

OTTAWA POLICE SERVICE DISCIPLINE HEARING
IN THE MATTER OF ONTARIO REGULATION 268/10

MADE UNDER THE *POLICE SERVICES ACT*, RSO 1990,
AND AMENDMENTS THERETO;

**AND IN THE MATTER OF
THE OTTAWA POLICE SERVICE**

AND

CONSTABLE CHARLES BENOIT, #1474

CHARGE:

DISCREDITABLE CONDUCT (2 counts)

DISPOSITION

Before: Superintendent (ret) Lisa TAYLOR

Appearances:

Counsel for the Prosecution: Ms. Jessica BARROW

Counsel for the Defence: Ms. Pamela MACHADO

Hearing Dates: May 26, 27, 2025

Decision delivered: July 28, 2025

This decision is parsed into the following parts:

PART I: OVERVIEW;

PART II: THE HEARING;

PART III: SUBMISSIONS, ANALYSIS and FINDINGS; and,

PART IV: DISPOSITION

PART I: OVERVIEW

Allegations of Misconduct (as amended)

COUNT ONE: DISCREDITABLE CONDUCT

Constable Charles Benoit #1474 is alleged to have committed Discreditable Conduct between March 2023 and September 2023, by making comments that he knew or ought to have known were unwelcome to AA¹, contrary section 2(1)(a)(xi) of the Code of Conduct, Ontario Regulation 268/10, as amended, and therefore contrary to section 80(1) of the *Police Services Act (PSA)*.

COUNT TWO: DISCREDITABLE CONDUCT

Constable Charles Benoit #1474 is alleged to have committed Discreditable Conduct on September 23rd, 2023, by slapping the buttocks of AA, contrary to section 2(1)(a)(xi) of the Code of Conduct, Ontario Regulation 268/10 as amended, and therefore contrary to section 80(1) of the *PSA*.

Two (2) counts of Insubordination related to the same facts in issue as the charges above were withdrawn following the hearing. `

Representation

In this matter, Ms. Machado represented Constable Benoit; Ms. Barrow represented the OPS.

Plea

On May 26, 2025, Constable Benoit, accompanied by his counsel, entered a guilty plea, assenting that the facts within the Agreed Statement of Facts (ASoF) were substantially correct. He was found guilty of two (2) counts of discreditable conduct based on clear and convincing evidence.

¹ Initials are used to protect the privacy of AA and her partner BB

Positions on Penalty

Penalty arguments were heard throughout May 26 - 27, 2025. The prosecution sought Constable Benoit's dismissal, while defence counsel proposed that a one-year demotion from first class to second class constable was a fitting penalty. Counsel supported their respective positions with submissions that are summarized within Part III of this disposition.

Decision

Having considered the submissions of counsel and the full circumstances of this matter, I order Constable Benoit demoted to second class constable for 18 months, after which time he will return to the rank of first class constable. The demotion will take effect upon Constable Benoit's return to work. My reasons for the decision are as follows:

Part II: THE HEARING

Exhibits

The exhibits for this matter are listed in Appendix 'I'.

Agreed Statement of Facts (as amended)²

Background

1. Constable Charles Benoit (cadre #1474) is a sworn member of the Ottawa Police Service (OPS). Constable Benoit has been a police officer with the OPS since 2001 and has been a member of the Neighborhood Resources Team, Central Unit, for the last seven (7) years. Further, Constable Benoit is a bicycle instructor tasked with training officers to acquire their certification. Constable Benoit is an OPS bicycle team coordinator, along with four (4) other OPS members, in the Canadian Police Memorial Ride to Remember.
2. In February of 2024, the OPS's Professional Standards Unit (PSU) became aware of allegations of sexual harassment, as well as workplace harassment by Constable Benoit, against AA. On February 26th, 2024, a Chief's Complaint was initiated, and a PSU investigation was launched.
3. The OPS's policy No. 3.24, *Violence and Harassment in the Workplace*, states:
The Ottawa Police Service must exercise due diligence in the management of

² The Appendices to the Agreed Statement of Facts are included within the exhibit list.

occupational safety risks associated with workplace violence and workplace harassment. The OPS will take all reasonable precautions to prevent workplace violence, workplace harassment, and workplace sexual harassment. Use of the terms “workplace violence”, “workplace harassment”, and “workplace sexual harassment” in this policy aligns with the definitions of these terms as prescribed by the *Occupational Health and Safety Act*. A copy of OPS Policy No. 3.24 – *Violence and Harassment in the Workplace* is attached as Appendix A.

4. The OPS’s policy No. 3.15, *Respectful Workplace*, states:

The Ottawa Police Service (OPS) and its members have a duty to provide and maintain an organizational culture of respect. The policy identifies key features of this program. They will support OPS’s intention to provide the tools, support, and information necessary to ensure members have the knowledge, willingness, and desire to treat each other respectfully.

Everyone is responsible for ensuring that any and all interactions with their coworkers will reflect their commitment to ensuring a respectful workplace.

Workplace harassment and discrimination are preventable. It is everyone’s responsibility to interact with one another in the spirit of decency, dignity, respect, and supportiveness. A copy of OPS Policy No. 3.15 – *Respectful Workplace* is attached hereto as Appendix B.

5. On March 13, 2024, AA was interviewed by the PSU Investigator. A copy of AA’s interview, both in audio and transcript format, are attached hereto as Appendix C.

6. On March 22, 2024, AA’s partner BB was interviewed by the PSU Investigator. A copy of BB’s interview, both in audio and transcript format, are attached hereto as Appendix D.

7. On April 11, 2024, Constable Benoit was interviewed by the PSU Investigator. A copy of Constable Benoit’s interview, both in audio and transcript form, is attached hereto as Appendix E.

Count 1 – Discreditable Conduct

8. On March 27, 2023, Constable Benoit contacted AA through text message to enquire if she was at work as he needed AA to sign a work-related document. AA responded that they were in the gym, which prompted Constable Benoit to reply, “Ok. We’ll come c you. You sweating yet. I’m not going in till ur sweating.” AA replied “Drenched.” A

copy of the text message exchange between Constable Benoit and AA on March 27, 2023, is attached hereto as Appendix F.

9. On May 3, 2023, Constable Benoit texted AA to ask if she could take a call. AA responded that she required five minutes to kit up for her shift. Constable Benoit responded, "Np. Was thinking I'd catch you all sweaty again." He sent a happy face emoji. AA replied "haha". A copy of this text message exchange between Constable Benoit and AA on May 3, 2023, is attached hereto as Appendix G.

10. On May 3, 2023, while at work, AA received a text message from Constable Benoit containing a screenshot of AA's *Facebook Marketplace* sale item, leather motorcycle Chaps. Constable Benoit's text message stated, "Bumm must be supper nice in this." AA responded "lol" and "that the chaps still fit", prompting Constable Benoit to state that he would need "proof of that." AA replied "bahaha...I am decluttering" Constable Benoit replied with two emojis. A copy of this text message exchange between Constable Benoit and AA is attached hereto as Appendix H.

11. AA stated in her compelled interview that these messages were unwelcome, inappropriate, and were interpreted as an invitation to send a senior constable a picture of her buttocks. Constable Benoit, as a bicycle instructor tasked with training officers, was directly involved in the certification of AA, placing him in a position of trust and authority over her. Constable Benoit acknowledged in his interview that these comments, while meant in a joking manner, were clearly inappropriate. Constable Benoit further acknowledged that as a lead bicycle instructor, he is senior to AA, and that his opinion of AA, along with others in the unit, would have been influential in his superiors' determination relating to her certification.

12. AA is a member of the 2SLGBTQQIA+ community, a sexual minority characterized as having a sexual orientation which differs from heterosexual. AA's sexuality is known to Constable Benoit.

13. On September 12, 2023, AA sent a text message to Constable Benoit containing a photograph of Constable Benoit taken by a family member of AA at the Carleton University Campus with the statement "You found my minion lol". Constable Benoit replied "hahaha. She found us...hahaha." AA replied "Ya, she's a gem." Constable Benoit replied with a heart emoji. The photograph depicted Constable Benoit alongside other members of the OPS in their uniforms at a bicycle event. During the text message exchange, Constable Benoit stated "heard you had a new gf. You still not coming back to this side. Just jump on our side for a little." M.C replied "Haha. Yes. I have a new gf And she's wonderful. Heart emoji." This message was a reference to AA's sexuality, and she perceived this as an invitation for her to "switch sides" in relation to her sexual

orientation. A copy of this text message exchange between Constable Benoit and AA on September 12, 2023, is attached hereto as Appendix I.

14. The above-noted comments and statements by Constable Benoit to AA were unprofessional and constituted sexual harassment in breach of OPS Policies 3.24 and 3.15. Constable Benoit's actions, as set out above, constitute discreditable conduct contrary to s. 2(1)(a)(xi) of the *Code of Conduct*.

Count 2 – Discreditable Conduct

15. From September 19 to September 23, 2023, AA participated in the Canadian Police Memorial Ride to Remember event, honouring police and peace officers killed in the line of duty, organized by Constable Benoit, Inspector Martin Gruxl, Sergeant Carl Grimard, Sergeant Paul Hart and Constable Todd Clark. Constable Benoit was unable to participate in the event he and his team members had organized as he was required for operational needs.

16. On September 23, 2023, AA completed the Canadian Police Memorial Ride to Remember event, finishing on Argyle Street, Ottawa, Ontario. Constable Benoit arrived at the location and parked his personal vehicle next to AA, who stepped out of her vehicle, conversing briefly with Constable Benoit.

17. Following their conversation, while outside her vehicle, AA began conversing with her partner and daughter, who were still in the vehicle. Constable Benoit approached AA from behind, slapped AA on the left buttock, creating an audibly loud noise. AA described the slap as hard.

18. AA, still dressed in their bicycle shorts, was stunned and embarrassed. AA's civilian partner, BB was shocked by the audible assault on her partner. BB felt humiliated and powerless by experience, being unable to assist her partner who was clearly embarrassed by Constable Benoit's assault.

19. Following the incident on September 23, 2023, on September 27, 2023, Constable Benoit communicated to AA through text message regarding property belonging to AA. Constable Benoit concluded the conversation, stating, "Oh and sorry for slapping ur ass the other day. I didn't know that was your gf, and on a flip side. That was a nice hard bum. Congrats," followed by the 'thumbs up' and 'ok' emojis. AA responded, "Just don't do it again, and you shall live." Constable Benoit did not reach out or try to communicate with AA following this. A copy of this text message exchange between Constable Benoit and AA on September 27, 2023, is attached hereto as Appendix J.

20. Constable Benoit acknowledged in his compelled interview that he was aware of OPS's policies on *Violence and Harassment in the Workplace* and *Respectful Workplace*. Constable Benoit acknowledged that his conversations with AA, which were intended to be a joke, were inappropriate.

21. Constable Benoit acknowledged in the same interview that his physical conduct towards AA, namely the slapping of her left buttocks, was inappropriate and beyond what is reasonable between friends.

22. The above-noted actions of Constable Benoit, including slapping AA on the buttocks and the related text exchange that followed, constitutes sexual harassment and violence and are in breach of OPS policy 3.24 and 3.15. The above-noted actions of Constable Benoit constitute discreditable conduct pursuant to s. 2(1)(a)(xi) of the *Code of Conduct*.

Witness Testimony

Over the course of two (2) days, the prosecution called one witness and defence counsel called three character witnesses. Witness testimony was then followed by AA and BB reading their victim impact statements. Constable Benoit also read a prepared statement before the tribunal.

Prosecution Witness: Superintendent David Zackrias

Superintendent Zackrias has been a member of the OPS since 2001, after having worked as an officer with the Toronto Police Service for over three (3) years. He is currently in charge of the Values Directorate after having held a variety of positions within the OPS. In 2022, Superintendent Zackrias was confirmed in his current position, overseeing the Respect, Values, and Inclusion Directorate umbrella over units of Equity, Diversity and Inclusion, and the Workplace Conflict Resolution Unit. His position reports directly to the Chief of Police.

In summary: Superintendent Zackrias reviewed the various reports, policies, and efforts of the Service in addressing the OPS "locker room" environment, noting it was a "work in progress" and it was "a bit like righting the titanic." Superintendent Zackrias acknowledged that the current system was not perfect and was evolving and, fairly agreed in cross examination that there was a lack of trauma-informed approach in internal complaints, for the complainant and the respondent officer, highlighting, "we can always do better..."

Examination in Chief

Superintendent Zackrias noted the changing demographics in Ottawa and stressed the Service should reflect the community it serves, referencing the related legislative requirements under the (PSA), that are more rigorously defined in the *Community Safety and Policing Act*

(CSPA). Further, he outlined the importance of the Service fostering and ensuring the rights of community members, being culturally competent, in order that they can provide adequate and effective police service and attract members of non-traditional communities. Discussing recruitment and retention of women in the Service and the obligation to the strategic priorities set by the board, Superintendent Zackrias outlined the need to look at the culture internally and ensure women are supported and protected. He noted that the Service has done very well with bringing women in but is struggling to keep women.

Superintendent Zackrias outlined his experience in this area and his realization early on, the need to “fix our home first” and make the Service a place where members can thrive and be their authentic self, bringing their lived experience into the organization. This would heighten the trust in the community. The focus has been internal over the last few years, noting “what happens inside, plays out in the public domain and perception has an impact.”

Superintendent Zackrias referred frequently to the 2017 *OPS Gender Audit to the Board*³ and the 2021 *Rubin Thomlinson Report*⁴ which address some of the challenges and barriers of women to thrive. He highlighted the public trust element and that “when the public reads in the news or social media about the culture of the organization they will think this is not a safe place for their loved ones to be working.” He opined that the lack of public trust affects the reporting of gender-based crimes noting, “if we don’t have that trust, it erodes our ability- it affects solve rates and how we support victims of crime.” The impacts include that the community may struggle or have apprehension to come and report to the police. He testified that it is important for the person to whom one is reporting the crime, to understand lived experience. Superintendent Zackrias stressed that “as an organization we need to strive to build back and strengthen those relationships – one is working with women advocacy groups,” partnering with them and to be more transparent and hold the Service accountable such as with the “community case review.”

Superintendent Zackrias described the Service as having “a male-dominated” and “strong hockey culture”. The *OPS Gender Audit* in 2017, in which the genesis of the complaint was based on sex and family status, addressed the need to “look at the internal culture and types of systemic barriers to women to progress in their career – look for gaps and blind spots and fix them.” Using the gender-based analysis (GBA) lens, the Service has put “structures...defined guidelines and policies” in place, for example, in respect to transfers and promotions, “so people feel valued and included.”

Superintendent Zackrias outlined the seven (7) core themes and 18 recommendations of the *Rubin Thomlinson Report*. In 2020, the OPS and the board retained a law firm to help conduct a pilot regarding all workplace harassment complaints and a full review of its workplace culture.

³ Prosecution Book of Documents, Tab 4

⁴ Prosecution Book of Documents, Tab 5

He testified that the report is based on having spoken to over 160 members. The OPS has over 2000 members; all of whom had the opportunity to provide feedback in relation to the culture and how women and marginalized persons are treated within the Service. He referenced the systemic issues in how the Service deals with internal complaints and member experiences, noting there was no confidence in the Respectful Workplace Program.

