, Constable Manning decided it was appropriate to post further items on Twitter for public review.

Sergeant Ben Licop was the officer responsible for the *Police Services Act* investigation into Constable Manning and as such, identified the Twitter account belonging to Constable Manning. Exhibit #23 is the affidavit of Sergeant Licop where he made note of the following tweets posted on Constable Manning’s Twitter feed of @mobinfiltrator.

September 27, 2021: I have been directed by a judge to hand over the entire #ProjectScopa target list to Same Merulla’s lawyers, which includes Doug Burns. I can almost guarantee it finds its way into the hands of organized criminals.

September 28, 2021: This is protectionism at play... all about protecting Merulla...they’ve protected him for years. ‘Public’ hearing but you won’t know what’s being said! I’ll release a public statement so you know exactly what they’re talking about.

September 28, 2021: The sensitive intelligence is literally nothing more than this target list given to me by the OPP in 2006. Nothing more. It’s a way to further protect him.

A picture of the target list from Project Scopa accompanied this Tweet.

September 30, 2021 (excerpt):

...next week they have a police hearing about some of those charges. They’ll find me guilty and put out a press release that I’m guilty of misconduct, and the best of luck to them getting people to believe their bullshit. If in 2009, the Chief had done his duty, that Det may still be alive. They can charge me all they want. I’ll never stop & until they change legislation or



every other cop gets on the same page and reports any wrongdoing they witness, nothing changes.

October 3, 2021: Tomorrow @Hamilton Police will have a 'public hearing' (in private) in relation to Sam Merulla's complaint. I will release a statement about the same, first thing in the morning.

The hearing commenced October 4, 2021. On the morning of that date, Constable Manning emailed the following unedited correspondence to me and to at least one member of the media. He also posted the note on Twitter:

Today, a two day police service hearing will take place into my alleged misconduct. The 'Judge' is employed by the police service at a taxpayer cost of \$5,000 daily. The 'prosecution team' also employed by the police service are a legal firm from Ottawa, and I can't imagine what they are costing the Hamilton taxpayer. And the complaint itself is from a sitting Hamilton councillor who recently appointed his friend to the board that supervises the Chief of that same Police Service.

A heavily conflicted group and a stacked deck to say the least. In fact, enough reason for me to refuse to become involved in this charade. If I did partake, I would never be allowed notes I've made of events as Hamilton Police have already claimed the same lost or purged and can all but guarantee the 'prosecution' would not disclose exculpatory evidence. A finding of guilt paid for and assured.

I've also been advised by medical professionals not to entertain any further involvement with Hamilton Police, and they have twice wrote to Hamilton Police stating their continued contact makes a mental health condition, which they created through negligence, criminality and bullying, that much worse.

On Thursday, Hamilton Police released a media statement stating certain portions of this 'public hearing' would not be heard publicly. I think we can agree the lack of transparency worrying. If I have done wrong not only should you all be told about it, but you should also be shown the evidence leading to that decision.

In 2005 I was directed to infiltrate Traditional Organized Crime syndicates in the Hamilton region of Ontario, named Project Scopa. I did exactly as I was asked.

Project Scopa would quickly garnered the attention of the senior management team (SMT) as it became clear city council officials and police officers were closely tied to the same organization. I expected encouragement, but more importantly funding and a professional cover team.

SMT's involvement came not in the form of support, but of trying to shut down a successful infiltration. It has become clear over the past sixteen years that SMT were fully aware of the criminality of City employees/ elected officials/ police officers and actively choose to hide malfeasance and misfeasance rather than tackle them head on.

Indeed, it is now widely believed that I was sold out by serving police officer to be murdered whilst undercover. A serious allegation that was never investigated by Hamilton Police, nor to my knowledge any other law enforcement agency.

One target of Project Scopa, the complainant in this hearing, was firmly entrenched in business with individuals who were members of organized crime groups who predominantly prey on hard working members of society. In fact, some of the complainants own constituents had fallen victim to this organized crime groups protection rackets amongst other things.

