

**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 BRIAN WREN

DISCREDITABLE CONDUCT

DISPOSITION WITH REASONS

Before: Superintendent (Ret.) Greg Walton
Ontario Provincial Police

Counsel for the Prosecution: Ms. Jessica Barrow

Counsel for the Defence: Ms. K.C. Wysynski

Hearing Dates: March 26, 27, & April 19, 2024

BACKGROUND

Constable Wren satisfied first appearance obligations September 7, 2023. On November 28, 2023, the date of February 21, 2024, was set for oral submissions regarding a motion for production brought forth by Constable Wren. In an email dated January 23, 2024, I was informed by counsel that the issue had been resolved and the date was vacated.

The hearing commenced on March 26, 2024. Submissions continued on March 27, 2024, but were not completed due to illness. Consequently, with the consent of counsel, further submissions were heard virtually on April 19, 2024.

Allegation of Misconduct (amended)

Count #1 – Discreditable Conduct

It is alleged that Constable Brian Wren committed the following act of misconduct contrary to section 80(1)(a) of the *Police Services Act* R.S.O. 1990 c. P. 15, as amended:

Constable Wren committed discreditable conduct in that on February 6, 2023, he was found guilty of a criminal offence that is an indictable offence or an offence punishable upon summary conviction, namely assault, contrary to section 266 of the *Criminal Code* of Canada before Justice B. Pugsley constituting an offence against discipline; discreditable conduct, as prescribed in section 2(1)(a)(ix) of the Code of Conduct, Regulation 268/10, as amended.

Plea / Penalty Position

Ms. K.C. Wysynski represented Constable Wren. During a conference call on November 13, 2023, Ms. Wysynski indicated Constable Wren was prepared to enter a guilty plea. That position was acknowledged by the prosecution but the plea was deferred until March 26, 2024. Based on the standard of clear and convincing evidence, I found Constable Wren guilty of discreditable conduct. Ms. Wysynski submitted a forfeiture of nine days or 72 hours would be a fitting penalty, one which would satisfy all the applicable sentencing principles.

Ms. Jessica Barrow represented the Hamilton Police Service as prosecutor at the disposition hearing. Ms. Barrow sought Constable Wren's termination taking the position that as a result of the aggravating factors, principally public interest, damage to the reputation of the Hamilton Police Service, and the nature and seriousness of the misconduct, Constable Wren had nullified his usefulness to the Hamilton Police Service.

Agreed Statement of Fact

Exhibit #4 is the Agreed Statement of Fact in the form of a three-page synopsis accompanied by material found at 12 tabs and a flash drive containing video recordings. Ms. Wysynski noted the synopsis was agreed to along with some aspects of the tabbed material but not completely. Ms. Wysynski submitted much of the material was included because it had been before the Court in relation to Constable Wren's criminal appearances. Ms. Wysynski noted the material includes a photograph of AA¹ to illustrate facial injuries sustained at the time of his arrest; there was not a concession that they were sustained as a direct result of the use of force applied by Constable Wren. Ms. Barrow acknowledged the prosecution was not suggesting the injuries can be attributed to Constable Wren. Also, Ms. Wysynski noted that the victim impact statements may have been properly before the Court, but they ought to receive no weight at this hearing. I will delve into that matter when giving this issue consideration in my analysis.

The Amended agreed statement of fact reads as follows:

Acting Sergeant Wren was hired by the Hamilton Police Service on August 29, 2011. He is currently a first-class constable. At the material time, acting Sergeant Wren had successfully completed the requirements to serve as an acting sergeant. On May 25 - 26, 2022, Acting Sergeant Wren was working with the east High Enforcement Action Team (HEAT), a plainclothes unit of the Hamilton Police Service that focuses on street level drug dealers, street workers, and other criminal activity in the east end of the city of Hamilton.

In May 2022, the Hamilton Police Service launched a one-month investigation into an organized vehicle theft ring dubbed project Grizzly. The Hamilton Police Service Break and Enter, Auto theft and Robbery (BEAR) unit, was directly involved in fulfilling the mandate of project Grizzly. At times, the BEAR unit were assisted by officers working in the divisional HEAT units.

On May 26, 2022, Acting Sergeant Wren was working with the HEAT unit. At this time the HEAT and BEAR units were involved in the surveillance of a black Ford F-350 pickup truck which was on file as stolen. Through surveillance, the driver of the truck was identified as AA with whom the police had previous dealings.

AA was apprehended at the Upper Sherman Mobile gas station located at 856 Upper Sherman Avenue in the evening of May 26, 2022. Acting Sergeant Wren was involved in AA's arrest, during which Acting Sergeant Wren delivered multiple

¹ Random initials used to anonymize this involved individual.

strikes to AA's head and face using his foot. On June 16, 2022, Acting Sergeant Wren was arrested for assault in connection with his involvement in the arrest of AA.

On February 6, 2023, before Justice B. Pugsley, Acting Sergeant Wren entered a plea of guilt and was found guilty of the criminal offence of assault contrary to section 266 of the *Criminal Code* of Canada in that on or about June 16, 2022, at the city of Hamilton he did without lawful excuse assault AA. Acting Sergeant Wren's plea of guilt and finding of guilt was based on a written synopsis of agreed upon facts read into the record at the criminal proceeding. A copy of the synopsis for guilty plea is attached as appendix "A."

In the course of the investigation, video footage of AA's arrest was obtained from the gas station cameras as well as a civilian witness of the arrest. A copy of all gas station footage is attached as appendix "B." A copy of all civilian video footage is attached as appendix "C." Copies of screenshots of this civilian video footage, relied upon in the criminal proceeding, are attached as appendix "D." Attached as appendix "E" is a copy of the booking photo of AA demonstrating the facial abrasions and bruising suffered during his arrest.

On June 2, 2023, Acting Sergeant Wren appeared before Justice Pugsley for continuation of the Proceeding at Guilty Plea. During the Proceeding at Guilty Plea, Justice Pugsley received various materials relevant to Acting Sergeant Wren's sentence, including the following:

- a) Community Impact Statement of Madam Elder McGrimmond, attached as appendix "F."
- b) Community Impact Statement of Kim Beaudin, attached as appendix "G."
- c) Community Impact Statement of Audrey Davis, attached as appendix "H."
- d) Pre-sentence report by Helen Coulter, attached as appendix "I."
- e) Letter from Desiree Duplessis, attached as appendix "J."
- f) Defence material, attached as appendix "K."

On June 29, 2023, Acting Sergeant Wren appeared before Justice Pugsley to be sentenced in relation to the finding of assault. Acting Sergeant Wren received a suspended sentence with 18 months probation, 200 hours of community service, and to attend and actively participate in all assessment, counseling or rehabilitation programs as directed by the probation officer for psychiatric or psychological issues. Other standard probation conditions were to apply. There was no weapon prohibition. Attached as appendix "L" is a copy of the probation order.

Acting Sergeant Wren's actions in being found guilty of a criminal offence, namely assault contrary to section 266 of the *Criminal Code* of Canada before Justice Pugsley, constitute discreditable conduct as prescribed in Section 2 (1)(a)(ix) of the Code of Conduct, Regulation 268/10 as amended.

Decision

I do not find Constable Wren has nullified his usefulness to the Hamilton Police Service. I find the argument that he is a strong candidate for rehabilitation compelling. However, I do not accept that a loss of hours is an appropriate penalty; I find the most fitting sanction is that of a demotion in the rank to that of second-class constable for one year, following which, he shall be returned to the rank of first-class constable.

REASONS

Neither the prosecution nor the defence called *viva voce* evidence. In addition to the Agreed Statement of Fact, the following exhibits were tendered:

- 5) Transcript - *R. v. Wren*, February 6, 2023
- 6) Transcript - *R. v. Wren*, June 2, 2023
- 7) Transcript - *R. v. Wren*, June 29, 2023
- 8) Affidavit of Desiree Estephan-Saliba – tabbed A – C 1 - 29
- 9) Prosecution Book of Authorities – tabbed 1 - 18
- 10) Prosecution Book of Authorities – tabbed 19 - 31
- 11) Prosecution Book of Documents – tabbed 1 – 54
- 12) Defence Book of Authorities – tabbed 1 – 28

The disparity in counsel's position in respect to disposition is vast; dismissal versus a forfeiture of 72 hours. I will first consider the circumstances which must exist for a police officer to be dismissed from employment.

At tab 30 of Exhibit #10 is the matter of *Williams and Ontario Provincial Police*, 1995, (OCCPS) 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.

At tab 27 of Exhibit #12 is the matter of *Favretto v. Ontario Provincial Police*, 2002 ONCPC 3, (CanLII) wherein the Commission stated:

A penalty must be tailored to both punish and deter while not causing undue or excessive hardship. The penalty of dismissal is the ultimate penalty. It should be reserved for the most serious offences committed by a police officer where there is no hope for rehabilitation, there are no significant mitigating factors, and where the police officer is of no further value to the police service or the community in general....

Again, dismissal is the ultimate penalty and will generally only be justified where it has been established that the officer is not fit to remain an employee. Dismissals should be reserved for the most egregious offences which nullify the usefulness of the officer and cause serious damage to the reputation of the police service.

As was noted in *Re Tremblay et al. and Fleming et al.* (1986), 55 O.R. (2d) 570 (Ont. C.A.) at 589:

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.

Therefore, the key question which we need to consider is whether or not Constable Favretto can be rehabilitated and reformed to the extent that he can be an asset to the Ontario Provincial Police and the general community as a police officer...

The sentencing principles as enunciated in *Williams* and *Favretto* remain applicable to disciplinary matters where the dismissal of a police officer is being considered. It is clear that in some instances, the seriousness of misconduct can be so egregious it would cause irreparable harm to the police service should the officer remain employed. On those occasions, any potential for reform is surpassed by the seriousness of misconduct and in many of those cases, it is unlikely that an opportunity to rehabilitate would correct a fundamental character flaw of that magnitude.

While I consider the nature of the misconduct significant, for reasons which will follow, I do not find that the conduct in this case is so egregious that it merits dismissal without consideration of other aggravating and mitigating factors. Therefore, as per *Williams*, in addition to contemplating the nature and seriousness of the misconduct, it is incumbent upon me to consider Constable Wren's ability to reform or rehabilitate, and the damage to the reputation of the Hamilton Police Service that would occur should he remain employed as a police officer.

At tab 26 of Exhibit #12 are citations from the *Annotated Police Services Act* by Ceysens and Childs, 2023 Edition. When considering the most fitting sanction I must also adhere to the following penalty foundation principles and proportionality considerations:

The jurisprudence has generated five foundation principles that govern the process of crafting an appropriate disposition when an allegation of police misconduct is proved.

The first principle is that the disposition should fully accord with the purposes of the police discipline process, which are as follows: the employer's interest in maintaining discipline in the workplace; the rights of respondent police officers suspected of misconduct being treated fairly; the public interest: ensuring a high standard of conduct in the constabulary, and public confidence in the constabulary; and where members of the public are involved (whether or not they register a formal complaint), the process should ensure that the interests of those individuals are protected.