Referring to the *Rubin Thomlinson Report*, Superintendent Zackrias outlined the changes the Service has made including the Directorate overseeing two branches at the strategic level, applying the EDI lens to each policy and when developing content and new projects such as the *Drive2Strategy*. The Service reports on programs and progress to the board every six (6) months noting it is an “ongoing journey...a work in progress... with lots of challenges and as with any change there is huge resistance.” He stated, “we were proactive but need to be more progressive.”

Superintendent Zackrias explained that the OPS has a Workplace Conflict Resolution Unit with a Director who oversees the team. The “prevention and restoration pillar” looks at supporting members including by training such as the “active bystander training” which makes it mandatory to intervene if a member sees something [such as sexual harassment]. He noted that this culture and the treatment of women, although some of the barriers have been addressed, the culture still exists, giving some examples. Noting there is still an unwillingness to report sexual harassment due to the fear of reprisal, there is a need to remove barriers. Superintendent Zackrias stressed that training is not the panacea, it is a culture change that is needed.

Superintendent Zackrias outlined various steps the Service had taken to create a safe work environment for OPS employees including developing the Accountability Matrix; the Code of Professional Ethics; Competencies and he shared a list of relevant training. He explained the *Drive2Strategy* that was formed in 2022, has 30 action items over four (4) focus areas; the current process for Safe Workplace complaints includes a committee of civilian directors and an Inspector who triage the complaints. More serious complaints would be referred to a third-party investigation. Being aware of the facts of this case, Superintendent Zackrias expressed concerns about the public trust, how others view the OPS and how this may impact women in the community reporting crimes, knowing it will be taken seriously. He testified that both public and member trust and confidence in the OPS is important; the OPS needs to ensure transparency and accountability.

Cross Examination

When asked if, when he was in charge of recruiting and development, it was difficult to find someone of Constable Benoit’s calibre, Superintendent Zackrias noted that recruitment and retention is a challenge across all police services. He agreed that having experienced

members leave the OPS is problematic for the Service as such members are a huge investment.

When questioned about the use of progressive discipline in accordance with the *PSA*, Superintendent Zackrias stated that as an employer, supervisors are told to use progressive discipline and include opportunities for improvement. It is an obligation that the OPS owes to all members. Superintendent Zackrias stated several times that training is not a panacea. It is one component, and one needs to look at situations on a case-by-case basis; there are times when training will not work, particularly when considering seriousness and impact on public trust and confidence.

When questioned about the Service being reactive not preventative as being one of the reasons for the matter before the tribunal, Superintendent Zackrias agreed, it is a reaction, but the Service has an obligation to address the matter. There is a commitment of the OPS and the board to improve the environment.

Superintendent Zackrias was questioned about addressing these matters best through restorative justice, education and training. He explained that restoration is an important pillar under the Safe Workplace program and that is a legal obligation under the *Occupational Health and Safety Act (OHSA)*. When asked whether restoration was as important in the serious cases and whether the OPS had appreciation to mend the relationship between two people, Superintendent Zackrias stated that it is a voluntary process. He clarified that if the matter does not meet the threshold where it would be sent to a third-party investigation, then the Chief of Police can ask for mediation.

Although Superintendent Zackrias agreed that restoration of relationships was a huge part, he explained mediation is not built into every complaint and the facts of the matter before this tribunal are more serious than the files coming through the Workplace Conflict Resolution Unit. Defence counsel noted several examples members of the OPS leadership being involved in incidents of sexual harassment and thereby failing to set the example for the membership. Superintendent Zackrias agreed those incidents do undermine the work for which he is responsible.

When questioned about the triage committee and the potential of preferential treatment of senior officers facing similar misconduct, Superintendent Zackrias testified that he was not aware of any issues. He was questioned further about any potential conflict of interest a senior manager may have sitting on the triage committee and issues of self-reporting such conflicts, Superintendent Zackrias testified he was not aware of any such issues. When questioned about supervisor misbehaviour and whether it was a culture of harassment as described in the *Rubin Thomlinson Report*, he agreed that it was the lived experiences being reported by some in 2020.

Superintendent Zackrias agreed that at a time when he himself was off work, someone had reached out to him. He stated he was not aware that no one from the OPS management had checked on Constable Benoit while he was suspended.

Reply

Superintendent Zackrias advised he had no knowledge of complaints being handled differently by the triage committee, based on the rank of the respondent officer. Further explaining, anyone on the committee would be required to declare a conflict of interest and if someone became aware of this, action could be taken and that it would go to the Chief, the Board or the Ottawa Police Association.

In clarifying the three examples of misconduct by OPS leaders brought forth by defence counsel, Superintendent Zackrias noted that the Deputy Chief is no longer an OPS member, he resigned; another senior officer, a Superintendent, is before the criminal courts and will enter the *PSA* process when that is completed; and an Inspector who was charged, retired.

In clarifying the impact of loss of a quality member of the OPS, Superintendent Zackrias noted a distinction between quality and experienced officer. The latter is based on years of service and places worked while quality is a very subjective depiction of a member. He agreed that the term quality would include how you treat and interact with women. A quality member is someone who has humility, integrity, emotional intelligence and is a selfless leader, putting others before self.

In discussing the importance of a trauma-based approach, Superintendent Zackrias outlined he is a big proponent and that every member should apply that approach. Regardless, one has to be mindful not to re-traumatize the victim, threatening their sense of safety and security by even suggesting mediation. One has to ensure it is the appropriate step. Mediation should be canvassed and only conducted when the facts are not serious; if they are serious then the employer has to take appropriate action.

In terms of the obligation to train and correct members when they make mistakes, he agrees this exists but there may be times when as a first offence, it is so egregious, it may not be appropriate. There is mandatory training through a virtual platform and if an officer was trained, was aware it was inappropriate but engaged in those actions any way, then it is clear that training was not the panacea.

In addressing questions that had been raised by defence counsel related to the OPS support group for women [called WINS] and that there was not a similar group for men, Superintendent Zackrias testified that WINS arose out of the identification of barriers for women, as follow up

to the 2017 *OPS Gender Audit*. The other support groups that exist are member driven according to Superintendent Zackrias.

Defence Witnesses

Witness 1: Rose Bergeron (Community Member)

Rose Bergeron testified as a character witness for Constable Benoit. She joined the military in 1979 posted around Canada and eventually deployed to Afghanistan. She recounted various incidents of sexual harassment she experienced throughout her career. She stated, having read the facts in this case, in her opinion, it should have been dealt with at a lower level. In the military, they were taught to deal with such issues at the lowest level and face to face. If she were unable to resolve the issue, she would go to her supervisor.

Ms. Bergeron met Constable Benoit when his daughter was playing volleyball on a team that she and her own daughter coached, the *Ottawa Mavericks, U15*. She outlined that she did not fraternize with the parents as she often had to make difficult decisions concerning players. They would set up a fun game for parents to play against their daughters. It was during such a game that Constable Benoit came to her attention. Some fathers would push you out of the way, but Constable Benoit was respectful and encouraging to others, not trying to show off. This impressed her and her daughter, and they decided to ask him to be the third coach the following year.

Ms. Bergeron testified that Constable Benoit took instructions from her well and was always helpful and respectful. She totally trusted him and was impressed with his initiative and professionalism. With little direction, she asked him to put together a circuit [training] for the girls. She observed how he dealt with the girls; encouraging and making them laugh.

At the end of the year, a banquet is held. While parents are expected to volunteer, the parents all respected Constable Benoit and chose him as the volunteer of the year. Constable Benoit dealt with all injuries and concussion protocol issues, and she never observed any interactions that were improper. There is no pattern that she has ever seen and learning that termination was being sought, she stated that as a community member, it was a horrible waste of money. Ms. Bergeron testified that as a community member, learning of this matter, thinking, "why are we paying this guy all this money to not go to work." She noted that the slap on the butt was inappropriate stating, "if the person [the victim] felt it was inappropriate then it was."

Cross Examination

Ms. Bergeron agreed that incidents like she described [throughout her military career] can have an impact on certain women, although for her it was over once dealt with. She agreed

she felt strong enough to address issues herself but that not all women feel capable and safe and that is why structures exist. She agreed some women would find it difficult to come to a supervisor.

When questioned about male dominated spaces, such as in the military, having issues with recruitment and retention of women, Ms. Bergeron agreed. Further she agreed that women should not have to put up with sexual harassment and abuse and that it should be reduced and/or eradicated. She agreed that the story of the victim in this case is important and matters.

Ms. Bergeron agreed that although she was aware of the facts of this matter as outlined in the ASoF, she did not see the attached appendices. She could accept that there are two sides to every story, and she did not have the victim's perspective.

Reply

Ms. Bergeron testified that she did not view Constable Benoit as a sexual perpetrator; she stated having seen him several times each week and some weekends; he does not disrespect women, and she has not observed any inappropriate touching.

Witness 2: Constable (retired) Jim Irving

Constable Irving testified that he had 28 years of service with the OPS following five and a half (5.5) years of service with the Toronto Police Service. He outlined various roles he had with the service including the 'Bike Unit'. As a School Resource Officer for three (3) years he would ride bikes for the summer. He then rode bikes fulltime 10 months per year for five (5) years.

As one of four (4) instructors who taught the bike course, he worked with Constable Benoit within that unit. He outlined they were all constables in the unit who brought different strengths and were all friends. He stated he knew Constable Benoit quite well as Constable Benoit was his bike instructor and it was through his (Constable Benoit's) mentorship that he became part of the 'Bike Unit.' He described there was collegiality amongst the instructors, including AA, and they would hang out and eat pizza when there were "requalifications".

He testified that he got to know AA quite well; she was a good bike rider and assisted him when he went to buy his own mountain bike, and she has rented a vacation property from him as well. Constable Irving described that he would have dinner separately with AA and with Constable Benoit. He noted that there was not a lot of contact with her outside of work, but he would pass her in the hall, say hello and give her a hug.

Constable Irving described that the instructors all worked well together and tried to make the course fun for the officers. He testified that they tried to have a lighthearted class and although

at times there may have been innuendo, he thought everything was very respectful. He did not see any flirting within the bike unit.

Constable Irving outlined various concerns about the inappropriateness of the OPS to allow people who are dating, for one to be in a supervisory position over, or dispatching their partner. He testified that would not be allowed in Toronto [Police Service] but there was no policy restricting that behaviour at the OPS.

When questioned whether he completed the *Gender Audit Survey* in 2021, Constable Irving testified that he would have filled it out even though “we were surveyed out.” He agreed that in terms of gender discrimination within the OPS, he thought it is an ongoing issue.

Constable Irving was asked whether he had experienced gender discrimination and whether he had ever been touched. Constable Irving testified that while at a retirement party, a female sergeant who was from PSU at the time, came up to him, giving him a “slap on the ass”, saying how are you doing. He noted this occurred after the proceedings with Constable Benoit had commenced. He was surprised the female sergeant did this to him, but he did not do anything about it, such as report it.

Constable Irving testified that he was an Ottawa Police Association director for nine (9) years. In terms of the Safe Workplace Office requirements of the related mandatory Canadian Police Knowledge Network (CPKN) training, Constable Irving advised that you were encouraged to get the training done as soon as possible, not to take the time to go through the online course properly and the supervisor would “tell you to get it done, just to move through it quickly and see how fast can you get through it.”

Constable Irving described how Constable Benoit cares for people around him; when Constable Irving was going through a separation, Constable Benoit, who was not his close friend, came and helped him move. He saw how kind and empathetic Constable Benoit was.

In terms of the bike course, Constable Irving went to Toronto and then to New Jersey where he resided with Constable Benoit, describing him as positive and kind and, when he was struggling, Constable Benoit would assist him.

Constable Irving testified that when Constable Benoit was charged, he (Constable Benoit) was devastated, he could not believe that AA made the complaint. He described that Constable Benoit was more concerned about her (AA's) well-being than anyone else. Constable Benoit would say how he had two daughters, and he would not want them to feel that way and was very concerned about how he made AA feel.

Constable Irving testified that Constable Benoit admitted to what had occurred, right away, took full responsibility and did not try to say it had not happened. The investigation dragged on, and it affected Constable Benoit's mental health. Constable Benoit referenced having to sign in at the Service daily and how people would walk away when they saw him, and he felt like a criminal. Constable Irving would meet him regularly, sometimes accompanying Constable Benoit to the 'sign in'. They talked about going to therapy, which Constable Irving stated had helped Constable Benoit but that he still struggles. The two meet once a week and take their dogs for a walk.

Constable Irving testified about the impact these proceedings have had on Constable Benoit's relationships, including his daughters, noting the relationships are strained. Constable Irving testified that even he has been affected in terms of knowing what is appropriate and what is not, like when he used to give a hug [to AA].

Constable Irving gave an example of dealing with a young woman who was pregnant and with whom he worked. He stated that he was happy for her but was not certain what was appropriate to say and that, to him, was sad. When questioned about whether a slap on the butt was appropriate, Constable Irving acknowledged he had done so in the past to a male colleague but not to a female. Constable Irving opined that this was not a dismissal offence, it was not a pattern of behaviour for Constable Benoit and progressive discipline should be considered.

Cross Examination

Constable Irving acknowledged he was present for the testimony of Superintendent Zackrias when he spoke of mistreatment of women in the Service and Constable Irving agreed that everyone should feel safe in the workplace. Constable Irving was asked about women being impacted disproportionately in terms of safety, he noted one can make assumptions, but he could not speak as a woman. He was questioned about recruitment and retention issues, specifically in relation to women, and he observed that overall recruitment and retention in policing was a challenge. He testified there were many factors to address this issue but agreed that reputationally, matters like this being publicized will serve to undermine the OPS' reputation in the community and this foundational trust was very important.

Constable Irving testified that he became aware Constable Benoit was facing disciplinary actions after the respondent officer was served. Constable Irving agreed that although he read the ASoF, he had not read through the attachments. He agreed that he had not spoken to AA, nor heard it from the lens of her perspective, although he acknowledged her side and feelings were valid.

The prosecution questioned Constable Irving about his testimony of the inappropriate touch by a female member on him when was attending a retirement function. He stated he was stunned by who had slapped him and particularly that it had occurred after the charges against Constable Benoit had been laid. He agreed there was no question unwanted touch was inappropriate and that a complainant should feel comfortable to report such behaviour. He agreed that consensual relationships in general are different than nonconsensual comments and touching.

In reference to his testimony in chief and him questioning about where the pendulum now lies and not wanting to offend a pregnant woman, he agreed that it was different than making comments about sexual body parts or physically touching, neither of which are appropriate.

Constable Irving agreed that he could not speak to whether or not AA and Constable Benoit could rebuild their relationship. He was asked if he knew whether AA could feel safe if Constable Benoit was given the opportunity to return, Constable Irving advised that he had not spoken to her.

Reply

Constable Irving noted that in terms of reputation, he has not seen this matter in the media and that most members are not even aware. He responded that he never observed any inappropriate behaviours from Constable Benoit to AA, "not at all."

Witness 3: Detective Constable Todd Shepard

Detective Constable Shepard is currently assigned to the OPS High Threat Offender Unit; he has been a police officer with the OPS for 27 years, and previously as an officer in Montreal from 1991 to 1998. In his current role, he deals mainly with sex offender registry compliance. Detective Constable Shepard testified that he met Constable Benoit in 2001; explaining he was the lead range instructor and Constable Benoit was a recruit. Detective Constable Shepard stated that he and Constable Benoit became fast friends and that he was immediately drawn to Constable Benoit's demeanour and ease of communicating.