I believe it is not only in the public interest to release information of corruption, but to actively pursue offenders in the courts no matter their standing in society. Hamilton Police SMT think differently, and time and time again have hidden crimes committed by public officials and police officers.

I fully admit I released two target photographs on Twitter via my handle @mobinfiltrator. One was handed to me by the Ontario Provincial Police, the second by an officer from the Royal Canadian Mounted Police when I worked at the Combined Force Special Enforcement Unit.

Neither documents belonged to Hamilton Police Service at anytime therefore contrary to Hamilton Police assertions I have breached no trust by releasing them.

I have never "harassed" the complainant. From recollection I emailed once in 2015 to ask him about his involvement with two corrupt Hamilton cops and his alleged ownership of illegal massage parlors in the City of Hamilton. I received a cease and desist from his lawyer and never contacted him again.

Almost 17 years ago when I stood in front of a Canadian Federal Court Judge, already with 13 years policing experience, I swore an Oath to uphold the Constitution of Canada and keep the peace. I did not swear an oath to Hamilton Police SMT's self serving rules to protect themselves, their friends and their political allies.

If whistleblowing on the continuous cover-up of corruption and criminality of our elected official and police officers is misconduct then I am certainly guilty of the same, but will continue to make those disclosure until I am no longer mentally or physically able.

No one has said I am lying about my disclosures. The alleged 'misconduct' is that I disclosed documents belonging to Hamilton Police, which is untrue. Therefore, deduction would suggest those disclosure are true and those making accusations against me are guilty of criminal obstruction of justice in the fact they hid the very wrongdoing I'm accused of disclosing.

The complaint itself is libel along with other comments made by the complainant about me on Twitter. I have filed a defamation lawsuit for the lies contained in this complaint and last week a small claims Judge endorsed the same to trial.

I asked Frank Serpico, an NYPD whistleblower what he thought and he wrote me, "It is a great disservice to society, our system of justice and the police image when our police system does not honor the officers who expose corruption, but make them the target instead. Unless this attitude changes, police corruption is here to stay."

I guess police corruption is here to stay.

Peace. Paul Manning

The above noted tweets are not consistent with an individual who appears the least bit remorseful for their actions. Constable Manning had every right to enter a not guilty plea and to defend himself. It could be argued that he may have been of the belief that conducting himself in this manner was not discreditable. However, for the purpose of this penalty factor, in the face of similar allegations, he once again insinuated in his Twitter posts that Mr. Merulla was linked to organized crime and laid blame on senior management and on the chief of police for failing to do his duty.

Constable Manning appears solely focused on the fact that his allegations are true, he does not appear to grasp the notion that he is not permitted to release confidential police information to the public or breach internal policy by posting restricted documents and making unprofessional comments on Twitter for public consumption.

In his above noted correspondence, Constable Manning acknowledged that he was responsible for posting the material found in his Twitter feed. Following the conclusion of the hearing, Constable Manning posted additional tweets, some of which appeared as follows, unedited:

October 5, 2021: A series of tweets posted and reposted including:  
In 2018 parties claiming they represented alleged #Mafia underboss [name withheld from this decision] contacted me & offered details/proof of all the #HamOnt cops he paid off over the years.

He was pissed he paid for protection & was still arrested.

Now happy to receive intel and disseminate the same.

October 8, 2021: Constable Manning posted a series of tweets including a photograph of an intelligence report related to Project Neighbour. The following Tweet accompanied the photograph:

So @HamiltonPolice have issue with me #whistleblowing using confidential docs. That's fine. The majority of my cover team were lazy, so when they completed reports, they failed to add classification. I have 100s of docs. This was authorized by Det. Patterson. SMT covered up crimes!

November 10, 2021: Tomorrow, #HamOnt Police will find me guilty of misconduct in that I blew the whistle on corruption & Hamilton Police's subsequent cover up of corruption. I will release a video Monday detailing everything I know and how we found ourselves here. Then a book.

Constable Manning stated he was "happy to receive intel and disseminate the same," implying that he was agreeable to publicly disseminating additional unproven allegations of police corruption. He stated to that he has hundreds of other documents and that he was intent on releasing further material.