The second principle - which flows from the move towards a more remedial philosophy, as noted above - dictates that a corrective disposition should take precedence over a punitive disposition, where possible.

The third principle is the presumption of the least onerous disposition, which presumption would be displaced at the public interest or other specified considerations should prevail.

The fourth principle is proportionality, requiring that the tribunal consider all applicable mitigating and aggravating considerations, and then weigh those applicable factors appropriately....

The fifth principle is that the law holds police officer's conduct to a higher standard, compared to other employees...

It is a "fundamental proposition" that a disposition must be proportionate to the misconduct, "given due regard to those special considerations applicable to service in the police force." 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 the relevant disposition considerations are *mitigating, aggravating or neutral*.

- Third, the decision-maker must *properly balance* (or appropriately “weigh”) the identified relevant 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.” In Ontario, although the Commission frequently cites various disposition considerations as “key factors”, it has stated that “there is no requirement that any one factor be given more weight than another,” while at the same time stating that a hearing officer need not give all the factors equal weight and one factor can support the highest penalties, if appropriate.

The disposition in this case must be consistent with sanctions imposed in similar matters but also it must reflect the unique circumstances particular to this case. Counsel provided me with numerous cases as a guide to assist me in determining the most fitting sanction. Those cases will help to establish a range of penalties available for this misconduct, but I must consider all relevant factors not just the nature and seriousness of the misconduct, Constable Wren’s ability to rehabilitate, and the damage to the reputation of the Hamilton Police Service that would occur should he remain employed as a police officer.

At tab 9 of Exhibit #9 is the matter of *Krug and Ottawa Police Service*, 2003 ONCPC 1 (CanLII) wherein the Commission identified the factors a hearing officer may consider in the determination of the most fitting sanction. In this decision, I will address those disposition considerations that I deemed most relevant. I will determine whether each specific factor is aggravating, mitigating, or neutral, and ultimately, I will determine the appropriate weight to be applied to each factor considered. The analysis of these penalty factors will guide my determination of an appropriate and fitting sanction.

Nature and Seriousness of the Misconduct

At tab 31 of Exhibit #10 is an excerpt from the text *Legal Aspects of Policing*, looseleaf, (Saltspring Island: Earls court, 1994) (current to update 38, June 2022) which states:

Seriousness of the misconduct is a fundamental proportionality consideration, and necessarily arises in all disposition decisions.... Although “seriousness of the offence alone may justify dismissal,” even “reprehensible” misconduct may not be determinative, because proportionality requires an appropriate balancing of all relevant mitigating and aggravating (and neutral) disposition factors...

In matters involving police misconduct, the law places considerable importance on assessing the degree of seriousness and misapprehending the seriousness of the misconduct can compromise the decision-making analysis....

Various circumstances can reduce the seriousness of misconduct, thereby possibly mitigating a disposition...

Ontario Court and tribunal decisions have consistently concluded that progressive discipline does not inevitably apply, and in appropriate cases one penalty factor - usually "seriousness of the misconduct" - can support high penalties, including dismissal.

Ms. Barrow submitted the seriousness of the misconduct in this instance is so egregious that it must result in dismissal. Ms. Barrow submitted the seriousness of misconduct affects other factors such as damage to the reputation of the police service and public interest. I will address those factors separately but I agree that other penalty factors will be negatively impacted by Constable Wren's inexcusable conduct and the extensive media coverage which followed. Ms. Wysynski acknowledged the conduct in question is serious, but not to the extent that Constable Wren cannot be of further use to the Hamilton Police Service. I agree with that assessment.

Constable Wren has been convicted of discreditable conduct for being found guilty of the criminal offence of assault. Jurisprudence has determined that being found guilty and/or convicted of a criminal offence is an aggravating feature, but on its own it is not sufficient to result in the dismissal of the involved officer; it is imperative that I consider the specific behaviour that gave rise to the guilty finding and conviction. For example, an officer convicted of impaired driving would not likely receive the same sanction as an officer convicted of impaired driving causing bodily harm even if all the mitigating and aggravating factors were identical; the actual behaviour is more crucial to my analysis on disposition than the fact that the conduct resulted in a criminal conviction.

Counsel played the video footage multiple times for the benefit of the Tribunal and made submissions about what I ought to consider and how to interpret Constable Wren's behaviour. Those submissions were helpful to guide my attention to certain areas. To follow is my analysis of the video footage contained in the flash drive attached to the Agreed Statement of Fact. My analysis is consistent with the analysis conducted by investigators and found in the Synopsis for Guilty Plea at tab A of Exhibit #4.

The video footage titled "Gas Station video 1" runs for over 18 minutes. This video is time stamped May 26, 2022. A black truck operated by AA entered the frame for the first time 4 minutes in at 20:59:04. The vehicle pulled into the gas station and reversed up to pump #6. The truck was situated between the camera and the gas pumps used by AA. AA was standing between the truck and pump #6 when several undercover police vehicles pulled into the parking lot at 21:01:47 and blocked in the truck. At 21:02:01 AA made a brief

attempt to flee on foot but after only a few steps, he was apprehended by officers. AA was not acting assaultive, but he was resistant. At 21:02:27 AA was taken to the ground by four officers. Two officers were dealing with people in the gas station lot. Constable Wren entered the frame at 21:02:30. Due to the angle of the camera and the positioning of the other arresting officer, I was unable observe Constable Wren contacting AA.

“Gas Station video 2” is just over 13 minutes long, commencing at 21:00:01. The positioning of this camera looks down showing AA at the pumps. He inserted the gas nozzle into the tank at 21:01:57. Two seconds later he noticed plain clothes officers approaching him and began to run in the direction of the back of the truck but officers stopped him almost immediately. The video provides footage of the struggle that ensued but Constable Wren’s kicking motions occurred just off screen and are not captured.

“Gas Station video 3” is over 10 minutes long, commencing at 21:02:28. The positioning of this camera looks down showing the officers struggling with AA on the ground and a civilian parked at pump #5 recording the incident using her cell phone while sitting in the driver’s seat. While AA was blocked by the arresting officers, Constable Wren’s kicking motions were clearly visible but I was not able to see them make contact.

The civilian seated in her parked vehicle adjacent to gas pump #5 recorded the incident on her cell phone. I find this to be the most assistive video footage because it provides the closest and best angle of the interaction between AA and Constable Wren. By the time the civilian began recording, multiple plain clothes officers could be seen wrestling with AA. He was resisting their efforts but was taken to the ground.

This video recording is not time stamped but of note, it is less than one minute in duration. Nine seconds into the recording, Constable Wren is first observed on screen. Officers were struggling to control AA. AA was laying on his left side. Another officer applied knee strikes to the back of AA’s head while others were attempting to restrain him. This footage is the only one with an audio component but the audio feed is not very helpful; at least one officer was issuing verbal commands to the effect of “hands behind your back now, fucker,” but for the most part, the utterances cannot be made out. Officers appeared to be trying to pull AA’s arms behind his back to facilitate hand cuffing.

At the 13 second mark, Constable Wren kicked in the direction of AA’s head three times in quick succession. The first two kicks appeared to contact the back of AA’s head, the third kick did not contact AA, instead, Constable Wren kicked the cement curb, the likely cause of his broken toe. Constable Wren then stomped the side of AA’s head about eight times. He repositioned himself to gain better access to AA and stomped his face and head approximately five more times.

The initial three kicks appeared to be at or near full strength while the stomping motions were shorter in length and delivered at far less than full effort. I use the term stomp to effectively describe the motion of his knee coming up then down, but as noted, they did not appear to me to be delivered with full force, more consistent with a distraction technique but assaultive, and unnecessary, nonetheless. When Constable Wren repositioned himself, AA stopped resisting and was either unconscious or presented as such. Constable Wren may or may not have been able to make this observation. It could be argued that Constable Wren stopped administering kicks to AA once he realized AA was no longer resisting. Constable Wren's final strike was delivered at the 35 second mark when AA's body was completely limp with his hands pinned behind his back.

Constable Wren entered a guilty plea in criminal court in relation to his actions which were captured on video; he has been convicted of assaulting AA. It is not only clear that the strikes he delivered were unnecessary and excessive, but the video footage is disturbing. The manner in which I have described the misconduct pales in comparison to watching the video footage; it is dreadful behaviour worthy of a significant sanction, one which corresponds to the seriousness of the misconduct. The civilian who made the recording from her car can be heard making an utterance to herself, "oh my god, those are police?" It was reasonable for her to question why a police officer was acting in such a manner. AA was not assaultive; he was resistive but was in the process of being apprehended by four other officers.

Constable Wren applied multiple kicks to the head and face of AA. Regardless of how hard they were delivered, anytime an officer needlessly contacts an offender's head, it is cause for concern. That act is compounded by the fact AA was defenceless, in a vulnerable position being held down by other officers.

Exhibit #7 is Justice Pugsley's Reasons for Sentence. The Crown Attorney in the criminal proceeding was seeking a suspended sentence and probation while Constable Wren sought a conditional discharge with probation. Counsel argued whether I must adopt the findings of Justice Pugsley in his decision on penalty. I need not delve into that argument because whether I am obligated to adopt the position taken or not, I wholeheartedly agree with the following comments made by Justice Pugsley:

- Clearly, an assault by a police officer on a citizen is to be treated as a serious occurrence but more so when the victim is in custody or otherwise under police control at the time of the assault.
- Society places police officers between the law-abiding citizen and those who seek to break the law.
- Acting Sergeant Wren did not follow his training, rather the opposite. This is not about whether AA should have been arrested or taken down to the ground when

he did not comply with the arresting officer's demands. What this is about, is [Constable Wren] approaching and kicking AA in the head and face after he was taken to the ground and was under control and possibly unconscious. There was no need for any assistance from [Constable Wren]...

- Acting Sergeant Wren was one of the supervising officers at the time of AA's arrest. He was acting as a leader and as an example to his team and other officers with the police service. As a leader, he is held to a higher standard...
- Mr. Wren's career as a good and effective police officer is in jeopardy. He may have to start again. But it is clear to me that there is simply no public interest in granting a discharge to the defendant on these facts. To do so would send a fundamentally flawed message to the public that there may be one sentencing path for the police and another for the public.

Justice Pugsley carefully considered the merits of granting a discharge but found the seriousness of misconduct did not warrant such a conclusion. To arrive at the most fitting sanction, I must consider all mitigating and aggravating factors and weigh them accordingly. In this instance, it is important to balance public interest with the nature and seriousness of the misconduct. An aggravating feature is Constable Wren's behaviour was so serious that the Court's confidence in him as a police officer has been shaken.