Detective Constable Shepard stated that he had seen the allegations and reviewed the ASoF and that, in his opinion, "perspective is everything; how it is perceived, and context is massive." He testified that he was perplexed at the fact that Constable Benoit's termination was being sought when there are officers charged criminally, with impaired, assaults, and drug charges over the years.

Knowing the type of person Constable Benoit is, a person who, in his opinion, embodies empathy and good judgement, he approached Constable Benoit to assist his (Detective

Constable Shepard's) son with some personal struggles he had. Detective Constable Shepard testified that he knew Constable Benoit will take this experience, learn from it and come out better and the entire citizenry will benefit. Noting the challenges facing the Service needing to hire 140 officers over the next five (5) years, and that 500 officers will have less than five (5) years left, a senior constable like Constable Benoit who can teach empathy to junior members, is needed. Detective Constable Shepard outlined he had never seen any inappropriate behaviour from Constable Benoit such as is the subject of this proceeding.

Detective Constable Shepard described Constable Benoit as an officer who embodies the true spirit of policing and that he believed that how the community should judge an officer is whether they will show up and place themselves between danger and you, regardless of your skin colour, where you come from or who you love. Constable Benoit is an asset that the community should not lose. Detective Constable Shepard testified that the loss of Constable Benoit as an officer would have a significant impact on the Service and the community.

When questioned about the culture at the OPS, Detective Constable Shepard testified that he was aware there have been other instances of a similar nature. He did not wish to minimize the impact of what occurred as, in his 34 years of experience as an officer, harassment is something that exists, and all levels of harassment are unacceptable. In relation to the CPKN 'harassment' training, Detective Constable Shepard noted he was not sure when he took the training, but it is mandatory and takes about 30 minutes.

Cross Examination

Detective Constable Shepard testified he had understood the allegations but did not review the transcript of the victim statement. He indicated that he was aware of the texting and the slap, and when asked about the impact on the victim, Detective Constable Shepard stated that the impact cannot be minimized.

When questioned about being perplexed by the penalty being sought, Detective Constable Shepard agreed that he could not say what the long-term impacts were on the victim as it was dependent on the victim.

The prosecution questioned Detective Constable Shepard about his comments about all being better at the end of this which probably undermined the victim's experience. Detective Constable Shepard stated his statement was a generality. He agreed that the victim's point of view was also valid, there is nothing that justifies sexual harassment and that women historically experienced sexual harassment, particularly in policing.

No Reply

Victim Statements

The victim (AA) and her partner (BB) both read from their typed victim impact statements.⁵ Both were very emotional in speaking about their experiences related to Constable Benoit's misconduct. It is clear that Constable Benoit's words and actions have greatly impacted them, putting some strain on their relationship.

AA expressed how she felt degraded and disrespected when Constable Benoit slapped her buttocks in the presence of her daughter and her partner, BB. She stated she felt fear and that her safety at work is compromised and was concerned Constable Benoit's actions would escalate.

AA stated that Constable Benoit's misconduct has affected her ability to trust co-workers and "I think [Constable Benoit] is a dangerous person and is a danger to women around [him]."

BB spoke about witnessing the assault on AA and how she immediately felt a wave of helplessness and fear. She described the emotional burden and self-blame and how she constantly relives the moment in her mind and has lost weeks of sleep. BB expressed that Constable Benoit violated AA and then gloated about it afterwards in messages.

Officer Statement

Constable Benoit read a statement before the tribunal outlining his remorse for his misconduct and what he has learned in terms of the impact of his actions on the victim. He outlined some of the challenges he has had in his life and the impacts of this process. He was emotional as he read his statement in which he expressed he hoped to be able to apologize to the victim in the future.

Part III: SUBMISSIONS, ANALYSIS AND FINDINGS

Issue

Having found clear and convincing evidence existed to support a finding of guilt for two counts of discreditable conduct against Constable Benoit, the remaining issue is in respect to the appropriate penalty to be imposed.

⁵ Prosecution Book of Documents – Tabs 2 and 3

Submissions

Prosecution Submissions

The prosecution, Ms. Barrow, submitted that it was non-negotiable, women deserve to feel safe regardless of their position within the workplace. Further, men have the moral and legal obligation to be respectful and equitable. It was submitted that women are disproportionately impacted by sexual harassment, and the Service is very serious about addressing sexual harassment and the impacts.

Ms. Barrow highlighted that there is no context which justifies sexual harassment or violence and no context that justifies the comments made nor touching the private part of a woman's body. She outlined that Constable Benoit was not a victim of his circumstances; he abused his relationship with AA knowing or ought to have known that his words and actions were unwanted. Women are not required to give warnings to not sexually harass them, irrespective of the relationship. There is and was no mystery about what constitutes sexual violence. At that time, it was all over the media and the workplace and it is not complicated. There are tools, training and knowledge about how to act appropriately. These are undebated principles, but the policing industry has historically struggled in this regard.

The OPS is trying to make progress and vulnerable women in the community need to know that this is a safe place for them. The prosecution stressed that there is a ripple effect, and women will be watching what happens here and determine whether they can complain, if this is a good career and whether they can feel safe.

The prosecution highlighted some of the questioning of Superintendent Zackrias and the "what about men theme." It was submitted that women systemically need support. Ms. Barrow outlined that this tribunal has heard this has been blown out of proportion, could have been handled at a lower level, and that there should have been mediation. It was submitted that men who created the system and who continue to dominate the system are not underrepresented nor marginalized.

Ms. Barrow submitted that although men too deserve mentorship and training, this case is about women and about a pattern of sexual harassment and ultimately violence. Ms. Barrow noted that I would hear the OPS position on dismissal was unreasonable, that Constable Benoit is being treated like a sacrificial lamb, and he is otherwise a great police officer but at what point do we prioritize women feeling safe. There have been enough warnings and training, and one cannot engage in patterns of sexual harassment and continue to work here. She asked the tribunal to tell people in general, and members specifically, that safety is a priority, for women in particular. This matter involves a victim and a perpetrator.

The prosecution referenced the ASoF and outlined the nature of the relationship and the dynamics; both AA and the Respondent officer were part of the Neighbourhood Response Team. It was submitted that in the bike unit, Constable Benoit holds a position of power; he is the head trainer. She noted that there is a distinction between certified and other instructors and although Constable Irving emphasized that all were equal, it was submitted they were equal in rank, not power.

Ms. Barrow described that there had been an evolution and escalation of Constable Benoit's behaviour and that the text messages became flirtier and more inappropriate, and AA never flirted back; it was submitted that AA laughed, played along and changed the subject, in order to preserve the relationship. The prosecution highlighted the interview of Constable Benoit wherein he admitted it was wrong, but he stressed it was important to remember context and that he stated he often spoke to people like this, and AA never told him to stop.

Ms. Barrow submitted that context is not required and that when Constable Benoit was confronted with his messages about seeing AA "sweat" he says that he likes pushing people and teasing and that he himself is a big "sweater" and this is not teasing nor an explanation.

Ms. Barrow stressed that police are expected to be held to a higher standard and that sexual harassment is extremely serious, citing *Serco Canada*⁶ and *St. Clair College* to show that dismissal is typical for serious issues such as sexual harassment in other sectors. The prosecution acknowledged sexual harassment exists on a spectrum but submitted that this matter was at the serious end. Given police are held to a higher standard, it was submitted that dismissal was within the range.

The prosecution provided *Williams*⁷ wherein the Commission noted:

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.

The prosecution noted that in *Williams* there was a clear willingness amongst the parties, but a male employee took it too far while in this matter there was no consent at all.

Ms. Barrow outlined that defence counsel will say that Constable Benoit should not be terminated but both *Costa* and *Husseini* reiterate the proposition that no one factor is

⁶ Exhibit 9, Tab 26: *Serco Canada Inc. (Driver Examination Services) v United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 9511*, 2020 CanLII 64087

⁷ Exhibit 9, Tab 33: *Williams and Ontario Provincial Police*, unreported, December 4, 1995 (OCCPS)

paramount and that police are expected to be held to a higher standard. It was submitted these cases highlight that accountability can evolve over time and although such societal attitudes once existed, we are trying to move away from that.

The prosecution highlighted the importance of considering the Public Interest and that police officers have the duty to protect the public and uphold the integrity of the profession citing *Ceyssens*⁸ and the Commission in *Markham*⁹:

...one of the objectives of the disciplinary process is being mindful of the police officer's obligation and duty to protect the public.

The prosecution submitted that there is a strong public interest which goes beyond that, and it is to uphold the high standard expected of police and the penalty must send a message to the community that sexual harassment and violence is unacceptable. The Service counts on the public trust of the community. Historically, there has been fear in the community around reporting gender-based violence and concerns about the police sensitivity to that. It was submitted that incidents of sexual violence in the workplace and although the public at large was not impacted, vulnerable members will be. The service is working hard to eradicate sexual violence.

Ms. Barrow submitted that Constable Benoit abused his power and ignored his training and made AA feel dehumanized and unsafe and, in the face of his lack of understanding of the impacts, Constable Benoit's usefulness has been spent. A dismissal will also indicate to police officers, like with other employers, there is zero tolerance for misconduct of this nature. Acknowledging there was no case on point, the Ontario Court of Appeal in *Render* is the closest factually.

The prosecution cited *Belleville and Shorey*¹⁰, a 2017 matter involving an officer convicted of criminal harassment and breach of trust in criminal court. The officer was later dismissed after a police disciplinary hearing; the Commission upheld the dismissal. In doing so, the Commission outlined it was reasonable for the Hearing Officer in that matter to give considerable weight to nature and seriousness of misconduct, despite letters of support and a positive ability to rehabilitate which were found insufficient to overcome concerns. The prosecution submitted the same can apply in this matter.

The prosecution reminded the tribunal that the trust of the women within the organization was a consideration and this was not a one-dimensional task. It required the weighing of all aggravating factors outweighing those that are mitigating. Citing *Johnson*¹¹ a 2024 Sault Saint

⁸ Exhibit 9, Tab 34: *Paul Ceyssens, Legal Aspects of Policing*, looseleaf, (Salt Spring Island: Earls Court, 1994)

⁹ Exhibit 9, Tab 36 *Markham and Waterloo Regional PS*, 2015 ONCPC 04 para 57

¹⁰ Exhibit 9, Tab 35: *Belleville v Shorey*, 2017 CanLii 53072 para 56-57

¹¹ Exhibit 9, Tab 17: *Johnson v. Sault Ste. Marie Police Service*, 2024 ONCPC 34, para 99

Marie Police Service dismissal case, the prosecution outlined the officer's usefulness in the matter at hand had been annulled:

The Hearing Officer ultimately concluded the appellant's usefulness as a police officer "has been annulled" and ordered dismissal. He found that the seriousness of the appellant's conduct warranted dismissal and this consideration was paramount; it could not be overcome by any of the mitigating factors or indicia of the potential to rehabilitate, the Hearing Officer found in his analysis of the dispositional factors. The appellant submits that the Hearing Officer made numerous errors and asks that the penalty be varied to demotion. In our view, the Hearing Officer set out the correct test and he fairly considered the relevant dispositional factors, there is no error in principle and no basis for intervention.

Ms. Barrow stressed that issues of sexual harassment are extremely serious, and Constable Benoit's actions are entirely inconsistent with the actions of a professional police officer. Referring to *Markham*,¹² the public trust and confidence in the police is fundamental to effective policing.

Citing *Ashby*¹³ and *Brayshaw*¹⁴, the prosecution submitted that even 30 to 35 years ago people were being terminated for sexual harassment. The prosecution went on to highlight that such conduct would negatively impact the functioning of the police officer, decrease the trust of the public and lessen the respect of the Service. Ms. Barrow submitted that we need to send a message and tell victims they matter and that the penalty must go well beyond the one (1) yr demotion.

The prosecution brought my attention to *Brudlo*¹⁵ noting there were similarities to the current context as is involved unwanted comments and touching. Although in *Brudlo* the officer had a lengthy employment history, there was a history of prior misconduct, and the Commission upheld the penalty of dismissal. The Commission stated it was troubling behaviour by any employee but was particularly troubling given it was committed by a police officer sworn to uphold the law, to assist victims and not create further victims.

Citing *Chohan*,¹⁶ the prosecution highlighted that letters of support could be given less weight when the writers did not understand the full circumstances as well as considering the role of police in respect to upholding the law and being held to a higher standard.

Submitting that Constable Benoit trivialized his conduct, the prosecution stated that I must be guided by the Commission that this is serious misconduct. Ms. Barrow noted that the

¹² Exhibit 9, Tab 36: *Markham and Waterloo Regional PS*, 2015 ONCPC 04

¹³ Exhibit 9, Tab 2: *Ashby and the Board of Commissioners of Police for the City of Brockville*, 1990

¹⁴ Exhibit 9, Tab 4: *Brayshaw and the Ontario Provincial Police*, 1992 CanLII 12273

¹⁵ Exhibit 9, Tab 5: *Brudlo and The Toronto Police Service*, 2005 CanLII 81117, para 24

¹⁶ Exhibit, Tab 7: *Chohan and Peel Regional Police*, 2024

caselaw is not a bar you have to reach. She noted in cases involving sexual violence and harassment outside the policing context have resulted in dismissal and while I am not bound by those cases, they may be assistive given the absence of similar case law in the policing environment.

The prosecution outlined that *Orser*¹⁷ stands for the proposition of how seriousness of misconduct relates to other disposition factors and that neither *Ability to Rehabilitate* nor *Employment History* are determinative factors. Further, it was stressed that this tribunal must consider the misconduct with the lens of the full assessment of facts and that contrary to the references to *Progressive Discipline*, that also is not determinative.

Citing *Welfare*¹⁸, while addressing the weight to be given to any guilty plea, the prosecution noted that a guilty plea can be motivated by many different things including the strength of a case and therefore it is available to this tribunal to give a guilty plea limited weight in this matter.

The prosecution submitted that *Ceyssens*¹⁹ outlines that character evidence is only one part of the ability to reform. Citing *Seamons*, wherein the Commission found it was open to the Hearing Officer to conclude that Constable Seamons was in effect, 'ungovernable,' and that determination is open to me as well.

Defence Submissions

Defence counsel argued against the prosecution's assertion that Constable Benoit must be fired in order to show that this employer, the law in general, or anyone impacted, will not tolerate sexual harassment in the workplace. Defence counsel submitted that because Constable Benoit was compelled to attend an interview in which he tried to provide context is not to say that he does not understand that what he did was wrong. Further in this theme, defence counsel highlighted that Constable Benoit, because he is male, is well respected and has worked hard in this profession, then he should be laden with the burden of repairing the issue of sexual harassment and violence in the workplace, in general.

Defence counsel asked me to recognize that the law required a relevant assessment in this matter and to not fall prey to this false narrative. It was submitted that a 12-month demotion from first to second class constable including any up-to-date workplace harassment training or other relevant training considered by management would be sufficient. Defence counsel submitted there are mitigating factors in this matter including the admission of guilt.