After receiving my decision and being notified of my findings, Constable Manning posted additional tweets, some of which appeared as follows, unedited:

November 11, 2021: Constable Manning posted four pictures of intelligence information. Attached, was the following comment:  
and remember...wasn't charged with fabricating evidence but whistleblowing on cover up of corruption...that means #HamOnt admitting all the docs I have are real & there's lots more.

January 1, 2022: Lengthy Twitter thread posted related to this hearing process and several pictures of purported intelligence information along with Constable Manning's commentary about persons allegedly involved in organized crime and organized crime investigations. Comments included:

Its not about Merulla. I don't give a shit about him. Never will. He's not a nemesis. Just a fucking snake. He's inconsequential.

Recently Hamilton Police, assisted by a piece of shit lawyer called David Migicovsky from #Ottawa, found me guilty on 8 counts of misconduct. Some relate to me telling Hamilton Police senior management to go fuck themselves...

January 4, 2022: Posted a picture of Ontario Premier Doug Ford with the caption: Hamilton Police happy they are no longer the top Google search result for corrupt, incompetent assholes.

January 9, 2022: Snapshot of 2015 Ontario Provincial Police e-mail with the caption: During misconduct hearing @HamiltonPolice prosecutor, & all round piece of shit, David Migicovsky insisted I never blew the whistle...

Constable Manning's behaviour illustrates his blatant disregard for the police disciplinary process and his contempt for the Hamilton Police Service. I am uncertain whether he is unable, but he is definitely unwilling to consider that his actions may constitute police misconduct. Immediately following my finding of guilty, he responded by once again posting Third-Party intelligence reports on Twitter. I find the hearing officer's comments in *McPhee* very applicable to Constable Manning's behaviour; his actions "constituted an

overt display of a repudiation of the employment relationship and made it very difficult to consider the possibility of rehabilitation or reform.”

Mr. Migicovsky submitted there is no evidence that the misconduct in question is out of character for Constable Manning or that there is a reasonable prospect for rehabilitation. Constable Manning’s most recent tweets from September 2021 to January 2022 support that position. His ongoing attacks on Twitter demonstrate he has no intention of curbing this behaviour.

In my decision of November 11, 2021, I found that Constable Manning intentionally posted on Twitter the street name at the time, of Sergeant Licop’s residence, the officer conducting the internal investigation into Mr. Merulla’s complaint. I determined:

...the Tweet is meant to intimidate the investigating officer by making him aware that he knew where he lived and that he was willing to make it public knowledge.

Clearly, Constable Manning took no notice of my finding or simply has no regard for it. In an email addressed to only me, dated December 31, 2021, Constable Manning stated:

This is my private email.

Did I ever come up to 10th Sideroad in Bradford and harass you at your front door?

No!

I AM GOING TO FUCKING DESTROY HAMILTON POLICE FOR DESTROYING MY CAREER!!! MY JOB WAS EVERYTHING TO ME AND THEY FUCKING DESTROYED IT. [emphasis added by Constable Manning]

The fact that the email was addressed to me directly and solely, causes me to conclude that once again the intent of this correspondence by Constable Manning was to intimidate me by suggesting that he was aware of my home address.

I agree with the submission of Mr. Migicovsky that Constable Manning is an officer who has not acknowledged wrongdoing, has demonstrated no desire to reform and has shown no potential for rehabilitation. His correspondence with myself and counsel along with his tweets leading up to the hearing and following my decision, illustrate that this is the type of behaviour that can be expected in the future; he even alluded to a forthcoming book addressing this issue.

Constable Manning no longer possesses the characteristics necessary to continue as a police officer. His initial misconduct followed by his post offence behaviour, have exemplified his complete and utter lack of respect for his employer. His comments about the Hamilton Police Service and this disciplinary process effectively severed any chance of future employment.

I determined the seriousness of misconduct and the damage to the reputation of the Hamilton Police Service may not have been significant enough to automatically render Constable Manning unsuitable for employment as a police officer. However, when the nature and seriousness of misconduct is considered in conjunction with his post offence conduct and his clear inability to rehabilitate, dismissal is the only available sanction.