In the matter of *Groot v. Peel Regional Police Service*, 2002 CanLII 76738 (ON CPC) the Commission noted:

It is clear that police officers, whether on or off duty should not be threatening harm to others or engaging in assaultive behaviour. Such conduct is discreditable, warrants discipline, and must be deterred... This is particularly the case, where a police officer assaults an intoxicated, handcuffed, and helpless prisoner at a police station. This is highly damaging to the reputation of a police service. We agree with the Hearing Officer's conclusion that, "what occurred was a serious deviation from the professional behavior expected and demanded by the public of an officer and of every member of this service."

I find the *Groot* matter more serious, the victim was heavily intoxicated, handcuffed behind his back, and the injuries directly attributed to the assault were far more severe than the injuries in this matter. However, the Commission's comments still apply here, Constable Wren repeatedly kicking AA's head and face while he was under police control is behaviour that I expect the public would find disgusting, not simply unprofessional.

In *Levis (City) v. Fraternite des policiers de Levis Inc.*, 2007 SCC 14, the Court noted:

...the arbitrator must not lose sight of the special role of police officers and the effect of a criminal conviction on their capacity to carry out their functions. A

criminal conviction, whether it occurs on duty or off duty, brings into question the moral authority and integrity required by a police officer to discharge his or her responsibility to uphold the law and to protect the public. It undermines the confidence and trust of the public in the ability of a police officer to carry out his or her duties faithfully.

As I have already noted, Constable Wren's behaviour has undermined the Court's confidence as to whether he possesses the necessary characteristics required of a police officer. In criminal proceedings, Crown Attorneys are required to disclose matters of internal formal misconduct such as this, often referred to as "*McNeil* obligations." It is fair to conclude that police officers who have a negative disciplinary record will be scrutinized in court in relation to the conduct that gave rise to said record. Having been convicted of assault has the potential to negatively impact Constable Wren's ability to testify and brings his integrity and professionalism into question which may affect his credibility and reliability depending on the nature of the criminal trial.

I find Constable Wren's criminal conviction and the associated *McNeil* issue adds to the seriousness of misconduct, but they are not insurmountable hurdles. The facts must be considered in their entirety, being convicted of assault is but one aggravating feature as the Commission noted in *Groot*:

The simple fact that a police officer may have been found guilty or convicted of one of many thousands of possible criminal offences does not automatically mean that this individual cannot continue to serve as a police officer. The seriousness of each transgression must be weighed and assessed against the factors identified above.

The text *Legal Aspects of Policing* lists examples of considerations which might mitigate the seriousness of misconduct such as a single or isolated occurrence, citing *Canadian National Railway Company and Canadian National Railways Police Association (Teles Grievance)* 2012 CanLII 97614 (Sims):

... the public and employers of police rightfully expect a very high standard of police officers. However, the corollary is that this in itself makes police work a stressful occupation. This does not excuse aberrant conduct, but it justifies a measure of humanity when determining whether one instance of human failing justifies ending a career.

The nature of the assault in this instance, repeated kicks to AA's head and face, is mitigated slightly because the injuries AA sustained were less than serious. In the Synopsis for Guilty Plea for Constable Wren's criminal proceedings, investigators noted the following injuries: minor bruising to the right side of his face; a small cut to his bottom

lip; bruise to the left side of the face; bleeding of the left ear; minor bleeding of the right ear; scrapes to both knees. As conceded by Ms. Barrow, it is not possible to attribute specific injuries to the kicks administered by Constable Wren due to the fact multiple officers were using force to restrain AA at the same time.

The Synopsis for Guilty Plea states medical records from St. Joseph's Hospital identified the following injuries/complaints: multiple facial abrasions, but no deep lacerations requiring repair; swelling to his right pinna (external ear) and mastoid (located just behind the ear); complaint of headache, particularly over the left cheek; general tenderness on his back and superficial abrasions on his back; pain and bruising to the right knee. A CT scan of AA's head and brain yielded no abnormalities and X-rays were normal. While not insignificant injuries, I would not categorize them as being serious or long lasting. Had AA sustained more significant injuries that were directly attributed to Constable Wren, the sanction imposed would have increased correspondingly.

Constable Wren was aware of AA's criminal history which included a propensity for violence (according to Exhibit #6) and had information that he may have been in possession of a firearm. Knowing this does not absolve him of responsibility, but it does put the matter into context; there is no evidence to suggest this was a premeditated assault, it occurred in the heat of the moment. Based on the officer's strong employment history and the high regard his employer held him in prior to this incident, I am satisfied this was a lapse of judgement during a dynamic situation, not indicative of an officer who ordinarily behaves in this manner. However, not only were Constable Wren's kicks not required, there was no need for Constable Wren to be involved at all; he could have simply stood by to provide aid to other officers if it became necessary.

The Synopsis for Guilty Plea included Community Impact Statements from Wilamina McGrimmond, a First Nations Community Elder, Kim Beaudin on behalf of Congress of Aboriginal Peoples, national voice of Provincial Territorial Organizations, including the Ontario Coalition of Indigenous Peoples, and Audrey Davis on behalf of the City of Hamilton Urban Indigenous Community. While I accept Ms. Barrow's submission that there is insufficient evidence to suggest this was a racially motivated crime, the impact violent behaviour by a police officer on an Indigenous Community member can be profound as noted by Ms. Davis:

On a larger scale, the failure of the policing system to adequately protect, support, and provide culturally sensitive services to Indigenous peoples limits the right, freedoms, and ability for Indigenous residents to feel a sense of belonging and safety in their own communities and within their own territories. This feeling is only compounded when the crime being alleged is at the hands of a local community police officer.

If one is to recognize that there is a longstanding distrust of police by Indigenous people, then one must also recognize that racial discrimination continues to be deeply ingrained in policing and justice systems and the issue can't be addressed until it's acknowledged...

The video of the alleged crime has been viewed by members of our Indigenous Communities, and by people all over the world. While a video can often serve as useful evidence that a crime was committed, it also can continue to re-traumatize a person, family, community, and nations each time it's re-watched. The video of the violent assault has only served to reinforce the fear and distrust of the police and the justice system that Indigenous people continue to feel. The overwhelming narrative is that when Indigenous people are confronted by police regardless of reason for interaction, that things will unfold in a way that doesn't necessarily happen between police and other members of society. Indigenous peoples feel they won't be afforded the same courtesy and respect as others, and the treatment of Indigenous peoples by the police only solidifies the Community's concerns. When there is video evidence of a horrific assault, it only serves to reinforce those feelings narratives to be true. How are Indigenous peoples supposed to put their trust in a colonial system that continues to racially profile, discriminate against, and hurt its people - the very people whose mandate is to serve and protect?...

Fear of security is the biggest concern for our community after the assault of one of our relatives, especially when it was done at the hands of a police officer who swore to serve and protect everyone in their community. Even prior to such a public crime, our people have been very vocal about the treatment they have received by Hamilton police officers, and law enforcement in other capacities...

While physical injuries heal, intangible wounds - like loss of trust in police and even fear of them - continue to resonate long past the incident that caused them. Each incident that wrongly involves one of our community members just puts up bigger walls around our community and people and incite fear and anger that incidents like this continue to happen without consequent or regard.

Legal Aspects of Policing notes that other considerations may aggravate a disposition such as conduct that offends the rule of law, and having significant consequences or potential consequences that flow from the misconduct. Ms. Barrow confirmed this is not to be considered a racially motivated incident, however, whether intended or not, Constable Wren's actions will have deep, long-lasting effects in the Indigenous Community. The loss of confidence in the Hamilton Police Service by the Indigenous Community and the general public aggravates the seriousness of the misconduct.

At tab #4 of Exhibit #10 is the matter of *Galassi v. Hamilton Police Service*, 2005 CanLII 20789 (ON SCDC) where the Court stated:

In a system of progressive discipline, an employer applies increasingly serious sanctions to employee misconduct in an effort to correct the employee's behavior. Nevertheless, even in such a system, the particular misconduct of an employee may be so serious that dismissal is warranted, despite the absence of prior warnings or disciplinary action.

I am satisfied that if I deemed it appropriate, I could order Constable Wren demoted or dismissed; previous formal discipline is not a necessary feature for such significant sanctions to be imposed. Constable Wren's misconduct is clearly serious in nature. Had AA sustained injuries directly attributed to Constable Wren's conduct that were more severe, it would have resulted in an increased sanction, perhaps dismissal.

I find the Nature and Seriousness of the Misconduct to be the most aggravating factor for consideration; it necessitates a sanction of corresponding significance.

Public Interest

In *Legal Aspects of Policing*, Mr. Ceyskens noted that because of the extraordinary powers police officers have to use force and to put restraints on liberty, the misconduct of police officers is always a matter of public interest. Mr. Ceyskens cited *Rendell v. Canada* (Attorney General) 2001 FCT 710 wherein the Court stated:

I cannot ascertain that the Commissioner erred in law by giving undue weight to public expectations in determining the appropriate sanction to be imposed in cases of this nature (criminally convicted of assaulting his wife)...

Mr. Ceyskens noted that public interest arises as a disposition factor in several situations: where the misconduct generated a demonstrable risk; where the misconduct has offended or undermined the public interest or public confidence, or would do so; and, where there is a need to demonstrate confidence in policing, its members, or its discipline process. Constable Wren's behaviour offended all three of these principles.

Constable Wren's actions obviously put AA's health at risk and potentially, other members of the public who were in attendance at the gas station; the video footage showed civilians approaching the altercation perhaps looking to intervene until they realized plain clothed officers were involved. Clearly, Constable Wren's repeated kicking to the head of AA undermined the public's confidence in him and to his employer requiring the Hamilton Police Service to demonstrate confidence in the discipline process to the public.

In his decision, Justice Pugsley noted:

Acting Sergeant Wren on the other hand, is a police officer. He has sworn to uphold the law and protect the public and instead has broken the law and harmed the public, AA directly and the public at large, including most obviously, the Indigenous community indirectly...

In my view, not only would it not be in the public interest for the defendant to be granted a discharge, to do so would seriously impact the public interest in holding the police accountable for breaches of the law by police officers. More plainly put, the faith of the public in the police and the overall justice system...

The above noted comments by Justice Pugsley not only speak to the seriousness of this incident, but also to the importance of satisfying the public's interest in police disciplinary matters such as this. I find public interest to be a significant aggravating factor. Constable Wren's conduct has jeopardized the trust ordinarily levied upon him by his peers, subordinates, and his employer. Furthermore, his behaviour undermined the public's trust in him and the Hamilton Police Service in general. The public, rightfully so, expects the Hamilton Police Service to respond accordingly with an appropriate and fitting sanction.

The public has an interest in ensuring police officers achieve and maintain an extraordinarily high standard of conduct. The public must have confidence that police officers will always act professionally; the public's trust is eroded when an officer fails to meet those expectations. In his text, Mr. Ceysens cites the following passage from the dissenting judgement in *Montreal (City) v. Quebec, 2008 SCC 48*:

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 judgement and integrity, it is also a position that requires the utmost public trust.