¹⁷ Exhibit 9, Tab 21: *Orser v Ontario Provincial Police*, [2018] ONCPC 7 para 34-37

¹⁸ Exhibit 9, Tab 32: *Welfare v. Peel Regional Police Service*, 2018 ONCPC 15

¹⁹ Exhibit 9, Tab 34: *Paul Ceyssens, Legal Aspects of Policing*, looseleaf, (Saltspring Island: Earls court, 1994) p 411

Ms. Machado reviewed the highlights of a positive employment history and the numerous and positive character letters in support of Constable Benoit as an officer and community member. I will address and weigh the content of those letters, the testimony of character witnesses and yearly evaluations within the analysis section of this decision.

Defence counsel acknowledged the need for deterrence, noting the significant stress and reputational impact due to these proceedings have served as a personal deterrent for the officer. A demotion and its accompanying financial impacts would further serve as a deterrent for Constable Benoit and other officers and reflect the seriousness of such misconduct. It was submitted that Constable Benoit's acknowledgement of wrongdoing, his positive employment history, and support of colleagues support a well-founded belief of the ability to reform.

In terms of damage to the reputation of the Service, defence counsel submitted this matter was not in the public realm and the transparent handling by the Service, the officer's acceptance of responsibility and the imposition of a fair penalty demonstrate the Service's commitment to accountability and maintaining the public trust.

Ms. Machado outlined the significant emotional toll the disciplinary process has taken on Constable Benoit and that this must be a mitigating consideration. Ms. Machado highlighted that Constable Benoit was willing to accept accountability early on, but the process has taken 15 months. It was submitted that Constable Benoit feels abandoned both by the position taken by the Service and their lack of compassion for the impact on the officer and his family, when this was a first offence in a positive 24-year police career.

In terms of the public interest, defence counsel submitted that Constable Benoit's actions are isolated and outweigh his overall service record, experience, investment by the Service, and demonstrated capacity for remorse and rehabilitation. It was submitted that a "fair and proportional disciplinary process that allows for second chances can reinforce the values of justice and procedural fairness."

While acknowledging Constable Benoit's misconduct was very serious, reflecting a failure to uphold the values of accountability and integrity expected of a police officer, defence counsel submitted that Constable Benoit had taken accountability through his guilty plea. It was submitted that the Service's decision to seek dismissal appears disproportionate and risks undermining the fairness of the disciplinary process. A response must be fair, proportionate and consistent with how similar cases have been addressed within the OPS and across the policing profession.

Defence counsel outlined that some of the prosecution cases involved sex with minors and termination should be upheld as it was in those cases. Distinguishing those cases from the

current matter, defence counsel submitted that in *Armstrong* the officer had a history of discipline, and the case involved six (6) different women and after the officer had been warned.

Ms. Machado highlighted that in *Brayshaw* there was a power imbalance as the respondent officer was the commanding officer and was found guilty of sexual misconduct in relation to five (5) females, two (2) were civilians and three (3) were co-op students. While disagreeing the misconduct in this matter was of a similar nature, in *Brayshaw*, the officer received a one-year demotion, and it was submitted that it did not justify that the penalty in this case would be higher.

Defence counsel noted that in some instances while there may be principles applicable in the caselaw provided by the prosecution, there were little parallels to the matter at hand. It was submitted that *Brudlo* also involved unwanted touching but not comparable to what is before this tribunal.

In *Canadian Union of Public Employees* cited by the prosecution, defence counsel noted that matter involved a kiss that was repeated. In the current matter there was no communication after the fact and Constable Benoit has not been able to apologize.

Defence counsel submitted that unlike the matter at hand, *Clough* and *Costa* both involved intentional deceit. In *Galassi*, the officer was involved in nine (9) separate misconduct incidents involving a firearm and speaks to the issues of a sub-culture.

In highlighting principles to be applied, defence counsel noted *Husseini* involved an insurance fraud however it highlighted that no one sentencing factor was paramount. It was submitted that *Johnstone* was assistive for the dismissal test but for nothing more. Defence counsel submitted that for various reasons *Krug*, *Clewley* and *Durham Region v. CUPE* were clearly distinguishable from the matter at hand.

In terms of consistency, defence counsel provided several cases for consideration. *LaFosse*²⁰, a 2024 Toronto Police Service decision involving an officer who made offensive comments over the course of several situations, receiving a penalty of seven (7) days. *Monaghan* involved a Staff Sergeant who made inappropriate comments to a subordinate and received a six (6) day penalty.

Defence counsel submitted that the Commission in *Kunkel*, which involved a probationary constable who grabbed the breast of another officer while the two attended police college. The other officer had grabbed Constable Kunkel's side and a roll of fat saying, "what is that?" and

²⁰Exhibit 14, Tab A-9: *Cst. Jeffrey LaFosse and Toronto PS*, February 9th, 2024, Decision of Insp. Redman.

he grabbed her breast saying the same thing. The appeal of the penalty of a demotion was dismissed.

Bond is a 2010 OPS misconduct matter wherein the officer, after pleading guilty to inappropriate physical interactions while on duty in a police vehicle, received a four (4) month demotion.

*Howard*²¹, *MacVicar*²², *Cate*²³, and *Sham*²⁴ were submitted by defence counsel as having more egregious circumstances and officers in those matters received reductions in rank, not dismissal. Those matters also involved sexual comments and at times touching by those in clear positions of authority over the victims, in the workplace and in the community.

Defence counsel, acknowledging they are non-binding, provided several Royal Canadian Mounted Police (RCMP) misconduct cases²⁵ submitting that they involved far more egregious and intentional acts and the penalties were significantly less.

Defence counsel submitted that Constable Benoit absolutely accepts that what he did was wrong. He pled guilty and there is no point as in *Orser*, that Constable Benoit demonstrated a lack of ethics; noting it was a six (6) month span in a 25-year career. Like *Orser*, *Nelles* was a dismissal case wherein the officer had sexual intercourse on duty and there was implied coercion involving a power imbalance. Further, the character letters in *Nelles* are not comparable to the ones in this matter.

Defence counsel submitted that AA does not speak for all women at the OPS; there are at least nine (9) women who trust Constable Benoit and believe he has learned from his misconduct matter. It was agreed that there has been a change in society in how sexual harassment is viewed but defence counsel submitted there has also been a change regarding reform and restoring relationships and that context does matter to penalty. Defence counsel submitted that the tribunal is being told the only way to make this better is to dismiss Constable Benoit and that is not reasonable nor proportional.

Defence counsel submitted that Constable Benoit is being used as a sacrificial lamb but in this circumstance, there is no evidence of this being a pattern by Constable Benoit, noting he had been involved in events fighting for the rights of women. It was submitted that the employer has been what can only be described as lackadaisical, and that this tribunal is being asked to fix the last ten (10) years of this OPS culture and training that was not prioritized. Ms. Machado

²¹ Exhibit 14, Tab A-5 : *Detective James Howard #2748 and Peel Regional Police*, March 19, 2021.

²² Exhibit 14, Tab A-10 : *Constable Perry MacVicar #1472 and Peel Regional Police*, April 10th, 2015.

²³ Exhibit 14, Tab A-2. *Cate and Peel Regional Police Service*, 1998 CanLII 27134 (ON CPC).

²⁴ Exhibit 14, Tab A-15: *Cst. Harvey Sham v. Peel Regional Police*, January 31st, 2012.

²⁵ Exhibit 14, Tab B 1-5: *RCMP Non-Binding Case Law*

stressed that the message to Constable Benoit is clear, and it was not necessary to extinguish an impeccable and promising career.

In terms of the power imbalance being portrayed, although Constable Benoit has tenure over AA and while it can be appreciated that she felt a certain way, it was submitted that this was not an abuse of authority. It was submitted that Constable Benoit was not the Staff Sergeant in charge of the unit, and he does not determine who is chosen for the bike program. Further, there was no evidence that he took any action or reprisal since the incident.

Ms. Machado responded to the prosecution comments about Constable Benoit's depression noting it was a typical outcome, however that ignores what the process aims to do. It was submitted that Constable Benoit's employer has shunned him and that is mitigating. Further, it was claimed that Constable Benoit does not understand the seriousness of his actions but had the employer reached out they would have a better understanding. Further, in addressing the character witnesses who may not have understood the impacts on the victim, defence counsel stated it was unfair as Constable Benoit was ordered to not speak to anyone about it and the only person who would understand the impacts would be AA and BB

Prosecution Reply

The prosecution brought my attention to the weaknesses associated with character letters and, in particular those in this matter wherein, for the most part, there does not seem to be a full understanding of the circumstances.

Further, the prosecution addressed that defence counsel had repeatedly expressed that there was no intent by Constable Benoit. It was submitted that Constable Benoit had pleaded guilty to sexual harassment and whether it was his intent to demean the victim, it is the impact on the victim that is emphasized in cases. Whether he meant to or not, he ought to have understood and known the impact on the victim and there was a disregard for that impact. Ms. Barrow submitted that the fact that he downplayed his actions, suggesting they were funny, is concerning. This cannot be a justification for his actions, nor can it retract the impact.

In addressing Constable Benoit's compelled interview, it was submitted that was the most appropriate time for him to tell his side of the story and to be clear, she was not saying that Constable Benoit did not feel bad, but it was clear from his repeated comments that he did not understand the impact on the victim.

The prosecution addressed defence counsel's caselaw in categories. In terms of those that did not deal with any form of sexual harassment or touching, *Lafosse*, *Howard*, *Herridge*, *Monaghan*, and *Bond* (an OPS matter) all involved joint submissions and were without any factual similarity to this matter.

The prosecution addressed the Peel Regional Police matters, *Sham* and *MacVicar* noting they are from over 10 years ago, there are factual differences, and there are various reasons that joint submissions are made. Further, there is a distinction, in particular when dealing with joint penalty matters of another service, as there may be factors related to institutional context, evidentiary issues or victim cooperation that a different employer may not agree with the same penalty.

In terms of the media links provided by defence counsel, the prosecution asked that I disregard those as the full context was not available. Concerning the RCMP cases provided by defence counsel, the prosecution submitted that it was not controversial to say that that agency did not have the best reputation in the media for dealing with issues of sexual harassment.

Ms. Barrow submitted that defence cases of *Cate* and *Grainer* were both very dated cases and cautioned against referring to those cases as there has been an evolution in response to sexual harassment. *Kunkel* is also very dated and dealt with a one-off incident involving alcohol.

The prosecution, referencing the *York Labour Relations* case²⁶ that Ms. Machado said was most on point, disagreed with that proposition stating that the physical touching was far less serious, was absent of any sort of theme of sexual harassment, unlike in this matter where the sexual harassment culminated in a slap. It was submitted an immediate apology was made whereas in this matter, after the apology, Constable Benoit made another sexualized comment noting it was part of a pattern of misconduct.

The prosecution submitted that although defence counsel stressed that there was no *pattern* of misconduct in this matter, and while Ms. Barrow agrees there are no other victims, she contended that there *is* a pattern of similar behaviour. There were comments made about the way the complainant responded to the texts as defence counsel submitted that she could have said nothing. The prosecution submitted that Constable Benoit pled guilty to sexual harassment which by definition was that he knew or ought to have known it was inappropriate and unprofessional, regardless of AA's reaction. It was submitted that defence counsel made numerous references to Constable Benoit not being in a position of authority but the caselaw says otherwise, that it is not simply based on rank. People in authority may be based on seniority, perceived power, or simply having more authority than their counterpart, as it is in this matter.

The prosecution submitted that the Service's attempt to adequately and appropriately deal with an issue of sexual harassment in an effort to eradicate it, does not equate to using Constable Benoit as a poster boy as suggested by defence counsel.

²⁶ Exhibit 14, Tab A-14: *Regional Municipality of York and York Police Assoc*, 2020 CanLII 25423

Analysis

The following analysis is based on the submissions of the prosecution and defence counsel. To assist me in this process, I will rely upon commonly held proportionality considerations relevant to this matter. In my analysis, mitigating and aggravating factors will be balanced and weighed.

As outlined in *Ceyssens*²⁷:

Proportionality is arguably the most complex of the five fundamental principles that govern the process of crafting a legally reasonable disposition, and requires three decisions:

- First, a decision-maker must identify which disposition considerations are relevant to the matter in question.
- Second, a decision-maker must determine whether each relevant disposition consideration is mitigating, aggravating, or neutral in the circumstances.
- Third, a decision-maker must appropriately balance – or weigh – the identified relevant disposition considerations in accordance with the factual background of the matter, and the competing interests. Thus, “a decision- maker must give proper weight to the relevant factors in a particular case”, and a “proper balance” is of “utmost importance”.¹ Weighing disposition factors is a “balancing act” and hearing officers, like judges, “may very well have reasonable differences in the weight to be given to each one”.

I start my analysis keeping in mind that my task is to ensure any disposition imposed, fully accords with the governing principles of an appropriate sanction. The jurisprudence is clear in how to assess a suitable disposition when misconduct has been established, citing *Ceyssens*:

The Ontario Police Commission has stated that there is “no requirement ... to give all factors equal weight”, “no requirement that any one factor be given more weight than another”, presumably a departure from its earlier approach of citing various disposition considerations as “key factors”. The Ontario Divisional Court has now agreed that none of the penalty factors “is paramount over the others and that the factors are intended to be flexible, contextual and may evolve over time”.

As noted in *Ceyssens*, the following five principles guided me through my analysis:

1. The penalty must concur with the actual purpose of police discipline:
 - The police service’s interest in maintaining discipline
 - The rights of the respondent officer to be treated fairly
 - The public interest, confidence and expectations of high standards
2. The process must focus more on rehabilitation and correction than punishment.

²⁷ Exhibit 9, Tab 34: *Paul Ceyssens, Legal Aspects of Policing*, looseleaf, (Saltspring Island: Earls court, 1994)

3. The penalty meted out should be the most favourable in the circumstances.
4. The penalty should be proportionate to the circumstances and balance aggravating and mitigating factors.
5. Police officers are held to a higher standard of conduct compared to others.²⁸

When imposing penalty, it is also important to consider prior disciplinary cases dealing with similar types of misconduct. The reason for this is simple. As the commission stated in its decision in *Schofield and Metropolitan Toronto Police*:

“Consistency in the disciplinary process is often the earmark of fairness. The penalty must be consistent with the fact, and consistent with similar cases that have been dealt with on earlier occasions”

In my analysis, I will outline aspects of submissions of each counsel relevant to the particular factor under consideration. Under the heading *Consistency*, I have considered the cases presented by each respective counsel, assistive in this matter.

The evidence in the matter before me is contained within the ASoF and the attached appendices which included the statements of the respondent officer, AA and BB. The prosecution and defence witnesses supported their respective cases. The victim impact statements of AA and BB helped me to understand the negative impacts that Constable Benoit’s misconduct had on each of them.

Public Interest

The prosecution submitted that there is a strong public interest, noting from *Ceyssens*²⁹:

Since one objective of the police complaint and discipline process is protection of the public, a decision-maker must carefully consider the public interest in each case. The Alberta Court of Appeal has characterized this disposition factor slightly more broadly: “the consequences for the public and the administration of law that resulted” from the misconduct. The Court of Appeal has also characterized a respondent police officer as being “subjected to public discipline for misconduct, which engages the public interest and public law, not just a private contractual relationship” and stated the following:

Because of the extraordinary powers they have to use force and to put restraints on liberty, the misconduct of police officers is always a matter of public interest.