### *Specific and General Deterrence*

I find specific and general deterrence are both relevant factors for consideration in this matter. As noted, Constable Manning has demonstrated a blatant disregard for this disciplinary process and a clear lack of respect for his employer. The public expects a high standard of conduct and professionalism from police officers; Constable Manning's behaviour fell well short of this standard. A clear message must be sent to Constable Manning that misconduct of this nature will not be tolerated by the public or by the Hamilton Police Service. Breaching police confidentiality by releasing Third-Party privileged documents to the public is serious misconduct which warrants a corresponding sanction.

The use of social media has increased exponentially in recent years. Despite the existence of very clear policy on the use of social media, it is important that all members understand that misconduct of this nature cannot be tolerated.

This penalty factor is an aggravating feature for consideration.

### *Consistency of Penalty*

Consistency of penalty is an important factor for consideration. A penalty ought to fall within the range of penalties from previous, similar, cases if a penalty within that range is fitting once all pertinent aggravating and mitigating factors are considered. Mr. Migicovsky submitted that Constable Manning's misconduct is comprised of three parts: harassment of a member of the public, Mr. Merulla; offensive remarks in the public forum of Twitter; and, repeated breaches of his oath of secrecy. Mr. Migicovsky submitted that he was unable to locate a previous case that captured all three of these components, instead, the cases submitted provide guidance by addressing these elements individually. I will refer

to those cases which provided the most assistance in my determination of an appropriate and fitting penalty.

Mr. Migicovsky submitted the matter of *Mulligan* (No. 2) v. *Ontario Provincial Police*, 2018 ONCPC 5 where the commission confirmed a one-year demotion in rank for a single case of misconduct. In that matter, the officer sent a letter to a local newspaper asserting that the Commissioner's decision to relocate the Ontario Provincial Police helicopter would put the public's safety at risk.

The misconduct in *Mulligan* is similar in that it served to undermine the public's confidence in the police service, but Constable Manning's behaviour is far more serious. Sergeant Mulligan's whistleblower defence was not accepted. In his letter he openly criticized the decision and rationale of the Ontario Provincial Police in relocating the helicopter. The newspaper printed the letter but also printed a rebuttal from the Commissioner.

Constable Manning did not just provide an opinion, he posted Third-Party, sensitive, and privileged records on Twitter on several occasions. This in itself separates the facts from *Mulligan*, but also, by posting restricted information, the Hamilton Police Service was unable to simply write a letter to refute his allegations. Additionally, Constable Manning's tweets were disrespectful, offensive, and harassing. As detailed in my analysis of the seriousness of misconduct, Constable Manning's conduct was far more severe than that found in *Mulligan*.

Based on the facts and sanction imposed in the *Mulligan* matter, the lower end of the spectrum must be significantly greater than a one-year demotion in rank.

*United Steelworkers of America, Local 9548 v. Taneris Algoma Tubes Inc.*, 2014 CanLII 26445 (ON LA) is an arbitration ruling concerning the termination of an employee and the subsequent grievance. In that matter, the dismissal of an employee was confirmed for behavior described as sexually harassing comments posted on Facebook. It was an isolated incident, but the concept of progressive steps of discipline did not apply due to the seriousness of the conduct and despite the offender's remorse, the arbitrator determined the employee could no longer be trusted not to re-offend.

The *United Steelworkers* matter is helpful in the sense that this too is an employee, employer disciplinary proceeding where Constable Manning cannot be trusted to reoffend.



Mr. Migicovsky submitted the most serious component of Constable Manning's misconduct relates to the release of the Third-Party documents; the release of confidential information has been treated with the utmost concern in past cases. In the *Clough* matter, neither the facts nor the charges align with this matter. However, the case does provide guidance in the sense that the officer repeatedly breached her oath of secrecy by disclosing the locations of traffic collisions to an associate who was a tow-truck operator. Other factors were in play in that matter that do not exist here, but the Commission upheld dismissal as an appropriate sanction.