I agree with the Court's assessment in *Montreal v. Quebec*, Constable Wren needlessly assaulted a member of the public who was unable to defend himself; behaviour which obviously creates public concern and calls into question Constable Wren's character and whether he can be trusted to exemplify professionalism in the future.

Police services and their members require the public's trust in order to be successful. For these relationships to succeed, they must be based on respect and professionalism, an unachievable objective if the public cannot trust its officers to exhibit strong values such as ethical judgement. Public trust is fragile. Whenever an officer breaches the public's trust, the public expects that officer to be held accountable accordingly; the sanction imposed must be commensurate with the seriousness of misconduct while satisfactorily

addressing public interest. The public can have confidence that the Hamilton Police Service holds members accountable for their actions; they are seeking that Constable Wren be terminated for his actions.

Constable Wren committed serious misconduct which has been captured on video for the public to see. His misconduct has been well documented in the media. It is my position that the public, fully informed of the circumstances, would be extremely disappointed by Constable Wren's actions; it is appalling and distasteful behaviour which warrants a significant sanction in order to contribute to the process of re-instilling public confidence in the Hamilton Police Service.

I am confident that some members of the community expect behaviour of this nature to result in dismissal, but it is my duty to impose a sanction which corresponds to the seriousness of the misconduct while giving due consideration to all applicable factors. A fair and fitting sanction is required; a sanction more severe than appropriate could be viewed as overly harsh and unfair, which could have the effect of adversely affecting public interest. Conversely, a sanction too inconsequential could further erode public trust. Undoubtedly the general public along with the Indigenous Community will be very interested in the outcome of this case.

I find Public Interest to be an aggravating factor, one which necessitates a considerable sanction. I am not convinced that a loss of hours would sufficiently address this penalty factor but I am also not convinced that termination is required to satisfy this consideration.

Damage to the Reputation of the Hamilton Police Service

In the text Legal Aspects of Policing, Mr. Ceysens stated:

Damage to the reputation of the police force remains a standard disposition consideration. Some overlap exists between the "damage to the reputation of the police force" as a disposition consideration - addressing public confidence in the particular police agency - and the separate disposition consideration of "public interest"...

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.

The sanction imposed must be fitting, one which re-instills public trust and helps to repair the damage done to the reputation of the Hamilton Police Service. I must also consider

the potential damage which would occur to the reputation of the Hamilton Police Service if Constable Wren maintained his employment.

In *Orser*, the Commission stated:

The hearing officer was deeply troubled by the breach of trust, and the lack of ethics, integrity, professionalism, and compassion demonstrated by the appellant. As a result of these concerns, he determined the appellant no longer had any usefulness to the OPP or the community in general, and that damage to the reputation of the OPP would be too significant if the appellant were to remain employed by the OPP. His findings are reasonable and supported by the record.

Ms. Barrow submitted the seriousness of this misconduct brought so much discredit to the Hamilton Police Service and breached the public's trust to such an extent, remaining employed as a police officer is untenable. Ms. Barrow submitted I ought to apply the same analysis in this matter as I did in *Orser*, but the misconduct in *Orser* is not at all similar to the misconduct in this matter. Constable Orser's behavior was far more serious and occurred over a long period of time. Constable Wren's behavior is also disturbing, but I do not find that if he were to return to policing, the damage to the Hamilton Police Service would be irreparable considering the mitigating factors that also exist.

The existence of video evidence capturing Constable Wren's misconduct has been and will continue to be accessed by the public which aggravates the damage to the reputation of the Hamilton Police Service. The reputation of the Hamilton Police Service will continue to be damaged every time the video is accessed on social media or any other platform.

Constable Wren's behaviour violated the trust between the Hamilton Police Service and the community it serves. Public trust is essential to the Hamilton Police Service's success in carrying out its duties. Constable Wren has been suspended from active duty since this matter came to light. Clearly the Hamilton Police Service are concerned that he may have nullified his usefulness to them and to the community; they are seeking his termination. I have no doubt there are members of the community that share that opinion.

I accept that the reputation of the Hamilton Police Service has been severely damaged and further damage will occur in the eyes of some members of the community knowing that Constable Wren has maintained his employment. I am less than convinced, however, that this is necessarily the most prevalent perspective. Regardless, I am satisfied that Constable Wren returning to work has the potential to damage the reputation of the Hamilton Police Service to some extent. Therefore, it is essential that the sanction imposed has the ability to re-instill public trust and to help repair the damage Constable Wren's actions have done to the reputation of the Hamilton Police Service.

In his text legal aspects of policing, Mr. Ceysens cited the matter of *Martin and Windsor Police*, OCCPS, 2009 noting the Commission has confirmed public media coverage of an officer's misconduct is an appropriate consideration when considering the extent of damage to the reputation of the police force.

Exhibit #8 is the Affidavit of Desiree Estephan-Saliba which contains 29 media articles which refer to varying degrees, about Constable Wren's *Police Services Act* charges and the related criminal proceedings. Many of the articles include video footage of the incident or a link to it and/or still shots of the assault on AA. Some articles address how the conduct has affected the Indigenous Community and the further damage done to the relationship between the Indigenous Community and the Hamilton Police Service. Regardless of the specific content, each of the articles serve to damage the reputation of the Hamilton Police Service. I also note that members from the media were present for each of these disposition hearing dates; I expect the media coverage of this matter to continue.

The Damage to the Reputation of the Hamilton Police Service is an aggravating factor, not only because of how Constable Wren's conduct has adversely affected the reputation but also because some members of the public are likely to be dissatisfied with him maintaining his employment as an officer in their community.

Specific and General Deterrence

In Legal Aspects of Policing, Mr. Ceysens noted specific and general deterrence are legitimate objectives of police discipline. Ms. Wysynski submitted both specific and general deterrence have already been addressed as a result of this disciplinary proceeding, the criminal process, and the extensive media coverage. Furthermore, Ms. Wysynski noted Constable Wren was a "rising star" but his acting sergeant status and his pending promotion have been stripped; all of this is well known by the members of the Hamilton Police Service.

In his Reasons for Sentence, Justice Pugsley noted:

A large consideration in cases where police officers assault those in their custody, and without a doubt AA was in custody when assaulted, is to deter the defendant and other officers from such actions in the future. Police officers owe a duty to serve and protect all citizens, including those they are arresting. When that duty is breached, trust is breached, and the consequences of that breach of duty must be apparent to all peace officers and to the public at large.

I accept specific and general deterrence has been somewhat addressed by certain particulars, but I am not convinced that the penalty factor has been satisfied in full; further consideration of a fitting sanction is required to address this penalty factor.

Constable Wren must understand the seriousness of his misconduct; if he were to commit further misconduct in the future, it would result in an increased sanction, likely dismissal, especially if the misconduct was of a similar nature. Similarly, all police officers must appreciate they are accountable, held to a higher standard, and they must understand the consequences that are associated to misconduct of this nature.

The Court in *R. v. O'Mara*, 2020 ABPC 201 (CanLII) stated:

It is also frequently acknowledged that the job of a police officer can be a very difficult and stressful one. Police officers who patrol downtown beats in our major cities, like this accused, deal with all manners of street crime, and difficult, rude, and sometimes violent people, as well as the homeless, the addicted and the physically and mentally ill. Nonetheless the law is clear that for crimes committed by a police officer in a position of trust, denunciation and deterrence become the most important sentencing factors.

I do not consider Specific and General Deterrence the most significant penalty factor, but it is important that the sanction imposed adequately addresses this issue. Specific and General Deterrence is an aggravating factor.

Employment History

In legal aspects of policing, Mr. Ceyskens noted that employment history represents an important proportionality factor in all cases. I agree and in fact, I find employment history can provide insight into a subject officer's character and the likelihood for rehabilitation or the lack thereof. In this instance, the officer has enjoyed a stellar career, one where his employer recognized his knowledge, skills, and abilities by elevating him to the position of full-time acting sergeant and by promoting him to the rank of sergeant (although that promotion had not yet materialized, the Chief of Police confirmed the promotion was only pending a vacancy). Constable Wren's employment history is extremely positive having been elevated to the rank of detective constable early in his career, he then held a permanent acting sergeant position and was on the list to be promoted; an officer of this calibre is often referred to as a "highflyer." I can state that Constable Wren's exceptional employment history was paramount in arriving at a disposition short of dismissal.

Constable Wren commenced his career with the Hamilton Police Service on August 29, 2011. Prior to this matter, Constable Wren had a discipline free record. In 2016 Constable

Wren was promoted to detective constable and assigned to the BEAR unit. He returned to uniform patrol in 2021 where he was a full-time acting sergeant. He was transferred to the HEAT unit in January 2022 in the capacity of permanent acting sergeant.

At the time of this incident, Constable Wren was a first-class constable but was fulfilling the role of acting sergeant. In May 2022, Constable Wren was successful in the promotional process and was to be promoted to the rank of sergeant once a vacancy appeared. The Hamilton Police Service suspended him from duty when this incident came to light and rescinded his acting sergeant status and his promotion to sergeant.

As noted, Constable Wren's employment history is very positive; to follow are excerpts from his annual performance evaluations. The Performance Appraisal and Development Plan for 2014 notes:

- Constable Wren was the highest performing officer on the squad for 2014 in the areas of traffic enforcement and impaired driving arrests. He also performed exceptionally well with the criminal intelligence reports generated and self initiated arrests.
- Brian led by example in many areas such as RIDE lanes where he would routinely initiate an event instead of waiting for someone else to do it.
- Brian treats his peers and the public with respect and always remains calm during calls for service that are volatile in nature.

On January 1, 2017, Constable Wren was elevated to the rank of detective constable in the BEAR unit. The Performance Appraisal and Development Plan for 2017 notes:

- Brian is a strong team player and works well in that environment.
- Brian has a clear understanding of the ethical accountability and responsibility that comes with his current detail and policing in general.

The Performance Appraisal and Development Plan for 2018 was also very positive. The Performance Appraisal and Development Plan for 2020 noted:

- Brian has excelled in his fourth year as the scrap/by-law investigator in the BEAR unit. He displays a strong personal commitment to successfully completing all projects. He takes pride in his work and continually strives to make himself a better officer. He has a well-deserved reputation for accuracy, completeness, and integrity.
- Brian creates an inclusive work environment and is quick to recognize the hard work of others...
- He is always quick to share success and acknowledge individual contributions.
- Brian is a confident officer who is able to apply legislation, policies, and procedures. Brian freely gives of his experience and is able to communicate in a

confident and positive manner. Further, he makes a favorable impression and easily gains acceptance by others using his interpersonal skills and compassion. This is evident when he communicates with internal and external partners, as well when assisting victims of crime.