The *OPS Respectful Workplace Policy*³⁰ states all members working at OPS have the right to work in an environment that is respectful and free of harassment and discrimination. All members have an individual responsibility to contribute to creating and maintaining a

²⁸ Exhibit 9, Tab 34: *Ceyssens – Principles Governing the Determination of a Disposition*

²⁹ Exhibit 9, Tab 34: *Paul Ceyssens, Legal Aspects of Policing*, looseleaf, (Saltspring Island: Earls court, 1994)s. 5-356

³⁰ Exhibit 7, Tab B: *Agreed Statement of Facts and Appendices*

respectful workplace.

As the Commission in *Markham* outlined, the objective of the disciplinary process is to be mindful of the police officer's obligation and duty to protect the public. The totality of Constable Benoit's misconduct may undermine the public confidence in the OPS. Careful consideration of this factor is necessary in order to demonstrate public confidence in the police disciplinary process. The public expects police officers to act with integrity and to respect all members in their workplace. Constable Benoit is an experienced police officer, and his actions and judgement related to this misconduct fell well below the expectations for an officer. I find this an aggravating consideration.

Nature and Seriousness of Misconduct

The prosecution submitted that this was an aggravating factor given that Constable Benoit is a lead instructor who helps prepare other officers for becoming 'bike certified'. It was submitted that there was a power imbalance, and it mattered to AA that she impressed Constable Benoit and maintained a positive relationship. The prosecution further noted that the two had a professional collegial relationship and they were not "buddy-buddy" hanging out together away from the workplace.

Citing *Highbury*³¹ a 2020 Labour Relations matter that stressed the seriousness of sexual harassment:

Sexual harassment or assault is intolerable. It is one of the most frightening and damaging things that one person can do to another. The effects of sexual harassment or sexual assault on the victim can be extreme and long-lasting, and incidents of this misconduct can disrupt the workplace. I am satisfied that sexual harassment falls within the same category of serious misconduct as theft, and that discharge is prima facie the appropriate penalty even in the case of a first offence. This does not mean that discharge will necessarily be appropriate in every case, but the onus is on the Union and the grievor to demonstrate that it is appropriate to mitigate the penalty in a particular case.

I concur that sexual harassment and violence represents serious misconduct. There are issues to be considered that may make this more or less serious, particularly concerning the issue of whether Constable Benoit was in a position of authority over AA and whether it was a pattern of behaviour.

³¹ Exhibit 9, Tab 14: *Highbury Canco Corporation v United Food and Commercial Workers Canada*, Locals 175 & 633, 2020 CanLII 61597, para 131

Position of Authority and Pattern of Behaviour

I have considered the submissions and the evidence in terms of these issues. I find that whether Constable Benoit was in a position of power over AA or not, is relevant to weighing the aggravation of this disposition factor. Defence counsel argued that Constable Benoit was not in a position of authority over AA regardless of her perception of who he was to her and that there is no evidence of a rank/ power imbalance.

In AA's PSU interview she outlined she had known Constable Benoit since 2021 and that she was tasked with being a trainer and he was an instructor; they ran bike courses together and they had dealings in the fall related to the '*Ride to Remember*'³². When questioned, AA noted there was no difference between a trainer and an instructor but, "...he seems to kind of run that bike program." She acknowledged that she and Constable Benoit communicated outside of work, but it was usually work-related, and they were not 'buddy-buddy.' *Facebook* was one of the platforms on which they were friends, there was communication via *Whatsapp* and they communicated oftentimes via her personal cellphone. I find the relationship between AA and Constable Benoit could be described as friendly, if not friends. They did not socialize outside of work but communicated and the September 12, 2023, text, initiated by AA, would indicate she felt friendly towards him at that point, at least at the start of the text exchange on that date.

I can appreciate that AA may have viewed Constable Benoit as a superior given his tenure on the job and in the Bike Training Unit. Constable Benoit agreed in his interview that although the Staff Sergeant was in charge of choosing who would become certified, he and others in the unit, had some input. In the ASoF, Constable Benoit agreed that he was in a position of trust and authority over AA. Despite this, I find there is no distinct power imbalance that would significantly aggravate the circumstances of this matter. Unlike some of the cases put before me that involve positions of authority of a police officer supervisor over civilian employees or misconduct involving citizens, the relationship in this matter is best described as one of colleagues, albeit with some span of influence.

Communication does not operate in a vacuum. Constable Benoit in his compelled interview described AA as a friend and attempted to explain the various text comments that he agreed were inappropriate. He stated there was the context of a friend and working relationship they and others had in terms of joking. I find Constable Irving's testimony fair and compelling when he explained how they all (AA, Constable Irving and Constable Benoit and others) communicated outside of work, although it was predominantly about work, he described they were all friends.

Counsel argued about whether this was a pattern of behaviour by Constable Benoit. While acknowledging the significant impacts Constable Benoit's actions have had on AA and BB, I

³² The Ride to Remember is an annual bike ride across the province in honour of officers who have made the ultimate sacrifice.

have carefully reviewed all the text message exchanges between Constable Benoit and AA, five exchanges³³ commencing on March 27, 2023, and ending on September 27, 2023, a six-month period. One of the texts dated September 12, 2023, AA initiated and sent to Constable Benoit after her daughter met with the bike instructors on Carleton University campus. Four (4) of the exchanges³⁴, were initiated by Constable Benoit and two of those exchanges took place on the same day (May 3, 2023).

In two text exchanges, Constable Benoit referred to AA being sweaty which objectively can have a sexual connotation. In the first text in issue on March 27, 2023, after AA advised him, she was in the gym, Constable Benoit texted, "You sweating yet. I'm not going in till ur sweating." While I find Constable Benoit's PSU interview comments in relation to the sweating comments, as joking were an attempt at rationalizing, AA's response of "drenched," may also have a sexual connotation. It is not unreasonable for Constable Benoit to misunderstand the "drenched" comment and have taken it as some form of encouragement or participation although I accept that was not her intention and that she made that response as she felt "awkward."

In the May 3, 2023, exchange, Constable Benoit inquired of AA if she was good for a call, she responded "Just kitting up. Give me 5" to which he responded, "Was thinking I would catch you all sweaty again." AA responded "Haha." Later, on the same day, Constable Benoit sent AA a photo of a pair of leather chaps she had for sale on *Facebook Marketplace* saying, "Bumm[sic] must be supper [sic] in this" and AA responded "lol, They still fit too". Constable Benoit sent a happy face with hearts as eyes and commented, "I'd need proof of that". AA replied, "Bahaha. I'm decluttering."

In terms of Constable Benoit being aware that AA had a girlfriend at that point, AA stated in her PSU statement, "it would've come up between us just chitchatting, sharing some things about our lives..." She clarified she meant chitchatting with Constable Benoit *and* the other instructors. It would appear that Constable Benoit learned that AA had a girlfriend around September 12, 2023, after AA's daughter took a photo of Constable Benoit and his colleagues at an event. AA had sent the initial text to Constable Benoit that date and in body of his reply, Constable Benoit texted, "Heard you had a new gf [girlfriend]. You still not coming back to this side. Just jump on our side for a little". I find Constable Benoit's comments about the leather chaps (May 3) and those concerning AA jumping back on the 'other side' (Sept 12) are clearly sexualized and disrespectful towards AA, her relationship with BB, and her sexual identity.

I agree with AA that the comments made would appear to have the context of a romantic or sexual invitation. I find her response "Haha Yes. I have new gf And she's wonderful," was a clear indication by her to Constable Benoit that she was not interested in him. As stated in her

³³ Exhibit 7, Appendices F to J: *Agreed Statement of Facts and Appendices*

³⁴ Exhibit 8, Tabs F, G, H and J

interview, AA took his comments in this text exchange to mean it was an invitation, that Constable Benoit “would like to engage in whatever with me [in a sexual way]” and I agree that is an easy, rationale interpretation. AA stated she felt disrespected by these comments and that is a reasonable and understandable response.

The September 27, 2023, text exchange occurring after the buttocks slap appears to start mid conversation wherein Constable Benoit texts, “I’ll ask Erin o[sic] bring it for John tonight.” This was followed by some logistics of whatever they were discussing then Constable Benoit wrote, “Oh and sorry for slapping ur ass the other day. I didn’t know that was ur gf. And on the flipside. That was a nice hard bum. Congrats” (followed by ‘thumbs up’ and ‘okay’ emojis). AA replied, “Just don’t do it again and you shall live.” Constable Benoit’s words constitute a weakened apology, and I find AA’s response clear and definitive that she was not going to allow such behaviour.

AA explained her responses including “haha” and “bahaha” as she was in an awkward position with this person, because “I work alongside of him, but I also answer to him in a certain way, because he’s in charge of...the bike instructor program. ...just trying to keep things friendly.” I do not discount that may have been the intention of AA, to keep things friendly but in the same manner it is not a discouragement of such comments by Constable Benoit as were her words in the September 27, 2023, text. While it is not incumbent on AA to react in any particular manner, it is also possible that her comments could be misinterpreted by Constable Benoit. I agree with defence counsel that it is not illogical for Constable Benoit to get a response such as “drenched” and think all was okay. Regardless, it is improper for one to send such sexualized comments to a co-worker.

The evidence outlined in the ASoF, clarifies there was sexual harassment within the text exchanges of March 27, May 3, September 12 and September 27, 2023. Constable Benoit committed clear misconduct through his words and actions as admitted to and outlined in the ASoF at paragraph 14:

The above-noted comments and statements by Constable Benoit to AA were unprofessional and constituted sexual harassment in breach of OPS Policies 3.24 and 3.15. Constable Benoit’s actions, as set out above, constitute discreditable conduct contrary to s. 2(1)(a)(xi) of the *Code of Conduct*.

The May 3, September 12, and September 27, 2023, text exchanges all involved clear sexual commentary by Constable Benoit towards AA, three days over six (6) months. Texts can have some context outside of the communication that may not be clear to those communicating or to others reading them. I find this matter is *not* most accurately described as a pattern of sexual harassment *culminating* in sexual violence. I find the incident wherein Constable Benoit slapped the buttocks of AA stands apart from the online interactions via texts which also clearly represent misconduct on behalf of Constable Benoit.

The buttocks slap is a serious and demeaning action by Constable Benoit on AA and context is not necessary nor possible. I also appreciate BB perceived that Constable Benoit was laughing or gloating as he walked away after slapping AA's buttocks. The text apology by Constable Benoit would indicate he felt remorseful about slapping her as it occurred a couple days following the slap. Constable Benoit's words via text felt arrogant to AA and like he was entitled. I find her reaction understandable and not hyperbole at all. I cannot say that Constable Benoit understood the seriousness of his misconduct at that time due to the sexualized comments that followed the apology. I will address apology and remorse further under the next disposition factor.

I listened intently and compassionately as AA and her partner BB provided very emotional victim impact statements before this tribunal noting that Constable Benoit was someone:

I believed to be working under as a bike instructor, a peer and even a work friend; that you think you can touch me and degrade me as a human being for your own pleasure and having no remorse, no regret. I think you're a dangerous person and a danger to women around you.

It's placed tension in my personal relationship. Not knowing if I'm safe at work, if those I work with can be trusted. It put in question everyone else around me.

In her interview with PSU investigators, AA noted she felt "pretty crappy" about Constable Benoit's apology (via text), and it irritated and upset her as she realized that he did not think he did anything wrong and apologized simply because AA's girlfriend caught him. I can certainly understand this sentiment as regardless of BB's or anyone else's presence or not, unwanted physical touching, particularly such as a hard slap to the buttocks is absolutely wrong.

Given that AA's partner, BB, was present at the time, certainly compounded the seriousness of the impact on AA as she and BB argued about who did this to her and what the relationship was. AA shared that she was "in shock and so embarrassed" and "felt no respect as a coworker or a human being" and she felt her safety at work was compromised, causing her anxiety, stress and fear. I find the negative impacts of the slap on AA were significant.

BB in her victim impact statement outlined the "profound impacts as a result of what HE DID. It had left me in a state of disbelief, fear, anxiety, and anger." BB outlined how she was excited to celebrate the accomplishment of AA completing the *Ride to Remember* and then to have Constable Benoit "diminishing it all, and violating her in such a degrading way, in a public space, and least of all, in front of me." She wrote:

Thank you for recognizing that what he did was wrong. Thank you for holding him accountable. And thank you for listening. This is the first time I have had an opportunity to share how this has made me feel and I appreciate it.

Unwanted touch can have serious impacts on the victim and that is very clear from the words of AA and her partner. They described the hard slap on AA's buttocks as having "stunned" and 'jolted" them. BB stated it saddened her that AA's accomplishment in completing the ride was overshadowed by what Constable Benoit did. The analysis of this factor is a fundamental consideration and seriousness of misconduct is heightened by the significant impacts on the victim and her partner.

Constable Benoit's misconduct involving the buttocks slap cannot be characterized as being unintended despite his assertion that he was caught up in the moment. While he may have been 'caught up' in the moment, he is a grown man and a trained police officer, and ought to have known the seriousness of his conduct. Further, Constable Benoit's misconduct cannot be seen as arising from a lack of understanding. There is yearly online training with respect to sexual harassment and discrimination, regardless, Constable Benoit is an experienced officer who would clearly have had the requisite knowledge to understand what constitutes sexual harassment and violence.

OPS Policy 3.15 outlines the *Organizational Philosophy* including:

2. All members working at OPS have the right to work in an environment that is respectful and free of harassment and discrimination. All members have an individual responsibility to contribute to creating and maintaining a respectful workplace.
3. The primary intention of this policy is to ensure that all participants have the necessary tools and supports in place to foster a respectful workplace. This should be done both from a preventive and responsive perspective in order to encourage the positive resolution of any issues raised.
4. OPS recognizes that access to ongoing training and education as well as relevant supports provide everyone with the knowledge and tools to consciously and consistently contribute to an organizational culture of respect.
5. In order to foster an organizational culture of respect, the education and training components of the Respectful Workplace Program will be available via the mandatory training and throughout all Voluntary Conflict Resolution and disciplinary response processes.
6. The OPS has a vested interest in each and every member and values each person's right to feel welcomed and respected in their work environment. When we work in a culture of respect, it creates a healthy environment and instils a genuine desire and ability to contribute. OPS recognizes that having healthy members translates into having a healthy organization overall.

OPS policy documents are foundational and accessible to members to review and understand the position of the Service in respect to various topics. Workloads and competing priorities often mean review of policy may not be commonplace. Having reviewed the *OPS Gender Audit to the Board* (2017); the *Rubin Thomlinson Report* (2020) and the *Drive2Strategy* and

accepting the fair testimony of Superintendent Zackrias that this is a “work in progress, I find the Service is committed to ensuring the OPS is a healthy and respectful workplace.

The 2017 report found 85% of employees described the OPS culture in negative terms. The 2020 *Rubin Thomlinson Report* found the OPS had taken steps to address harassment and discrimination in the workplace, but the report was clear there was further work to be done. While the pathway to achieving this goal will not be without issues, the community can be assured the Service takes such matters seriously. The *Drive2Strategy 2023-2027* is another strategy undertaken and a “roadmap to continue the journey of transformative change our members and the communities we serve both want and deserve.”