Constable Clough was motivated by personal financial gain, not the case here but I take the position that the information released by Constable Manning was far more disturbing than sharing the locations of traffic accidents.

The Clough matter suggests that dismissal could be considered within the range of appropriate dispositions for repeated breaches of an officer's oath of secrecy.

In *Markham and Waterloo Regional Police Service*, 2015 ONCPC 4, the officer accessed police reports and shared them with a member of the public for non-policing reasons. He also accessed policing databases without lawful reasons and was found guilty of the criminal offence of Breach of Trust. The facts are disparate but some of the commentary by the Commission is helpful:

To send confidential police information to civilians in and of itself could cause harm.  
To send such information to the friend of a person who is being investigated could not only lead to an obstruction of justice but could lead to serious harm on many levels.

In comparison, the restricted Third-Party police intelligence information released, and disseminated by Constable Manning to thousands of people, and reported on by the media to thousands more, is a greater breach of public trust. The Commission noted:

The reputational harm caused as a result of Constable Markham's conduct cannot be understated as it calls into question a fundamental ingredient for effective policing in the Province: namely, public confidence and trust.

The Commission upheld the dismissal of Constable Markham. As indicated, he was convicted of a criminal offence, an aggravating feature that does not exist here, but otherwise, Constable Manning's conduct could be considered just as, if not more serious in nature.

Constable Manning committed serious misconduct, severely and intentionally damaged the reputation of his employer. The cases referred to in this penalty factor specify that the range of penalties available to this tribunal is from a lengthy demotion in rank to dismissal. Constable Manning clearly has not reformed, nor does he have potential to rehabilitate; consequently, dismissal is the appropriate sanction.

## **Conclusion**

In this disposition process, corrective sanctions should take precedence over punitive dispositions wherever possible. Consequently, Constable Manning must receive the least onerous disposition available while satisfying proportionality and other penalty considerations. The court in *Galassi* stated:

Both [Hearing Officer and the Commission] were concerned about the ongoing suitability of the Appellant to be a police officer, given his past conduct, the surrounding circumstances, and his prospects at rehabilitation. The Commission specifically asked whether his usefulness as a police officer had been annulled, while the words of the Hearing Officer show that he was concerned about the Appellant's ongoing suitability to be a police officer.

Similarly, I am not convinced Constable is fit to be a police officer; even when the few mitigating factors are considered, the aggravating factors are so substantial, that when measured in conjunction with his lack of recognition and his inability to reform, the only conclusion is that Constable Manning has annulled his usefulness to his employer. The seriousness of misconduct is at the most serious end of the spectrum; Constable Manning has violated the public trust and knowing that he is likely to repeat that behavior, he is undeserving of the public's trust in the future. Constable Manning's misconduct severely damaged the reputation of his employer, but for him to continue as a police officer, would cause irreparable damage to the reputation of the Hamilton Police Service and would be an affront to the expectation the public has of its police service. As a result, I find it is necessary to sever the relationship between Constable Manning and the Hamilton Police Service.

In *Williams*, the Commission stated three elements must be considered in matters of potential officer dismissal: 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 would occur should the officer remain on the force. Constable Manning committed serious misconduct, then, immediately thereafter, continued that behaviour by posting similar material on his Twitter account. This behaviour illustrated his inability to reform and further fractured the employment relationship beyond any reasonable expectation of rectification.

## Disposition

I found Constable Manning guilty of eight counts of discreditable conduct. After carefully reviewing the evidence, the submissions of counsel and the jurisprudence provided I find the fitting sanction is dismissal. It is the sanction that meets the goals of the discipline process: to strike a balance between community expectations, fairness to Constable Manning and the needs of the organization.

Pursuant to section 85(1)(b) of the *Police Services Act*, I order Constable Manning dismissed from the Hamilton Police Service in seven days unless he resigns before that time.



---

Greg Walton  
Adjudicator  
Superintendent (Ret.)  
Ontario Provincial Police

Date electronically delivered: January 31, 2022