- He has built and maintained relationships with internal partners (Intelligence Branch, Vice and Drugs, Forensics, Uniform Patrol) as well as external partners... He continues to represent the service in a professional and competent manner. Brian also excels when interacting with arrested persons, in that he quickly builds rapport with them which many times results in intelligence being obtained. He is also very aware of his surroundings ensuring his personal safety and the safety of others.
- Brian continues to expand his breadth and depth of experience and development, not only as an investigator, but in his personal life as well. This year Brian successfully completed "Indigenous Canada," an online course facilitated by the University of Alberta. Brian is also currently enrolled in Niagara College and completed two college courses this year... Brian has completed five out of seven college courses towards the Occupational Health and Safety Certificate.

At tab 18 of Exhibit #11 is a document titled "Divisional Review 2022 – Constable to Sergeant." The document is used to assess a candidate's qualifications for promotion and consists of 100 elements or areas of focus under the following categories: Interactive Communication; Leadership; Adaptability; Relationships and Interpersonal Skills; Task Management and Problem Solving; Production; Personal Development; Promotes a Learning Organization; and Education and Volunteering. For each element of category, a candidate is rated from a score of one to seven by a panel of five assessors and a facilitator ranging in rank from sergeant to superintendent. A perfect score, which seems not only illogical, but impossible, would be 700; Constable Wren received a score of 665 which I find rather remarkable.

Under the headings Interactive Communication, and Leadership, Constable Wren received a score of seven in 27 categories and a score of six in the remaining one. The rating system is as follows: (1) never; (2) rarely; (3) occasionally; (4) capable - with direction; (5) usually; (6) always; And (7) demonstrates at a level above and beyond others (self initiated). For example, Constable Wren received perfect scores for the following elements: respected by peers and supervisors; Demonstrates high ethical standards; Is a role model in terms of ethics, conduct, and living our organizational values; Consistently demonstrates the strength of character to defend unpopular but appropriate decisions; Makes appropriate decisions, considering all the circumstances (can manage risk); Responds appropriately and effectively in a crisis; Understands situational leadership and adopts appropriately; Has the confidence of their peers to supervise.

The assessment is outstanding, it resulted in Constable Wren getting on the promotional list, but I find it noteworthy that it was completed April 27, 2022; one month prior to this incident. Therefore, throughout his career and most importantly, at the time of this matter, Constable Wren was held in very high regard by his subordinates, his peers, and his supervisors alike. I find this assessment to be a compelling document which speaks to Constable Wren's character as a person and his value to the Hamilton Police Service.

I find Employment History to be an important, considerable, mitigating factor.

Recognition of the Seriousness of the Misconduct / Potential for Rehabilitation

Recognition of the Seriousness of the Misconduct and Potential for Rehabilitation are two separate penalty factors but I find them so closely related in this instance that I will address them simultaneously.

In *Favretto*, the Court stated:

...we believe that rehabilitation is a very important and significant factor when considering an appropriate penalty... The community has a significant investment in every police officer and before an officer is dismissed, every attempt should be made to consider whether or not rehabilitation is possible. This is of significant importance when the subject officer has had a clear record and good performance evaluations....

Favretto noted that I must consider whether Constable Wren can be rehabilitated; can he once again be an asset to the Hamilton Police Service and to the general community as a police officer? Constable Wren's ability to reform or lack thereof is an integral factor as to whether he ought to maintain his employment.

The public has a significant investment in every police officer, but I would suggest even more so when the officer has enjoyed an exemplary 11-year career. Mitigation is warranted in regard to Constable Wren's guilty pleas in criminal court and before this Tribunal, but I note that such consideration must be tempered given the strength of the respective cases; Constable Wren's actions were captured via uncontroverted video evidence, it would have been difficult to defend those actions. Nonetheless, I consider his early guilty pleas a recognition of the seriousness of his misconduct.

Constable Wren addressed the Court as noted in Exhibit #6 where in part, he stated:

I take responsibility for my actions on May 26th, and I confirm that the methods used were not the teachings of the Hamilton Police Service, but just a pure reaction myself. I went a little too far.

I'm extremely sorry for the hardships I have caused AA and also the Indigenous Community, also the Hamilton Police Service, and its citizens. I have learned from my mistakes and I am very truly sorry. And, the victim impact statements that were read today, that has also had an impact on me and I'm extremely sorry to have cast such a negative light by my occurrence. And, just overall, I'm very extremely sorry, and I've learned a very valuable lesson from all this.

At tab 47 of Exhibit #6 is the following letter addressed to AA, dated January 1, 2024 (Constable Wren received permission to contact AA directly for this purpose). It reads:

I am writing this letter to express my deepest apologies and sincere remorse for the assault that occurred in May 2022. I have taken my time and reflected over the past and have completed so much learning and thinking and have looked inside myself with the help of therapists, family, and professionals, to really help me understand fully the trauma that this has impacted on you, your family, and community...

I just want to let you know that my actions were wrong and inexcusable that evening and I take full responsibility and I am sorry for all of it. I have reviewed all of the case details and listened carefully to your statement regarding the assault. This has helped me understand the difficult and negative experiences faced by you and I have focused my learning and reading toward the direction of the negative impacts and difficulties of victim faces. I now understand more the challenges that you have faced and can now empathize how this has impacted you overall.

I am ashamed of my actions and I know that I have caused you and your family a great deal of unnecessary pain, suffering, and unwanted media attention and for this I can only hope my apology will be enough to show I am extremely sorry for my unacceptable behavior....

I have no right to expect forgiveness, but I am asking nonetheless, I was wrong. This whole negative experience has required me to take all responsibility, accountability, and understanding of my behavior and has also required me to understand the impact my consequences have had on your life.

I am truly sorry for the negative impact I have caused you, your family, and community.

Constable Wren addressed the Tribunal, making the following statement:

I just wanted to say thank you for allowing me the opportunity to speak today. Firstly, I would like to say that I made a mistake and I've taken full responsibility for the offence of assault. My behaviour and actions on March 26th, 2022, my behaviour was not acceptable, and I regret my actions whole heartedly. I'm ashamed and humiliated by this occurrence, acknowledge the damage this has placed on everyone affected, especially Mr. AA. I've been striving to make amends and be more sensitive in the future to improve, and I sincerely apologize.

I would like to apologize to Mr. AA. I truly am sorry for my actions, and I recognize that this interaction has had a profound impact on your life, your mental health, and trust in policing. There's no excuse for my behaviour on that evening and I sincerely do apologize. I accept all responsibility for my conduct, which I regret doing and acknowledge that no one has the right to assault another person. I blame no one other than myself and express my sincere regret and shame for my actions. I truly am sorry.

I would also like to apologize to the Indigenous community. I apologize for my actions, behaviour, and negative impact this interaction has caused and take responsibility for any pain or frustration. I am aware of the struggles between Indigenous persons and police and this incident I solely take accountability for. I know that the Hamilton Police Service is always working towards positive interactions with everyone in the community. I have personally put a blemish on this path to mending past relationships. I realize that my conduct has harmed the Indigenous community and I sincerely apologize.

I would like to apologize to the Hamilton Police Service, the City of Hamilton's residents, and all of my Hamilton Police Service colleagues. My actions have caused a black cloud on the Police Service and betrayed trust to the community, which has caused a strained relationship. This negative occurrence, I truly am sorry for. And I understand the impact that it has had on the trust between police and the public.

I would like to say that I am truly sorry for all the hardships my actions have caused everyone involved and I would like to clarify this occurrence had nothing to do with race or ethnicity. My actions were the result of fear and being scared in a dynamic situation. I am aware I have cast a negative light on the amazing work Hamilton Police Service does on a daily basis and I have become -- I've been working towards becoming a better person and moving forward.

Over the last 22 months I have been committed to making sure this never happens again by continuous therapy, self-guided reading, and self-help in all the areas that encompass my actions. I understand that my inexcusable and reprehensible behaviour has caused Mr. AA and his family an enormous amount of pain and suffering over the past two years. For this, I truly am sorry.

2011 was a very proud day for me. I became a police officer; my second career. And every day I gave 110 percent to the community and to the Service. At that point, I worked over 10,000 hours as a police officer and this was spur of the moment, 20 second blemish on that career of over 10,000 hours, which I regret completely.

I still remember the very first day that I was hired as a police officer, then Chief Glenn De Caire spoke to all of us new officers and addressed all the new hires. Words he said that stuck with me, Chief Glenn De Caire explained the difference between a mistake of the mind and a mistake of the heart. He stated he'd always have the back of his officer who made a mistake of the heart, and truly on that day I regret my actions, but I believe that I made a mistake of the heart.

I find Constable Wren's apologies sincere and heartfelt. I accept that he is genuinely sorry for his actions and understands the effect they have had on the Hamilton Police Service, AA, and the community. He has accepted responsibility for his actions but his apologies are tempered slightly as he looked to explain his actions by noting AA was wanted in multiple jurisdictions, was a violent offender who may have been in possession of a firearm and he reacted out of fear in a dynamic situation for his fellow officers, for the public, and for himself.

Kelli Nicholson is a psychotherapist who, on February 2, 2024, wrote:

This letter is to provide information regarding Mr. Wren's participation and engagement in therapy related to a highly publicized incident while on duty. I have seen Mr. Wren since July 2022. He attends regular sessions and engages in strategies discussed. Throughout this process he has demonstrated an understanding of the impact his actions on those he interacted with at the time of the incident. He presents as remorseful and remains engaged in understanding himself and why he chose these behaviors.

Knowing Mr. Wren for this time has allowed me to see how our actions in one particular incident don't necessarily reflect who we are as people. I assess Mr. Wren as a kind, empathetic, and well-regulated individual. I hope that these qualities are given weight in the determination of his circumstances.

Susan Chudzik-Sipos is a clinical psychologist. In a letter dated February 7, 2024, she wrote:

This letter is being sent on behalf of Constable Brian Wren. Constable Wren has attended 23 sessions of individual psychotherapy since starting treatment on June 23, 2022. Constable Wren is prompt for his appointments. He speaks openly about his thoughts and feelings and is engaged in the therapy process. He demonstrates a strong motivation and desire to understand his actions on May 26, 2022. In addition, he is committed to taking the necessary steps to ensure this type of event does not reoccur. He has expressed and demonstrated deep remorse and regret for his actions....

Constable Wren has improved his level of self-care, gained insight into himself, and is more psychologically minded. Constable Wren is committed to continuing with therapy on an ongoing basis.

Constable Wren began treatment on his own accord immediately after this incident which speaks to his potential for reform, especially considering his strong employment history and the commentary noted in the numerous letters of support. At tab F of Exhibit #11 are nine letters of support from members of the public, 11 letters from current police officers, three letters from civilian staff members from the Hamilton Police Service and two letters from retired sergeants. Needless to say, they all demonstrate high regard for Constable Wren indicating this behaviour is out of character for him. It is not necessary to extract excerpts from all 25 letters but to follow is a sample. Of note, each witness, after having written their letters of support, reviewed the Agreed Statement of Facts and also viewed the video footage. Although it may have been sensible to have received the material prior to writing their letters, I still find it helpful to know their support remained steadfast.