Police officers are held to a higher standard of conduct. Constable Benoit has received training on “*workplace violence and harassment*” and “*harassment and violence in the workplace*” and as an experienced police officer he knows or clearly ought to have known his actions constituted serious misconduct. The prosecution highlighted that the effect on the victim is a relevant consideration, and I agree.

I find Constable Benoit committed serious misconduct, and this is an aggravating factor for consideration.

Recognition of Seriousness of Misconduct

I am aware as noted by the prosecution that a guilty plea is different than an apology and that a plea can be given less weight depending on various factors such as the strength of the case. I also considered whether Constable Benoit demonstrated a significant lack of appreciation for the impacts of his actions on the victim. The sexualized commentary following the apology after the buttocks slap sent by Constable Benoit to AA had the effect of lessening or erasing that apology and so he is not due as much mitigation as he could have with an unwavering apology immediately.

Moving to the April 2024 compelled statement of Constable Benoit, he acknowledged he understood not everyone has the capacity nor strength to confront someone when such an incident as the “butt slap” occurs. He recognized the slap and many of his words in texts were inappropriate, and he expressed how sorry he was to have hurt AA or made her feel disrespected. Although the prosecution highlighted Constable Benoit in his interview made efforts to excuse his behaviour by giving context, I do find context is important. I find Constable Benoit was rationalizing some of his texting comments, explaining they were within the context of a joking friendship, although he acknowledged his comments in the text exchanges were inappropriate. Constable Benoit needs to strongly consider what is and is not a compliment, particularly when it comes to members of the opposite sex. Not all women appreciate commentary on the status of their bodies regardless of whether the comments could be

construed as positive in nature. At some point in his interview, Constable Benoit referred to the 'leather chaps' comment and that it was a "stupid thing to say". I concur and find many other comments from Constable Benoit towards AA were 'stupid things to say'.

I also recognize that AA had the last word via text when she told Constable Benoit, after the "butt slap", "Just don't do it again and you shall live." According to both AA and Constable Benoit that was the last communication between the two of them though the complaint was not brought forward until March 2024. To be clear, I am not casting any aspersions on AA; she dealt with this matter in the time and manner she could manage. Everyone has their own way of dealing with things and I can appreciate this has had a significant impact on AA and BB as is apparent through their words before this tribunal.

I find the absence of further communication from Constable Benoit to AA following her final words to him is indicative of him recognizing he stepped well over the line with his comments and the buttocks slap on AA. I concur with defence counsel in that there is no evidence to support that this was a planned sexual attack on AA. Constable Benoit explained that he got caught up in the moment. I find his actions demonstrate poor judgement. He did not participate in the ride, and he took away from AA's accomplishment that day and understandably she felt disrespected as a coworker and human being.

Constable Benoit provided an emotional statement to the tribunal outlining how he was raised with morals, and he struggled to understand how he hurt a friend and a colleague, outlining how this matter has had a staggering effect on his mental health. He outlined that over the past four years he has undergone family dissolution struggles that have impacted his relationship with his daughters. He stated he was devastated by the length of proceedings, but he was hopeful to move forward with his career and to have the opportunity to apologize to his colleague.

I find that Constable Benoit, despite elements of rationalizing within the PSU interview, appeared genuine in his sadness that he had made AA feel the way she did. Further, I accept the fair and balanced testimony of Ms. Bergeron, Constable Irving and Detective Constable Shepard that Constable Benoit was a kind, compassionate and respectful person and this is out of character. He had expressed remorse for his conduct in the presence of several character witnesses. These positive comments in no way minimize the impact on AA.

I have considered the prosecution submissions citing *Welfare* and while I do not find that Constable Benoit in his compelled interview attempted to place some element of blame on AA, I do find, given the existence of the text messages and that the "butt slap" occurred in the presence of others does render this matter a strong case. However, Constable Benoit is owed some mitigation for his guilty plea alleviating a need for a protracted hearing placing further stress on AA and BB, who in such proceedings would be subjected to cross-examination.

Given Constable Benoit's guilty plea, mitigated apology, his hope to apologize directly to AA at some point³⁵, and remorse demonstrated in his PSU interview as well as in the medical records provided, I find he is due some mitigation.

Employment History

Constable Benoit has been a sworn officer with the OPS since 2001. The comments throughout the performance evaluations provided to the tribunal, starting in 2001, are all very positive and he was assessed throughout these documents as either meeting or exceeding standards. Some of the comments by Constable Benoit's supervisors included that he was a "self starter" (2007) and he is "cool calm and maintains composure under stressful situations; an outstanding team player; always willing to help others; an excellent officer" (2008-09 by Supervisor, Sergeant Patrick Walsh).

He was described routinely as a well-rounded officer who performs duties with minimum supervision and in a professional and controlled manner and who respected complainants and co-workers. Sergeant C. Pepin noted that Constable Benoit was always professional and respectful towards his peers, supervisors and members of the public and was a major contributor to a positive working environment (2009-10).

These accolades continue, as recorded by his media relations supervisor, Carol MacPherson, who described Constable Benoit as very positive and always willing to take up new work and help out when new issues arise. Carol MacPherson as Constable Benoit's supervisor throughout 2017-2021 commented that he embraced teamwork giving various examples such as adjusting shifts or when he cancelled his vacation in order that a co-worker was able to take theirs.

Constable Benoit graduated in 1993 with a certificate in Law and Security. He has received training as a coach officer and numerous other courses through the OPS and the Ontario Police College. Further, Constable Benoit has numerous commendations noting excellent police and teamwork in solving various criminal investigations. A 2007 certificate confirms that he completed the OPS *Respectful Workplace Training*. Constable Benoit is noted to have perfect attendance in the years: 2002, 2011, 2012 and 2013.

I find Constable Benoit has had an excellent career in policing for over two decades. He was evaluated by various supervisors to not only meet expectations but frequently exceeding them as well. His career to date has been unmarked by any previous incidents of misconduct.

Overall, I find *Employment History* to be a strong mitigating factor.

³⁵ Exhibit 13, Defence Sentencing Brief, Tab E

Ability to Reform or Rehabilitate

The prosecution submitted that while rehabilitation is an important factor, it must be looked at with a more wholistic lens. It is not simply whether this officer can be a valued member of the OPS, but one must look at the full set of facts including that the officer must demonstrate some degree of understanding of what constitutes sexual harassment. Constable Benoit in his statement before this tribunal described how he had been attending psychotherapy to address his depression and anxiety. Further, he explained that in his treatment:

We've talked...about my actions, and how I got to the point of being in the moment on that day. I've learnt to place myself in positions of vulnerability and understanding the victim from an action that was committed by me. I continue to feel remorse for the behaviours towards my colleague and how they were inappropriate.

The psychotherapy records³⁶ demonstrate some challenges in his personal life beyond the matter before this tribunal. Dr. Lafleur reported that Constable Benoit is remorseful for his conduct towards his colleague and he has actively participated in 32 sessions as of May 1, 2025. I accept that Constable Benoit has done some work to understand the impacts of his misconduct on AA and her partner, and this is critical to him continuing on in his role as a police officer.

Citing *Orser*³⁷, the prosecution highlighted the Commission's comments that the Hearing Officer's sanction of dismissal was reasonable and supported by the record. The Hearing Officer in that matter was "deeply troubled by the breach of trust, and the lack of ethics, integrity, professionalism and compassion" demonstrated by the officer. With respect and without minimizing the impact on the victim in this matter, I find the facts in *Orser* more egregious than those before me.

Constable Benoit is an experienced police officer with a 25-year tenure and no prior history of discipline. The community and the OPS have a significant investment in him. I have reviewed and considered all the letters of support including that of Alison Stewart, a reporter and community member, who described Constable Benoit as representing the Service with honour, dignity, and integrity. Again, not minimizing the feelings of AA, I note the numerous females, knowing Constable Benoit for over 20 years, as friends and colleagues, who wrote letters of support. While acknowledging the facts of this matter, these women described Constable Benoit as professional and respectful. Some writers are members of the same community that AA identifies with and who supported Constable Benoit describing interactions as making them feel included, respected and supported. There is no evidence before me to

³⁶ Exhibit 15: Medical Documentation- Not for Disclosure

³⁷ Exhibit 9, Tab 21: *Orser v Ontario Provincial Police*, [2018] ONCPC 7

indicate that Constable Benoit's misconduct is rooted in any anti-gay or other prejudice nor that there is any pattern of misconduct in his past, similar or otherwise.

Constable Benoit is clearly committed to the betterment of his community, and this is evident through his volunteerism in various sports events and community fundraisers, including those raising awareness of violence against women. Constable Benoit's employment records portray an employee who contributes positively within the workplace and works well in the team and independently. Staff Sergeant Stephanie Burns described Constable Benoit's "positive attitude and teamwork, ...fostering a productive and inclusive work environment." Carole Lavigne, a civilian manager to whom Constable Benoit reported, described his commitment to policing and the Service. While letters of support do not receive the same weight had they been tested under oath, I find the information noteworthy and paint a more fulsome picture of the character of Constable Benoit.

Further, more than one supporter outlined how Constable Benoit stepped forward to assist them with their own struggles in their personal lives. More than one spoke of how Constable Benoit was there for them when they were going through difficult times and how his friendship and support kept them going. These contributions are significant as they demonstrate a pattern of positive behaviour and a commitment to community. Constable Benoit's efforts often took place outside the OPS realm, and there is no indication of a desire for accolades. I find the positive contributions weighty in this matter.

Constable Benoit did plead guilty, and a full hearing was not required. I give some mitigation in respect to Constable Benoit's guilty plea. Constable Benoit's employment history and personal community contributions, provide some assurances he can reform, and he should be given the opportunity to do so. While I agree with the prosecution that there is caselaw to support progressive discipline is not determinative, I find the stellar employment record and the letters of support demonstrate Constable Benoit has the ability to rehabilitate and contribute positively to the OPS and the community as he has done in the past.

I find Constable Benoit has the ability to move past this misconduct matter and to re-establish a positive reputation within the workplace and the community. Overall, I find this a strong mitigating consideration.

Systemic Failure and Organizational Context

The work environment can serve to mitigate penalty. I have considered whether there is some mitigation to bear in this matter. The OPS has clear policies including:

*Violence and Harassment in the Workplace OPS Policy 3.24*³⁸

³⁸ Exhibit 8, Tab A: Prosecution Book of Documents

- a. Participate in the promotion and maintenance of OPS workplaces that are free of violence and harassment;
- b. successfully complete mandatory CPKN training titled “Bill 168 – Harassment & Violence in the Workplace”; and
- c. report concerns related to workplace violence or harassment using the Workplace Violence and Harassment Incident Form.

The Professional Development Centre (PDC) will:

- a. maintain and update CPKN training titled “Bill 168 – Harassment & Violence in the Workplace” as required; and
- b. keep records documenting successful completion of Workplace Violence and Harassment Training by OPS employees.

Respectful Workplace Policy OPS 3.15³⁹

The Ottawa Police Service (OPS) and its members have a duty to provide and maintain an organizational culture of respect. Key features of this program are identified within the policy. They will support OPS’ intention to provide the tools, supports, and information necessary to ensure members have the knowledge, willingness, and desire to treat each other in a respectful manner.

OPS recognizes and applauds individual differences and embraces the diverse backgrounds allowing for an *Employer of Choice For All* environments. Each member has, and is entitled to, their own set of beliefs.

Members also have a responsibility to ensure their personal beliefs do not affect their relationships with others in a harmful way. Everyone is responsible and accountable for fostering and promoting respectful interactions with their colleagues in keeping with OPS Mission, Vision, and Values.

Sexual violence such as the buttocks slap committed by Constable Benoit on AA is never acceptable. Constable Benoit is an experienced officer who clearly knew his actions were wrong. His apology at the time was lacking as it was followed by comments that undermined that same apology. However, he did make the apology or at least acknowledged it in a hedged manner and refrained from any further actions or comments towards AA.

I find the Service has taken steps to change the culture of the OPS, responding to studies such as the *Rubin Thomlinson* report. I find the fair and balanced testimony of Superintendent Zackrias that it is a “work in progress”, is indicative of the Service’s commitment in this regard. A culture shift does not occur overnight but the Service’s response to this misconduct matter

³⁹ Exhibit 8, Tab B: Prosecution Book of Documents

in particular, demonstrates their strong desire to change the culture and should satisfy AA and the community that the safety of females in and outside of the organization is important to the OPS.

I find this a neutral consideration.

Specific and General Deterrence

The prosecution submitted that this discipline process and the consequences of dismissal will send a strong message to this perpetrator and any potential perpetrator that they should not take the risk of committing such misconduct.

I find specific and general deterrence are clearly required and can be served though a strong but fair sanction. I understand this process has been a stressful time for the officer, not to mention AA and her partner. While some specific deterrence may be served due to the stress of the process, a significant sanction is required and will send a strong message to Constable Benoit and to all OPS officers that such misconduct will not be tolerated. If Constable Benoit or any officer were to engage in such misconduct of this nature in the future, it will be abundantly clear they are placing the future of their policing career on the line.

I find Specific and General Deterrence an aggravating consideration.

Damage to the Reputation of the Police Service

Superintendent Zackrias outlined the list of all related mandatory training that largely has been introduced in the last four (4) years including the expectation that members shall “call out” any acts of sexual harassment or discrimination. Superintendent Zackrias testified that he was familiar with the facts of the case, having reviewed the ASoF and attachments, noting that in his opinion, Constable Benoit’s misconduct shows that “we have a lot of work to do” and this misconduct matter shines a negative light on the police service and to a degree it will have an impact on OPS recruiting.

Any police misconduct has the potential of negatively impacting the reputation of the Service. While I generally agree with Superintendent Zackrias’ comments, I find the public, knowing the Service sought the dismissal of this officer, will recognize the Service treats such misconduct very seriously and it is clear the OPS is taking action to improve their “locker room” reputation. In cross examination, Superintendent Zackrias admitted retention and recruitment are both issues for the Service but noted it is the same across the country and I agree this is the case.

Although it was submitted there has been no media coverage of this matter to date, I find the

community, knowing the full circumstances of this matter, the Service's approach to such misconduct, while being cognizant of Constable Benoit's employment record and reputation would expect a severe but fair sanction to be imposed. I have considered the potential for damage to the Service's reputation should Constable Benoit remain an officer with the OPS. Constable Benoit's misconduct while very concerning does not appear to be reflective of how he has conducted himself over the course of his career.

I find the public would be unsettled to learn that Constable Benoit slapped a fellow officer on the buttocks but there would be confidence instilled in the public knowing that the Service has taken the matter seriously and the member has been held accountable for his misconduct. The public would recognize that police officers are human too and make errors in judgement. The public and OPS members can be satisfied that the victim(s) in this matter were treated with compassion and respect, and their concerns were immediately addressed while the respondent officer was treated fairly.

Regardless, I find *Damage to Reputation of the Service* is an aggravating factor for consideration.

Effect on Police Officer and Police Officer's Family

The prosecution highlighted that this factor is not determinative and must involve extenuating economic or other impacts. Impacts due to the process such as depression and anxiety while unfortunate are potential outcomes when misconduct is committed and the disciplinary process is engaged.