Retired Sergeant Anthony Santostefano supervised Constable Wren in the BEAR unit for three years. He noted:

I can say with 100 percent certainty that Brian's work ethic was always one of the best in the unit and he was always willing to take on any assignment without any hesitation. Brian is always a team player with a positive attitude and always willing to offer his assistance whenever he could. Brian has exhibited exemplary qualities as a law enforcement professional having witnessed his dedication to the community and I can attest that Brian is a reliable compassionate officer who strives to build positive relationships within the community.... It was through the media that I learned about the incident Brian was involved in and I was in shock. I was in shock only because I knew this was definitely out of character for Brian and not something the Brian that I worked with would take part in.

Detective Greg Blunsdon Was partnered with Constable Wren in the BEAR unit for two years. He noted:

I can say that I never worked with a more diligent, patient, and thorough officer.... During the time that I worked with Brian I witnessed firsthand his integrity, resilience, and commitment to facing challenges head on. Throughout this unfortunate situation Brian has done the same, he has taken ownership and he has faced everything directly, with honesty and integrity.

George Gallant is a retired detective from the Hamilton Police Service. He has known Constable Wren since 2017 when he was his direct supervisor in the BEAR unit. Detective Gallant noted:

Brian is efficient, detail-oriented, and extremely competent as a sworn police officer with the Hamilton Police Service. He often finished tasks well before the scheduled deadline and was very well organized as an investigator. I worked with Brian on numerous dynamic operations and projects and I always found his decision-making capabilities very sound and competent.... I was involved in several arrests with Brian, some of which were dynamic with violent suspects, and again I always found his conduct sound and his decision-making solid. Brian always relied on his training to conduct these operations and arrests. Brian always treated his coworkers, the public, and suspects/accused persons with the utmost respect and conviction. I supported Brian in his application, and ultimate success at being promoted to the rank of sergeant with the Hamilton Police Service. I believed, and still believe, that Brian will be a positive influence within the Hamilton Police Service as a leader to younger members of the Service and members of the public in general.

Riyazal Siddiq is a civilian member of the Hamilton Police Service. He worked alongside Constable Wren on a daily basis for four years in the BEAR unit. Mr. Siddiq noted:

Brian was always a very hard-working officer and extremely motivated to further his career by continuing his education and continually taking college courses. Brian is a very liked person at work due to his easygoing nature and always willing to help anyone. When I first heard of what had happened, I was shocked that Brian was involved in a situation like that as he is always been level-headed and a calm individual. Police officers face stressful situations and I know that Brian is remorseful for his actions and has taken accountability.

I noted that when Ms. Wysynski was reading snippets from each of the letters submitted, Constable Wren showed genuine emotion, consistent with the type of person described by those who know him best. I was particularly struck by the following comments made by Tim Bauer, a sergeant with the Hamilton Police Service. He was one of Constable

Wren's supervisors in the BEAR unit for a number of years. Sergeant Bauer stated:

I found Brian to be a very competent and skilled investigator. As Brian's investigative and leadership skills grew, I was happy to support him in his efforts towards promotion to the rank of sergeant. Personally, I found Brian to be a very positive and likable person with whom I developed a friendship.

Brian demonstrated a "can do" attitude that made him the "go to" person for complex investigations including his expertise in warrant writing and larger complex "projects." Brian was respected by the other officers in the unit as well as the supervision team within the BEAR unit. In my capacity within the BEAR unit, I would occasionally participate in high-risk dynamic entry warrants with Brian and members of the BEAR unit. During these exceptionally fluid tasks I found Brian to be professional, using the least force necessary to complete the task.

I was shocked when I heard that Brian was involved in this incident. I have never known Brian to use excessive force and would describe him as an easygoing person. This incident is not the norm for Brian Wren and I would request that while he has pled guilty and admitted his wrongdoing one action should not define who he is. Brian has much more to offer the citizens of the City of Hamilton. He is a skilled officer who, with the exception of this isolated incident, demonstrates the values of the policing profession. These values are demonstrated by Brian taking responsibility for his actions by pleading guilty to the offence of assault.

In *Seamons v. Durham Regional Police Service*, 2006 ONCPC 8, the Commission noted that despite the existence of positive character references, it is open to a hearing officer to have concern about an officer's potential to reform. In *Nelles v. Cobourg Police Service*, 2007 ONCPC 7, the Commission noted:

He [the hearing officer] acknowledged that Constable Nelles' "career history indicates a high level of professionalism, enthusiasm, and capability." He noted the guilty plea to the disciplinary charges and the positive character reference. However at the end of the day he concluded that these were insufficient to mitigate against immediate dismissal given that Constable Nelles had "irreversibly harmed" his relationship with his employer.

That is not the situation here. Granted, character references who give *viva voce* evidence subjected to cross examination can receive greater weight than mere letters, but the evidence in totality, not just the character letters suggests this was an isolated incident and out of character for Constable Wren. The numerous character letters reinforce Constable Wren's strong employment history, demonstrating Constable Wren is a strong candidate for rehabilitation.

Constable Wren's continuing education over the past seven years includes university and college courses: Occupational Health and Safety Certificate Program; Diversity and Inclusion in the Workplace 4-week course; Psychological First Aid 5-week course; and a 12-week course titled Indigenous Canada. His community volunteer work includes coaching Timbits soccer, being a board member for Hamilton Water Polo, and a team member of Beyond the Streets.

In the document "Divisional Review 2022 – Constable to Sergeant," Constable Wren was rated at, "demonstrates at a level above and beyond others" for the following: admits mistakes and learns from them, handles negative critiques constructively, takes action to improve personal knowledge, skills, and abilities, is self confident and has a realistic appraisal of self, and, does what is best for the organization, the members, and the community; characteristics which bode well for the likelihood of reform.

With the exception of this isolated incident, Constable Wren has been a credit to his community and to the Hamilton Police Service; I expect that can continue, I do not expect this type of behaviour to be repeated.

I find Recognition of the Seriousness of the Misconduct and Constable Wren's Potential for Rehabilitation to be substantial mitigating factors for consideration.

Effect on Constable Wren and his Family

The dispositions proposed by counsel would have vastly different effects on Constable Wren and his family. However, because I do not find that dismissal or a forfeiture of hours are appropriate sanctions, I need not consider the consequences they might have, instead, I will focus on a demotion in rank.

Constable Wren effectively has already been demoted; as a direct result of this incident, his promotion to sergeant has been rescinded. There is a caveat to his rank being revoked; the Hamilton Police Association has filed a grievance against that decision. That grievance has not yet been heard; it is pending this decision as a disposition of dismissal would have made the issue moot.

Constable Wren was an acting sergeant at the time of this incident but he was returned to the rank of constable when he was suspended from duty. This resulted in the obvious loss of overtime and access to paid duties but that is a natural consequence of his actions, being a police officer and acting in a rank are not rights, they are privileges.

I find that a demotion in rank is appropriate but it is the length of that demotion and to what degree that I must determine is most fitting. Any demotion will have a significant financial impact on Constable Wren and his family. There is approximately a \$15,000 disparity in pay between a first-class constable and second-class constable and another \$10,000 between second-class constable and third-class.

Any term of demotion will have a significant monetary impact on Constable Wren and his family. While I consider this penalty factor mitigating, it is a necessary consequence of Constable Wren's actions.

Consistency of Penalty

In Legal Aspects of Policing, Mr. Ceyssens noted:

In the context of the police complaint and discipline process, the Ontario Court of Appeal has confirmed the principle that tribunals are not bound by tribunal precedence. In *Favretto v. Ontario Provincial Police Commissioner*, the Court of Appeal confirmed that the principle of *stare decisis* does not apply in such cases: "... tribunals are not bound by their previous decisions. The principle of *stare decisis* does not apply to administrative tribunals."

... Since *Favretto*, the Ontario Divisional Court has continued to place reliance on consistency as a disposition consideration. Thus, "although ...*stare decisis* does not apply to administrative tribunals, a comparison of similar cases is an essential component when considering the appropriate penalty."

... Parity represents one of the "basic principles of the discipline process," and flows from the philosophy that similar misconduct should be treated in similar fashion... The Ontario Police Commission expressed the law in *Schofield and Metropolitan Toronto Police*:

Consistency in the discipline process is often the earmark of fairness. The penalty must be consistent with the facts, and consistent with similar cases.

Consistency in penalty is essential to ensure the disposition imposed is not only fitting, but within the range of penalties established by sanctions imposed in other cases regarding similar misconduct. I am not bound by dispositions imposed in similar fact cases; I am permitted to impose a sanction outside the range of penalties established, but extenuating circumstances must exist to warrant divergence from the range of penalties that have been recognized as fitting.

It would be unrealistic to expect counsel to have identified cases that are exactly on point factually, however, the cases submitted for consideration can be used to assist me in establishing the range of penalties available, applicable to the specific misconduct in this matter.

In *Orser v. Ontario Provincial Police*, 2018 ONCPC 7, the Commission stated:

We also note that the presence of cases involving lesser penalties is not determinative. As the Commission has previously observed, assessments of appropriate penalties are not only fact specific, they may shift and evolve over time. Consistency of penalties should not be applied in a way that results in penalties being frozen in time period responses to misconduct should bear some connection to societal norms.

When reviewing the cases submitted for my consideration, not only will I focus on the parallels that might be present, I will also take note of the disposition dates because the public views this type of police misconduct much differently now than in years past; there is a greater intolerance than ever for behaviour of this nature.

Ms. Barrow submitted the matter of *Turpin and Durham Regional Police Service*, 2016 CanLII 13878 (ON CPC) which resulted in dismissal, but I find the features of that matter more serious. It involved two separate incidents where the officer assaulted prisoners. In the first, the officer threatened the prisoner, then grounded him twice and in the second, the prisoner who was handcuffed behind his back with his pants around his ankles, was violently grounded. The injuries sustained included a cut above the eye and black eyes. The officer had multiple prior matters of misconduct, two of which were for unlawful or unnecessary exercise of authority. The disparity in fact and employment history separates the two matters.

Similarly, I find the facts in *Wiles v. Durham Regional Police Service*, 2014 ONCPC 15, to be more serious than the facts in this matter. The officer unlawfully entered a residence where he effected an arrest (deemed unlawful based on the unlawful entry) and then forcibly grounded the arrested party twice. The officer had a previous disciplinary history which included two convictions under the *Police Services Act* and a previous guilty finding for assault in criminal court which in itself distinguishes itself from this matter.

In *Venables v. York Regional Police Service*, 2008 ONCPC 8, the officer only had three years of experience which is a significant disparity on its own. The officer was dismissed because he issued a discriminatory slur and punched a handcuffed prisoner who was seated in the back of a cruiser. I find the factors more serious in *Venables* than in this matter. As noted by the Commission, “unprovoked violence by a police officer on a citizen

is never acceptable. Unprovoked violence motivated by ethnic intolerance is exponentially more offensive.” Furthermore, it was only one punch but it was delivered to a passive, handcuffed prisoner seated in a cruiser as opposed to during an active arrest.

Turpin, Wiles, and Venables illustrate that dismissal can be appropriate in matters of police exercising unlawful force on a defenceless prisoner given the right circumstances.

In *Groot*, the relatively junior officer assaulted a heavily intoxicated handcuffed prisoner resulting in facial lacerations, and a cut on his forehead reaching the skull. In the criminal proceedings the Court determined that the officer fabricated his account of the events which led to the injuries. The officer had very strong rehabilitation potential yet the result was dismissal. I find the facts more serious in *Groot* than in this case based on the seriousness of the misconduct, the extent of the injuries, the intent to mislead, and the penalty factor of employment history.

Ms. Barrow submitted the matter of *Gould v. Toronto Police Service*, 2016 CanLII 64893 (ON CPC) to illustrate dismissal is an appropriate penalty in matters of serious assaults on people under the care and control of the police. In *Gould*, the officer taunted a handcuffed, combative individual by daring him to spit in his face. The prisoner spat as instructed. The officer then repeatedly struck the prisoner in the face or head. The officer received a conditional discharge in criminal court. In addition to being factually disparate, another distinguishing feature between the two matters is employment history; Constable Gould’s disciplinary record comprised of four informal disciplines in 2009 and 2010, a conviction of one count of insubordination in 2012, and another count of discreditable conduct in 2014. The Commission noted the Toronto Police Service conceded the penalty of dismissal was at the high end of the range of penalties given in similar cases, but that it was nevertheless reasonable and warranted.

I find that the above noted cases indicate that dismissal is in the range of available penalties if I were to focus solely on the seriousness of the misconduct. However, not only are there disparities of the facts from these matters, previous misconduct was an issue in *Turpin* and in *Wiles*, while in *Venables*, the officer had three years’ experience. As indicated, I place significant weight on an officer’s employment history, in this instance, Constable Wren’s employment history is weighty and it is the penalty factor that separates this matter from most others.

Ms. Wysynski submitted 28 cases for my consideration, 20 of them involved excessive use of force on a person in police custody which resulted in a forfeiture of hours. Ms. Wysynski indicated the matters of *Boer v. Thunder Bay Police Service*, 2018 (unreported), *Batista v. Smith and Ottawa Police Service*, 2007 ONCPC 6 (CanLII), and *Jacobs v.*

Ottawa Police Service, 2014 ONCPC 2 (CanLII), were the matters most factually on point. I will not consider the matter of *Jacobs* as it was later overturned by the Court of Appeal.

In *Boer*, an officer was dispatched to a break and enter in progress. The officer located a male person in the area which resulted in a foot pursuit. The officer threatened, “if you don’t stop running I’m going to kick your ass.” The male person was ultimately tackled to the ground and the officer delivered three closed fist strikes to the back of his head. It was determined those strikes were unnecessary to effect the arrest. The officer entered a guilty plea to unnecessary exercise of authority. The hearing officer noted the incident was an “adrenaline evoking event” and gave credit for a strong employment history. He also found that a demotion in rank “would be unduly harsh, when considering all of the aspects of the events... when taken in the context of a relatively unexpected and physically taxing pursuit.” The hearing officer ordered the officer forfeit 40 hours in addition to training and or counselling.

I find it noteworthy that the public complainant in *Boer* submitted that the officer need not be demoted and suggested a public apology and diversity training was an appropriate result. Additionally, I find the seriousness of misconduct greater in this matter than in *Boer*, there were repeated kicks to AA’s head which resulted in a criminal conviction.

In *Batista* the officer deployed a taser. The hearing officer concluded the officer’s use of the taser was inappropriate and based on a flawed decision, it constituted an error of judgement. The hearing officer noted the officer’s acting sergeant status had been reverted to the rank of constable resulting in a loss of pay of approximately \$10,000. He noted the officer’s actions were an error for which he had suffered obvious consequences and he subsequently assessed a penalty of reprimand which was upheld by the Commission. I find the facts to be very different, *Batista* was an error of judgment in deciding to use a taser; very different from repeated kicks to a detained person’s head which resulted in a criminal conviction.

The matters of *Kerr v. Metropolitan Toronto Police*, *Partridge v. Durham Regional Police Service*, and *Turgeon v. Ontario Provincial Police* are from 1981, 1998, and 1999. Those cases involved unnecessary use of force which resulted in a loss of hours; they are helpful to illustrate that this was an appropriate penalty approximately 25 years ago.

In the matter of *Parker v. Niagara Regional Police Service*, 2007 ONCPC 16 (CanLII), the hearing officer determined Constable Parker administered pepper spray to a handcuffed prisoner in the rear of his cruiser which resulted in a forfeiture of 48 hours. The facts are disparate, Constable Wren was in the act of effecting an arrest while *Parker* was gratuitous violence, but, similar in that the officers needlessly assaulted a vulnerable,

secured prisoner. The facts in this matter are far more serious, but *Parker* does illustrate a forfeiture of hours albeit, more than 48, could possibly be considered a reasonable penalty if the misconduct was less serious.

In *Toronto Police Service and Flis and Grande, 2008*, (unreported), the two officers pleaded guilty to discreditable conduct after being found guilty of assault in criminal court for punching and slapping an arrested person in the head following a vehicle and foot pursuit. The hearing officer accepted the joint penalty positions proposed and imposed sanctions of 40 and 48 hours respectively. I find this matter useful in illustrating a forfeiture of hours was considered a reasonable sanction in 2008 (the offence occurred in 1998 but a lengthy criminal process ensued) for violence of this nature. It is my position that the public's tolerance for police violence has evolved over time, compounded by various, widely publicized video footage of police officers committing acts of violence on multiple social media platforms. My position is supported by the fact neither officer was suspended from duty while the criminal and disciplinary matters progressed, in fact one officer was promoted during that time.

In *Ontario Provincial Police and Smith, 2013* (unreported) the hearing officer accepted the joint penalty proposed and ordered the officer forfeit 40 hours after having been found guilty of assault in criminal court. Multiple officers entered a cell to place the prisoner in leg irons because of his erratic, assaultive behaviour. The prisoner was handcuffed and when he was taken to the floor he was unable to protect himself; Constable Smith was observed protecting the prisoner's head from striking the floor. Once fully restrained, the officer kicked the prisoner in the leg (not deemed to be a violent strike) and then twice stepped on his buttocks. Because of the significant disparity in facts, *Smith* is of limited assistance.

In the unreported matter of *Toronto Police Service and Wilson, 2013*, the officer applied unnecessary force with her foot to a person in custody, handcuffed, and under the care of other officers. The hearing officer ordered a forfeiture of 40 hours. Again, this is one strike versus repeated kicks and stomps to the head so not that helpful.

In *Ottawa Police Service and Maseruka, 2016* (unreported) the hearing officer accepted the joint penalty position of a forfeiture of 56 hours. The officer used excessive force in effecting an arrest by throwing a male person down two stairs and then striking him in the face. Once the male was handcuffed, the officer threw him with force to the ground. Parts of the assault were captured on video and posted on-line. The seriousness of the misconduct is less in *Maseruka* than in this matter but the case does illustrate that a loss of hours can be considered reasonable in certain matters of excessive force on a restrained prisoner.

In the matter of *Hamilton Police Service and Park*, 2018 (unreported), the hearing officer accepted the joint penalty and ordered the officer to forfeit 120 hours. The officer was found guilty of assault in criminal court where he received a suspended sentence. The decision has limited information related to the incident; Ms. Barrow submitted it related to the officer striking a person after being spit on. The involved person received a broken cheek bone but of note, the officer was found not guilty of assault bodily harm, consequently, the extent of the injury is not a significant factor as it was not tied to the actual offence. Again, it is one strike versus repeated blows to the face and head.

In *Peel Regional Police Service and Mazzotta*, 2018 (unreported), the officer entered a guilty plea to discreditable conduct in relation to a guilty finding in criminal court for assault. The hearing officer accepted the joint penalty proposed and ordered the officer to forfeit 16 hours. The officer was off duty when he stopped to intervene after noticing a fight in progress. Once the altercation was under control, the officer shoved an involved person from behind and took him to the ground. The person had previously fractured his wrist, which was re-fractured during the incident but the crown attorney did not allege the cause of the injury was intentional. The facts are far less severe in *Mazzotta* but the sanction of 16 hours illustrates that in some instances, police violence can result in a minor sanction.

In the matter of *London Police Service and Paquette*, 2018 (unreported) the officer was found guilty of assault in criminal court where he received a conditional discharge. A female prisoner was assaultive and had kicked another officer. Once she was restrained, Sergeant Paquette kicked her in the lower back. While escorting her, the prisoner bit Sergeant Paquette's hand; he responded by punching her in the face and later kicked her once again in the back. Following a joint position on penalty, the hearing officer ordered the officer suspended from duty for 25 days, or 200 hours. The hearing officer considered medical issues which were a contributing factor and noted that he may have been more inclined to administer a more stringent penalty if it were not for the positive comments and observations relayed to him by counsel.

Ms. Wysynski provided the Tribunal with a document denoting the current salary structure for Hamilton Police Service. It was not marked as an exhibit; it was provided as a guide to illustrate estimated financial losses. Of note, if a first-class constable were to be suspended for 25 days without pay, it would result in a loss of over \$10,000. If I were to impose a demotion in rank from first-class constable to second-class constable for a term of one year, it would result in a loss of approximately \$14,000.

Therefore a demotion in one rank is a reasonable comparator to a 25-day suspension without pay. However, Constable Wren also forfeited his acting sergeant position and his

promotion to sergeant was rescinded adding to the magnitude of his penalty which is appropriate since I consider the seriousness of his misconduct greater than that of Sergeant Pacquette.

In the matter of *Nobody and Goortani and Toronto Police Service, 2018*, ONCPC (CanLII), the officer was convicted of assault with a weapon in criminal court, he subsequently entered a plea of guilty to discreditable conduct. During the G20 Summit Constable Nobody assisted other officers who were grappling with a male person by delivering a series of forceful baton thrusts upon the male's thigh in order to secure compliance. The Toronto Police Service sought a one-year demotion in rank, the public complainant sought dismissal, but the Commission upheld the hearing officers penalty of a forfeiture of 40 hours. Constable Nobody's actions which were video recorded by at least three persons did not cause injury to the male person.

Like many of the cases submitted, there are some similarities, such as the lawful arrest of a person and a criminal conviction for excessive force applied during the apprehension by multiple police officers simultaneously captured on video. The difference being that force was applied to the thigh albeit with a baton as opposed to repeated kicks to AA's face and head. The Commission imposing a sanction of 40 hours in 2018 demonstrates that a loss of hours could be considered for serious matters of excessive use of force.