A significant penalty such as a period of demotion will have a clear negative impact on Constable Benoit and his family. A lengthy demotion, as is contemplated in this matter, will have a financial and reputational impact on the officer however these are the understandable consequences of serious misconduct.

I find this a neutral consideration.

Consistency of Disposition

The prosecution submitted that her cases, even when not factually analogous, may provide legal principles I could rely upon. Ms. Barrow acknowledged although this matter may be significantly different from all of the cases, they may assist me in determining a range of appropriate penalties. The prosecution outlined it is important to look at cases how courts and tribunals look at types of misconduct and the cases provided will demonstrate that the penalty sought is within range of reasonable outcomes.

I have read all of the cases provided by counsel and have noted those most assistive. No one case provided is a perfect comparator with the facts in the matter before me, but some have guided me to determine an appropriate range considering the specifics in this case. The media articles provided are absent the Hearing Officer's analysis and are unhelpful in my disposition analysis. The RCMP cases provided were also not assistive given they are bound by their own legislation and their own caselaw as was noted by the prosecution. While each police service in Ontario is entitled to prioritize organizational values, I find the other Ontario police service misconduct matters assistive depending on various factors such as the decision dates.

Superintendent Zackrias testified about the concerted efforts of the Service to eradicate issues of sexual harassment and violence. The *Drive2Strategy*, the *Code of Professional Ethics* and the *OPS Competencies* are all very good documents⁴⁰ outlining the organization's values and priorities. Again, in his testimony, Superintendent Zackrias fairly agreed that there were some challenges with ongoing organizational changes surrounding the units responsible for this work. I agree with his testimony that "training is not the panacea" and this is "a work in progress" for the Service. I further concur that a 'culture change' is needed. Efforts such as seeking the penalty of dismissal will move the culture forward bringing awareness to all members that there is zero tolerance for sexual harassment and violence. The movement towards a more inclusive and harassment-free culture will tell victims that they matter.

Armstrong was a 2002 Peel Regional Police case of Constable Armstrong who was involved in an inappropriate relationship with a neighbour who was a minor. Constable Armstrong was dismissed following a *PSA* hearing. The dismissal was upheld by the Commission and a further appeal to Divisional Court upheld the Commission's decision citing paragraph 32:

The Commission pointed out that discipline proceedings involving police officers are labour relations matters. [Citing the Supreme Court of Canada] In *Burnham v. Metropolitan Toronto Police Association*, [1987] ...In my view, a Police Act discipline proceeding is not a criminal or penal proceeding within the purview of s. 11 [of the Charter....] A police discipline matter is a purely administrative internal process. 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.

The prosecution submitted that the Commission described the actions of Constable Armstrong as reprehensible and that every woman should be free from sexual harassment. I agree with both of those points. I appreciate *Armstrong* was also presented to highlight that a dismissal was not to punish the officer, but to rid the Service of an employee who was not fit to remain so. I find the facts in *Armstrong* more serious than in the one before me given there was a vulnerable victim, a full hearing, and Constable Armstrong had a "work history not without

⁴⁰ Exhibit 8, Tabs 6, 7 8

problems.” These factors set *Armstrong* apart from the current matter.

*Ashby*⁴¹ was a 1990 “sexual harassment” dismissal case that was upheld by the Commission. The details of the allegations were scant but there were six (6) female victims. The Judge who ordered Constable Ashby’s dismissal commented:

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

Despite the seriousness of Constable Benoit’s misconduct, I do not find he has any character flaw nor lacks integrity. The multiple victims in *Ashby* would appear to render that matter more serious. However, given the passage of time, the efforts and education that have been directed with the goal of eradicating sexual violence and harassment in the workplace, I find a dismissal is within the range of appropriate penalties.

In 1992, the Commission in *Brayshaw* confirmed a penalty of a one-year demotion for Detective Sergeant Brayshaw who was a commanding officer of a detachment and who made unwelcome comments and, in some cases, unwanted physical touching towards five (5) civilian members under his command. Although I find *Brayshaw* more egregious than the matter before me, given the pattern of behaviour towards multiple victims and the clear position of authority over civilian members, I find the passage of time has served to heighten awareness of these issues and a one-year demotion is outside the lower demarcation of a range of an appropriate penalty.

In 2005, the Commission upheld a penalty of dismissal in *Brudlo*⁴² which has some similarities to the current matter as it involved unwanted comments and touching. The facts in *Brudlo* had aggravating features, not present in this matter including a civilian victim, more instances and persistence by Constable Brudlo, and a full hearing with no acceptance of accountability. I have made the distinction between civilian versus uniformed member victims as there is a clearer power imbalance in the former situation.

The ASoF does outline there was some degree of influence Constable Benoit had over the choosing of bike certification candidates, but I do not find it comparable to the position of authority, a police officer has over a civilian member in the workplace or in the community.

I find that policing and the greater community have made significant strides in education about sexual harassment and violence in the workplace since the three aforementioned cases. In seeking Constable Benoit’s dismissal, the prosecution stressed that Constable Benoit’s conduct would negatively impact the functioning of the police officer, decrease the trust of the public and lessen the respect of the Service. While that may be the case, it is incumbent on

⁴¹ Exhibit 9, *Ashby and Board of Commissioners of Police for City of Brockville*, 1990 CanLII 10506, para 13

⁴² Exhibit 9, Tab 5: *Brudlo and The Toronto Police Service*, 2005 CanLII 81117

the tribunal to consider the specifics of this case and the interests of those involved, in a fair and balanced manner.

Given *St Clair College*⁴³ and *The Employee v. The University and another*⁴⁴ involved a student-teacher relationship and a superior-employee relationship in the latter, I find these cases unhelpful in my analysis. The power imbalance between the parties in those cases is not congruent with the relationship that existed in this matter. Although Constable Benoit was one of AA's mentors in the bike program, and he may have had some influence on a decision in respect to the certification program candidates, there is no evidence that Constable Benoit was abusing any influence he may have had and there was no distinct power imbalance as existed in those cases.

In outlining that dismissal as a penalty was appropriate, Ms. Barrow cited *Canadian Union of Public Employees*⁴⁵, *Krug*⁴⁶ and *Ottawa City v Ottawa-Carleton Public Employee's Union*⁴⁷ to demonstrate that the issue of sexual harassment was extremely serious misconduct. I find the matter before me involves very serious misconduct and it is disheartening to know that incidents of this nature still occur in the workplace. While I am not aware of the specifics of the cases mentioned by defence counsel involving misconduct of a similar nature committed by several OPS senior officers, it is even more troubling when those in positions of leadership fail to 'set the example.'

*Wark*⁴⁸, provided by defence counsel, involved a court security officer who tapped a female who worked in the courts on the buttocks on three separate occasions, once using a file, then an umbrella and then a lunch tray. These 'buttocks taps' occurred over an extended period (June 2018 to June 2019) and there were also inappropriate comments directed at the female by Mr. Wark, other court security officers and lawyers throughout that time. York Regional Police sought Mr. Wark's dismissal, but the Labour Arbitration Commission deemed that discharge was excessive as a penalty.

I concur that sexual harassment and violence constitutes very serious misconduct and will evoke severe consequences for those engaging in such misconduct. However, dismissal, while appropriate in some circumstances, is not automatic. The words of the Labour Arbitration Commission in *Wark*⁴⁹ provide me guidance in that:

Sexual harassment is a serious and persistent problem that has existed in workplaces in Canada, including in Ontario, for a very long time. In recent years, greater attention

⁴³ Exhibit 9, Tab 27: *St Clair College v Ont Public Service Employees' Union*, 2012 CanLII 61746

⁴⁴ Exhibit 9, Tab 28: *The Employee v. The University and another (No. 2)*, 2020 BCHRT 12

⁴⁵ Exhibit 9, Tab 6: *Canadian Union of Public Employees, Local 79 V Toronto (City)*, 2020 CanLII 21382

⁴⁶ Exhibit 9, Tab 18: *Krug v Ottawa Police Service*, 2003 CanLII 85816, para 75

⁴⁷ Exhibit 9, Tab 22: *Ottawa (City) v Ottawa-Carleton Public Employees' Union, Local 503*, 2016 CanLII 59377

⁴⁸ Exhibit 14, Tab A-14: *Regional Municipality of York and York Police Association*, 2020 CanLII 25423

⁴⁹ Exhibit 14, Tab A-14: *Regional Municipality of York and York Police Association*, 2020 CanLII 25423, para 99, 100

has been paid to the longstanding problem of sexual harassment, its impact on victims, and the need to eradicate it. Consistent with this, the Employer urges me to find that the presumptive penalty for sexual harassment is discharge.

I agree with the Employer that there should be “zero tolerance” of sexual harassment in the workplace. However, “zero tolerance” does not necessarily mean discharge will be the appropriate penalty in every case. The duty to take allegations seriously and provide a workplace free from harassment needs to be reconciled with the right not to be dismissed without reasonable cause. This includes, in appropriate cases, the right to be progressively disciplined and the corresponding opportunity for employees to correct their behaviour before losing their employment.

Police discipline is a labour relations matter, and I find *Wark* assistive in recognizing there is a balance between ensuring the workplace is free from harassment and the perpetrator being dealt with in a fair and consistent manner.

The prosecution submitted that in 2022, the Ontario Court of Appeal in *Render*⁵⁰ set the tone for where the courts expect us to be in society. *Render* involved a 30-year employee in a managerial role who was dismissed after a single incident of slapping a female co-worker on her buttocks. I am aware that ‘although the seriousness of the offence alone may justify dismissal,’ it is the totality of the circumstances, after a full analysis of the disposition factors that leads to determining an appropriate penalty.

*Drennan*⁵¹, a 1996 misconduct matter, involved crude and unwelcome sexist comments by Constable Drennan towards a female officer in the midst of other “squad members”. In that matter, the Commission stated:

Based on the evidence presented to her, the Hearing Officer observed that there is a tremendous pressure on women in policing to ignore sexual harassment, to somehow cope with it or accept it because to confront it means “a negative impact on working relationships, long-term consequences for everything from performance appraisal to promotion and potentially soured peer relationships and ostracism.”

Unfortunately, while much of this type of misconduct has been eradicated, it still exists and police services like other organizations must be vigilant to address it, out in the open. While AA ultimately dealt with Constable Benoit’s buttocks slap, putting an end to it, with her comments about warning him to not do it again if he wanted to live, women, who are disproportionately impacted by sexual harassment and violence in the workplace are not required to tell someone they do not want to be harassed or physically touched.

I find Constable Benoit’s character witnesses all provided fair and balanced testimony about

⁵⁰ Exhibit 9, Tab 24: *Render v. ThyssenKrupp Elevator (Canada) Limited*, 2022 ONCA 310

⁵¹ Exhibit 9, Tab 10: *Drennan and the Hamilton-Wentworth Regional Police Service*, 1996 CanLII 17298, para 14

the seriousness of sexual harassment, that it should be eradicated and the impacts of which, on AA, were not minimized in any way. Sexual harassment and violence need to be called out by those experiencing and witnessing such incidents. Such misconduct must also be called out by those in positions of power and the OPS has taken a strong stance in seeking Constable Benoit's dismissal in this matter. Unlike in *Drennan*, Constable Benoit's sexualized comments were delivered in a private forum to AA but that does not minimize the impact it had on her. The buttocks slap was delivered in a public place in the presence of AA's partner and daughter and possibly others and was demeaning to AA. Whether in public, or in private communications, sexual harassment and violence is egregious and should never be tolerated.

*Gruchy*⁵² is not helpful in my analysis as it involved numerous inappropriate actions on the part of Offender Transport Officer Gruchy. He was terminated after a *WDHP* investigation and then later re-instated with one of the considerations being that his actions were in the context of a 'poisoned' workplace culture. I have considered whether the workplace culture of the OPS was such that misconduct such as Constable Benoit was readily accepted and condoned. I do not find that to be the case although clearly, as noted by Superintendent Zackrias, the Service is committed to improving the safety, respect and security for all in the workplace. It was acknowledged by witness officers that the OPS had a reputation for its 'locker-room/ hockey culture.' There is no evidence that misconduct such as Constable Benoit's was being normalized within the unit in which he worked as in *Gruchy*.

Sham,⁵³ *Cate*,⁵⁴ *MacVicar*⁵⁵ and *Howard*⁵⁶ were submitted by defence counsel as having more egregious circumstances and penalties imposed were demotions not dismissal. *Cate* resulted in a variance from a dismissal to a demotion upon appeal. Defence counsel submitted that the current matter does not involve intent as in *Cate* and the officer in that matter received a six (6) month demotion. *Cate* is a dated case (1998), and I find the facts do not parallel those in this matter as, although sexualized comments and touching were involved, the victims were three members of the public over a protracted time period. Further, there were issues with the investigation and delay that contributed to the dismissal being overturned.

Sham was a 2012 case involving a supervisor of civilian monitors who made inappropriate comments and physically touched several monitors repeatedly and received a six (6) month demotion as a penalty. *MacVicar* from 2015, involved the clear sexual harassment of two civilian radio operators who accompanied Constable MacVicar on patrol and the officer received a six (6) month demotion. I find the activities involved in those cases while not exactly on point, equally, if not more egregious than the current matter. *Sham* and *MacVicar* involved

⁵² Exhibit 14, Tab A-13 : *Ontario Provincial Police v OPP Association*, 2022 (*Gruchy*) CanLII 50619 (ON LA).

⁵³ Exhibit 14, Tab A-15: *Cst. Harvey Sham v. Peel Reg Police*, Decision of Superintendent F. Roselli January 31st, 2012.

⁵⁴ Exhibit 14, Tab A-2: *Cate and Peel Regional Police Service*, 1998 CanLII 27134 (ON CPC).

⁵⁵ Exhibit 14, Tab A- *Constable MacVicar and Peel Regional Police*, Decision of Supt. Kim Whyte, April 10th, 2015.

⁵⁶ Exhibit 14, Tab A-5: *Detective Howard #2748 and Peel Reg Police*, Decision of Superintendent Shearer, March 19, 2021.

joint penalty submissions and there are considerations that may not be known. I concur with the prosecution that organizational context may be a factor in some of these lesser penalties, particularly when it comes to joint penalty submissions, however consistency in police services across Ontario is an important consideration. Given the passage of time since these cases, they are assistive in that a significant demotion is within the range of available penalties.

Howard, a more recent case (2021) of an officer in a supervisory position over two cadets and involved consensual sexual activity in the workplace. The officer received a 16-month demotion. *Howard* involved a joint penalty agreement, and although the facts are not on point and there was no theme of sexual harassment nor violence, it represents serious misconduct and demonstrates a demotion in the range of 16 months would not be unreasonable.

Herridge, a 2007 matter of an inappropriate but consensual relationship in the workplace between Staff Sergeant Herridge and a civilian member after which he was demoted several ranks. I find the facts in that matter too disparate to be of assistance in the current matter. Similarly, I find *Lafosse* of little assistance in that, although it dealt with offensive comments, they were generalized comments and there was no unwanted physical contact involved. Further, a joint penalty proposed by counsel was accepted by the hearing officer in that matter.

I concur with the prosecution that *Howard*, *Herridge*, *Lafosse*, *Monaghan* and *Bond* do not involve the element of sexual harassment or unwanted touching and provide me little guidance. Further, I concur that the fear, damage and long-term impact on a victim of sexual harassment does not equate to consensual sexual misconduct.