In the 2018 unreported matter of *Ottawa Police Service and Boldirev*, the officer entered a guilty plea to one count of unlawful or unnecessary exercise of authority for twice striking a handcuffed prisoner in the head, face, or neck area when the prisoner was attempting to get up from the back seat of the cruiser. The hearing officer accepted the joint penalty proposed of a forfeiture of 56 hours. The facts are less serious than in this case but nonetheless, *Boldirev* illustrates a loss of hours could be an appropriate sanction in cases of excessive force to a restrained prisoner.

In the matter of *Thomson and Ottawa Police Service, 2018* (unreported), the hearing officer accepted the officer's guilty plea to unlawful or unnecessary exercise of authority and the joint penalty position of a loss of 40 hours. A hospital patient was being disruptive by yelling obscenities and being belligerent to staff; the officer struck the patient's neck and choked him for a period of time. The facts are less serious than in this matter but the case illustrates a loss of hours could be an appropriate sanction in cases of excessive force to a restrained prisoner.

The particulars of *Johnson v. Durham Regional Police Service, 2020 ONCPC 3* (CanLII) are too disparate to be of any assistance.

I was the hearing officer for the unreported matter of *Hamilton Police Service and Cole*, 2023, where the officer was found guilty of assault after pleading guilty in criminal court. Constable Cole and other officers arrested a male patient pursuant to the *Mental Health*. The officers used force in their interaction which was deemed reasonable considering the patient's behaviour. Despite multiple de-escalation attempts by the officers the patient was non-compliant when the officers attempted to remove him from the cruiser at the hospital. During the extraction from the vehicle, Constable Cole grabbed the patient's inner thigh on multiple occasions, and his genitals on one occasion with an intention to cause sufficient discomfort that he would comply. I accepted the joint penalty position proposed by counsel and ordered the officer to forfeit 120 hours.

I find *Cole* assistive; the assault did not cause injury and despite the sexual component, I find it to be far less serious than repeated kicks to the face and head, yet it resulted in a loss of 120 hours on a joint penalty. It suggests to me a loss of hours would be disproportionate to the seriousness of the misconduct in this matter.

I was the hearing officer for the unreported 2023 matter of *London Police Service and Thomas* where I accepted the officer's guilty plea and the joint penalty position of a forfeiture of 80 hours. A male person was arrested and handcuffed to the rear. The male subject began to yell profanities; the officer struck him in the face with an open hand slap. The male subject was not injured. The officer pled guilty to the charge of assault and was found guilty but I find the facts far less egregious, and after a joint penalty, it still resulted in a loss of 80 hours. It suggests that a forfeiture of 72 hours is not sufficient to address the seriousness of the misconduct in this matter even when accounting for the rescinding of his promotion.

In the unreported matter of *Halton Regional Police and Bilton*, 2023, the hearing officer accepted a guilty plea to unlawful or unnecessary exercise of authority. The officer delivered one kick to the head of an arrested and restrained person. No injury was reported. The hearing officer accepted the joint position on penalty and ordered the officer forfeit 48 hours.

I was the hearing officer in the unreported 2022 matter of *Hamilton Police Service and Milburn* which resulted in a six-month demotion in rank following a guilty plea and a joint position on penalty. The officer received a conditional discharge after pleading guilty to assault in criminal court. The officer responded to a call for service causing him to attend at the complainant's residence where an exchange took place through a partially opened door. Constable Milburn put his foot in the door so that it was unable to close. During the exchange, the officer made a grimace on his face and lunged at the complaint. The interaction was recorded on video tape and posted on social media.

The officer accepted responsibility for his actions and had a positive employment history, the seriousness of the misconduct was far less serious than in this matter yet it resulted in a six-month demotion in rank after a joint position on penalty.

As expected, none of the matters submitted were exactly on point but I thank counsel for submitting cases that I found generally, quite helpful. A number of Ms. Wysynski's cases were unreported matters based on joint penalty submissions. While they can still be assistive, joint penalty submissions often times do not account for all the particulars that would otherwise be considered by a hearing officer because concessions are frequently yielded by both sides in reaching the joint position. Conversely, I find penalties considered by the Commission provide more guidance because generally, they have considered greater particulars. By way of example, in *Paquette*, the hearing officer accepted the joint penalty proposed when he ordered the officer suspended from duty without pay for 25 days but noted, "Counsel has not offered any cases to support their position."

Of the cases submitted, I am most impacted by *Milburn*, *Pacquette*, and *Cole*. The sanction in *Milburn* was a six-month demotion and it was a 25-day suspension in *Paquette* for misconduct far less egregious. In *Cole*, the sanction was a loss of 120 hours, which equates approximately to a loss of \$6,000.00, again for misconduct that I view to be far less severe.

The cases submitted for my consideration illustrate that while a forfeiture of hours, and dismissal could both be fitting sanctions for matters of excessive use of force by police, there are many factors that must be taken into consideration when determining the most appropriate penalty as noted repeatedly by the Commission. In *Reeves v. London Police Service*, 2021 ONCPC 3, the Commission stated:

Consistency of penalty has been referred to in the case law as the "earmark of fairness." We agree with its importance in considering the imposition of a penalty, with two qualifications. First, consistency of penalty is not an absolute principle carved in stone. Second, it is rare for there to be identical cases that establish with certainty what a penalty will be in any given case. This is why a hearing officer usually decides on an appropriate range of penalties then tailors the penalty to the situation before her or him. Hearing officers often consider some or all of the 13 factors set out in *Ceyssens* and apply different weight depending on the officers personal circumstances and the nature of the misconduct.

Conclusion

Ms. Barrow submitted the aggravating factors far outweigh the mitigating factors which resulted in Constable Wren nullifying his usefulness to his community and the Hamilton Police Service. I find the penalty factors of Seriousness of the Misconduct, Damage to the Reputation of the Hamilton Police Service, and Public Interest to be significant aggravating factors. Specific and General Deterrence is also an aggravating feature but far less so. Collectively, they call for a meaningful penalty.

The aggravating factors are tempered by the mitigating features that exist, including Constable Wren's exemplary Employment History, his Recognition of his Misconduct, and the likelihood for Reform. With the exception of this isolated incident, Constable Wren has been a credit to his community and to the Hamilton Police Service; I fully expect that can continue. There is much to be said about a single, human act of frailty as opposed to the poor character associated to repeated acts of misconduct. The totality of the evidence suggests this was a momentary lapse of judgement as opposed to a character flaw that cannot be overcome. Constable Wren possesses the requisite characteristics to be successful as a police officer as has been well documented throughout his career and also by his post offence conduct; I expect him to continue to demonstrate sound moral character moving forward; I do not expect this type of behaviour to be repeated.

I have alluded to my position that there is currently a greater intolerance for misconduct of this nature. In *R. v. Osborne*, 2021ONCJ 707 (CanLII), the Court stated:

There is increasing scrutiny and public attention to police misconduct and use of force. A modern court must be tethered to evolving social norms. I notice with an important caveat - recognition of social values does not mean that a criminal sentence should appeal to the masses. As Pomerance J. stated in *R. v. Doering, supra*, "public confidence in justice is not to be confused with popular justice. The sentence must reflect an objective balancing of the relevant legal considerations. The point is simply that the prevailing social milieu is context; a source from which to derive those values calling for affirmation in a denunciatory sentence."

It is imperative I recognize the growing intolerance of use of force misconduct, but to also ensure the most fitting sanction is imposed after considering all of the penalty factors. The Court in *R. v. O'Mara*, 2020 ABPC 201 (CanLII) stated:

It has been said by numerous courts across Canada that police are in a special position of power over citizens in the community. Persons under arrest can do little to protect themselves against assaults by those whom the law has entrusted with their care. It is the law and the justice system which puts the police officer in the position of power over this citizen, and therefore it is the law and the justice system

which must protect prisoners and detainees from abuse and excessive force. When a police officer assaults an arrestee, he commits a serious crime against not only that person but a serious crime against the community, and the justice system itself.

I agree with the Court's assessment in *O'Mara*; it is a perfect explanation of why I find a demotion in rank rather than a loss of hours to be the most fitting penalty. It is my position that the public is far less tolerant than ever before when it comes to police asserting excessive force. Constable Wren's behaviour is very serious and the Hamilton Police Service's position that he should be suspended and potentially dismissed was reasonable.

I accept the prosecution's position that there is no evidence suggesting race played a role; had there been racial undertones to this misconduct, dismissal would likely have been the appropriate result. Similarly, if Constable Wren's employment history was not so remarkable, and/or if the behaviour was not isolated, and/or if the injuries sustained were more serious, dismissal may have been the more fitting penalty.

In *Batista*, the Commission stated:

This is not simply a case of the imposition of a reprimand (the lowest possible penalty) for unnecessary exercise of authority. As the hearing officer properly noted, as a consequence of his conviction on this disciplinary matter, Constable Batista forfeited his acting sergeant status. Effectively this constituted a demotion. This clearly has negatively affected his career. As well, it has had a significant monetary consequence. The combined loss of rank, salary, and reprimand, taken together represent a serious consequence that addresses any considerations that might arise with respect to a general deterrence.

In considering the most appropriate term of demotion, I find it necessary to consider the fact that Constable Wren, essentially, has already received one demotion. Constable Wren had been in an acting sergeant rank for an extended period of time and had received congratulations from the Chief of Police for his pending promotion to sergeant. I am mindful of the fact that the finality of the loss of rank to sergeant is uncertain pending the outcome of the grievance process but regardless, it in itself has been a significant sanction. If that had not occurred, I most definitely would have increased the terms and duration of demotion.

Disposition

Constable Wren committed serious misconduct which tarnished the reputation of the Hamilton Police Service, and compromised public interest; it is behaviour which necessitates a significant penalty. The *Police Services Act* Code of Conduct sentencing principles call for a corrective disposition over a punitive disposition wherever possible and the presumption of the least onerous disposition. If it were not for his commendable employment history, and the strong probability for reform, Constable Wren may have faced dismissal.

I do not agree with the prosecution's assertion that Constable Wren has nullified his usefulness to the Hamilton Police Service; he has enjoyed an exemplary career up until this incident and I am satisfied he has the ability to continue to serve his community and his employer in the same manner. I find the argument that he is a strong candidate for rehabilitation compelling, however, I do not accept that a loss of hours is appropriate; the sanction imposed must reflect the seriousness of this misconduct.

After weighing aggravating and mitigating factors, I find a demotion in rank from first-class constable to second-class constable for a term of one year strikes a balance between community expectations, fairness to Constable Wren, and the needs of the Hamilton Police Service.

Pursuant to section 85(1)(c) of the *Police Services Act*, I order Constable Wren demoted in rank from first-class constable to second-class constable for a term of one year effective immediately. At the conclusion of the one-year demotion, Constable Wren shall be returned to the rank of first-class constable.



Greg Walton
Superintendent (Ret.),
Ontario Provincial Police Adjudicator

Delivered electronically: April 29, 2024