In *Costa*, the officer gave a KGB statement to York Regional Police (YRP) officers indicating he did not know the whereabouts of his brother, who was a person of interest in a homicide. Constable Costa did in fact know the location of his brother and the morning following the statement, delivered a letter to the YRP officers admitting the information he had provided was not accurate and he had in fact purchased a plane ticket for his brother and drove him to the airport. The officer had pled guilty to deceit and was dismissed. The Commission varied the penalty to a 30-day suspension without pay followed by two-year demotion to the rank of fourth-class constable given Constable Costa had come forward with the truth within hours after the false statement. The current matter lacks the element of deceit that was present in *Costa*.

Costa, *Clough* and *Galassi* were provided by defence counsel as matters not incurring penalties of dismissal despite the fact that the first two dealt with intentional deceit and the latter with nine separate misconduct incidents including with a firearm and the issue of a sub-culture. I find all of these cases involved facts too disparate to the current matter to be helpful. These cases do reinforce that each matter must be weighed with the circumstances specific to it.

In *Kunkel*, the officer was a very junior officer unlike in the current matter however the Commission who made that decision in 1992, over 30 years ago, stated:

As we assess the situation this assault was not merely an offence to the individual complainant but is also an offence to women at large. It can readily be seen as degrading to women generally and not merely to this one individual. The Commission in 1992 noted the penalty imposed in that matter was the least acceptable. Since that time awareness, and community and police service distaste for misconduct involving any form of sexual harassment or violence has only heightened.

For this reason, I find a one-year demotion is well below the demarcation of an acceptable penalty in this matter.

Conclusion

I find this matter clearly involved sexual harassment and electronic harassment as outlined in the OPS Policy No. 3.15, Respectful Workplace Policy, which defines:

Respectful Workplace – A workplace where employees feel safe, are treated fairly, and where there exists a climate of understanding and mutual respect for equality, dignity, and human rights. A respectful workplace is more than the absence of harassment but places a positive duty on everyone to treat each other in a manner befitting an organizational culture of respect. A respectful workplace acknowledges that the physical, psychological and social well being of the participant is paramount.

Sexual Harassment – unwanted sexual attention, physical contact, or offensive, derogatory, abusive or obscene comments, gestures, jokes, and writing or images of a sexual nature;

Electronic Harassment – harassment in any of the contexts stated above that is achieved by using electronics, including email, pager, facsimile, voice mail, computers, including OPS Network Computers and in-car laptops.

Constable Benoit sent inappropriate sexualized texts to AA. I find that the second component, comprised of Constable Benoit's action of slapping AA's buttocks, was intentional and non-consensual. No context is required to understand that the slap constituted serious misconduct. Constable Benoit's misconduct could not be described as a mistake but a serious lapse in judgement and he ought to have known better. Constable Benoit's strong employment history and letters of support would demonstrate this is out of character for him. Regardless, AA has the right to be treated with respect and to feel safe in the workplace and the offensive comments and physical contact directed at her are completely unacceptable.

Demotion or Dismissal

I have to consider whether Constable Benoit still has usefulness as a police officer or whether his dismissal is necessary to protect the public interest and the reputation of the Service. In *Williams*, the Commission outlined the three elements to be considered including: the nature and seriousness of the misconduct, the ability to reform or rehabilitate the officer, and the damage to the reputation of the Service that would occur should the officer not be dismissed. The Commission has also outlined the other factors that may be considered when determining the appropriate penalty.

The Divisional Court in *Husseini*⁵⁷ stated that:

...no one of the 13 factors is paramount over the others and that the factors are intended to be flexible, contextual and may evolve over time.

This clarifies to me that while dismissal may not have been an appropriate penalty for such misconduct 20 or 30 years ago, there is little tolerance for incidents of sexual harassment and violence today and the result may be the ultimate penalty of dismissal.

Having read and carefully considered the jurisprudence, balancing the interests of all of those involved including the complainant, her partner, the Service and the respondent officer, I find a penalty from a significant period of demotion to dismissal is within the range of available dispositions. Constable Benoit has committed serious misconduct, and a significant sanction is necessary to maintain the public confidence and confidence of OPS members. I find the public interest in this matter can be satisfied by imposing a demotion and not a dismissal.

Any disposition imposed must be remedial, not punitive, and there is the presumption of the least onerous disposition. If a sanction, less than dismissal, would maintain the public confidence in the police discipline process then such a sanction should be ordered. The Commission has repeatedly outlined the importance of rehabilitation and that dismissal should be reserved for the most egregious matters.

I have listened to the words of AA in her initial report to the Safe Workplace Office, to PSU investigators and in her words before the tribunal. In each she described Constable Benoit's misconduct and how it impacted her and her relationship. In her initial reporting, AA stated to the investigators that she was not out to ruin Constable Benoit's life, but she was concerned that he did not appear to recognize the impacts of his actions and was concerned for other women. I commend AA for bringing her concerns forward and I agree that Constable Benoit did not appear to recognize the impact of his actions at that time. In his words since, to the PSU investigators, his therapist, and others, including Constable Irving who testified about Constable Benoit's concerns for how he made AA feel, I find he understands the impacts of

⁵⁷ Exhibit 9, Tab 16: *Husseini and York Regional Police Service*, 2017 CanLII 4791, para 36

his actions now.

AA, in her words before the tribunal, stated that she was concerned about her safety and that she felt Constable Benoit was dangerous. While I cannot speak to her feelings of safety, I find the evidence does not support her conclusion that Constable Benoit is dangerous or a threat to women. Nor do I share the prosecution's assertion that Constable Benoit is ungovernable. The evidence before me in terms of employment history and letters of support do not support either of these sentiments. While I acknowledge that Constable Benoit's actions have deeply impacted AA and BB, and while AA is under no obligation to engage in any form of workplace restoration, I would encourage her to do so, not for his sake but for her, if only to help her move forward past this incident.

Public interest is also achieved through general deterrence when other officers become aware of this decision and see that such misconduct will not be tolerated by the Service. Keeping in mind the concerns outlined by Superintendent Zackrias, the sanction imposed in this matter is significant and the community and OPS members should have confidence that the Service will address matters of sexual violence and harassment swiftly and severely.

The OPS is a male dominated workplace but that does not have to equate with a workplace defined by sexual harassment and violence. Regardless of the percentage of women in the police service, the OPS has made it clear that sexual harassment and violence will not be tolerated. The OPS has implemented training and policies and, they have embraced support groups dealing with women and other sectors that are 'minorities' in the Service.

Regardless of all the efforts put forward by the Service, police officers are human, and they make errors in judgement, sometimes significantly, as in the matter at hand. Seeking the dismissal of Constable Benoit makes it abundantly clear to women that such misconduct will not be tolerated and that they can feel safe and supported by the Service who took their complaints seriously. At the same time, all members will know that they will be treated in a manner that is fair, and consistent with similar matters of misconduct.

Demotion is a substantial penalty that comes with accompanying negative financial impacts on the officer. The fiscal impact is significant and equates to approximately \$20,000 per year, according to defence counsel. However, unlike dismissal, demotion comes with an end date. Constable Benoit must remain cognizant that should he face similar misconduct in the future involving such issues as outlined in the ASoF, dismissal as a sanction is not out of the question. In fact, dismissal is a distinct possibility should such misconduct occur in the future.

The prosecution while acknowledging Constable Benoit's positive employment history and the fact his misconduct appeared to be an aberration, cited various cases including *Husseini*,

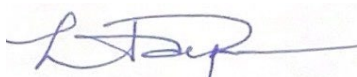
Krug, Barlow and Orser all to highlight that there was no requirement that any disposition factor be given more weight than the other. Despite the seriousness of this misconduct matter, I find the mitigating considerations are weighty including employment history and Constable Benoit's potential to rehabilitate. Constable Benoit's contributions to the OPS and his community both on and off the job are notable.

While acknowledging *Howard* involved a joint penalty, it is a current disposition. *Howard* involved consensual sex in the workplace while on duty and is clearly serious misconduct; the matter before me involves sexual harassment and violence unlike in *Howard*. The impacts on the victim in this matter needs to be considered so this tells me a 16-month demotion is a starting point.

Balancing the aggravating factors including the significant impact on the victim along with the officer's positive employment history and his ability to rehabilitate, I find an 18-month demotion is a fair and balanced sanction that will satisfy the significant public interest. AA and the community should be satisfied that the OPS takes such misconduct very seriously and incidents of sexual violence and harassment will not be tolerated.

PART IV: DISPOSITION

I order Constable Benoit demoted from first class to second class constable for a period of 18 months, following which time he will be returned to the rank (gradation) of first class constable. The demotion will take effect upon Constable Benoit's return to work. This order is made pursuant to section 85(1)(c) of the *Police Services Act*, R.S.O. 1990.



Lisa Taylor
Superintendent (ret)
PSA Adjudicator

Date: July 28, 2025

Appendix 'I'

The following exhibits were tendered during the hearing:

- Exhibit 1: Delegation – Adjudicator Superintendent (ret) Lisa Taylor
- Exhibit 2: Designation – Prosecutor, Ms. Stewart
- Exhibit 3: Designation – Prosecutor, Mr. Estwick
- Exhibit 4: Designation – Prosecutor, Ms. Christine Huneault
- Exhibit 5: Notice of Hearing
- Exhibit 6: Designation – Prosecutor, Ms. Jessica Barrow
- Exhibit 7: Agreed Statement of Facts and Appendices
- Exhibit 8: Prosecution – Book of Documents
- Exhibit 9: Prosecution – Book of Authorities
 - Tab 1: *Armstrong v. Peel Regional Police Service*, July 18, 2002 (OCCPS)
 - Tab 2: *Ashby and the Board of Commissioners of Police for the City of Brockville*, 1990 CanLII 10506
 - Tab 3: *Barlow v. Ottawa Police Service*, 2011 ONCPC 9
 - Tab 4: *Brayshaw and the Ontario Provincial Police*, 1992 CanLII 12273
 - Tab 5: *Brudlo and The Toronto Police Service*, 2005 CanLII 81117
 - Tab 6: *Canadian Union of Public Employees, Local 79 V Toronto (City)*, 2020 CanLII 21382
 - Tab 7: *Chohan v. Peel Regional Police Service*, 2024 ONCPC 31
 - Tab 8: *Clough v Peel Regional Police Service*, [2014] ONCPC 12
 - Tab 9: *Costa v Toronto Police Service*, 2017 ONCPC 14
 - Tab 10: *Drennan and the Hamilton-Wentworth Regional Police Service*, 1996 CanLII 17298
 - Tab 11: *Durham (Regional Municipality) v Canadian Union of Public Employees, Local 132*, 2011 CanLII 55999
 - Tab 12: *Ebdon v. Durham Regional Police Service*, 2020 ONCPC 5
 - Tab 13: *Galassi v. Hamilton Police Service*, 2005 CanLII 20789
 - Tab 14: *Highbury Canco Corporation v United Food and Commercial Workers Canada*, Locals 175 & 633, 2020 CanLII 61597
 - Tab 15: *Horton and Ontario Provincial Police*, 2015 ONCPC 16
 - Tab 16: *Husseini and York Regional Police Service*, 2017 CanLII 4791
 - Tab 17: *Johnson v. Sault Ste. Marie Police Service*, 2024 ONCPC 34
 - Tab 18: *Krug v Ottawa Police Service*, 2003 CanLII 85816
 - Tab 19: *Lewin and Toronto Police Service*, July 23, 2001 (OCCPS)
 - Tab 20: *Nelles v. Cobourg Police Service*, 2007 ONCPC 4
 - Tab 21: *Orser v Ontario Provincial Police*, [2018] ONCPC 7

- Tab 22: *Ottawa (City) v Ottawa-Carleton Public Employees' Union*, Local 503, 2016 CanLII 59377
- Tab 23: *Reeves v. London Police Service*, 2021 ONCPC 3
- Tab 24: *Render v. ThyssenKrupp Elevator (Canada) Limited*, 2022 ONCA 310
- Tab 25: *Seamons v Durham Regional Police*, 2006 ONCPC 8
- Tab 26: *Serco Canada Inc. (Driver Examination Services) v United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers)*, Local 9511, 2020 CanLII 64087
- Tab 27: *St Clair College v Ont Public Service Employees' Union*, 2012 CanLII 61746
- Tab 28: *The Employee v. The University and another (No. 2)*, 2020 BCHRT 12
- Tab 29: *The Law Society of Upper Canada v. Abbott*, 2017 ONCA 525
- Tab 30: *Toronto Transit Commission v Amalgamated Transit Union Local 113*, 2020 CanLII 17116
- Tab 31: *Trumbley v. Fleming*, 1986 CanLII 146 (ON CA)
- Tab 32: *Welfare v. Peel Regional Police Service*, 2018 ONCPC 15
- Tab 33: *Williams and Ontario Provincial Police*, unreported, Dec 4, 1995 (OCCPS)
- Tab 34: *Paul Ceyssens, Legal Aspects of Policing*, looseleaf, (Saltspring Island: Earls court, 1994) [Ceyssens] (current to update 38, June 2022)
- Tab 35: *Belleville v Shorey*, 2017 Canlii 53072 (filed separately)
- Tab 36: *Markham and Waterloo Regional PS*, 2015 ONCPC 04 (filed separately)
- Exhibit 10: Audio – Constable Benoit
- Exhibit 11: Audio - Constable AA
- Exhibit 12: Audio - BB
- Exhibit 13: Defence – Sentencing Brief
- Exhibit 14: Defence – Book of Authorities
 - Tab A-1: *Cst. Michael Bond and Ottawa Police Service*, Decision of Supt. Jill Skinner
 - Tab A-2: *Cate and Peel Regional Police Service*, 1998 CanLII 27134 (ON CPC).
 - Tab A-3: *Cst. Grainer v. Ontario Provincial Police*, 2005 CanLII 84849 (ON CPC).
 - Tab A-4: *Staff Sgt. Herridge v. St. Thomas Police Service*, 2007 ONCPC 5.
 - Tab A-5: *Detective James Howard #2748 and Peel Regional Police*, Decision of Superintendent Rob Shearer, March 19, 2021.
 - Tab A-6: *Karklins and the Toronto Police Service* (April 12, 2007, OCCPS).
 - Tab A-7: *Krug v. Ottawa Police Service* (OCCPS No.03-01 decision).
 - Tab A-8: *Provincial Constable T.P. Kunkel and the Ontario Provincial Police*, 1993 CanLII 14136 (ON CPC).
 - Tab A-9: *Cst. Jeffrey LaFosse and Toronto Police Service*, February 9th, 2024, Decision of Insp. Suzanne Redman.
 - Tab A-10: *Constable Perry MacVicar #1472 and Peel Regional Police*, Decision of Supt. Kim Whyte, April 10th, 2015.
 - Tab A-11: *Monaghan v. Toronto Police Service*, 2003 CanLII 85803 (ON CPC).
 - Tab A-12: *Monaghan v. Toronto Police Service*, 2005 CanLII 11796 (ON SCDC).

- Tab A-13: *Ontario Provincial Police v Ontario Provincial Police Association*, 2022 (Kevin Gruchy) CanLII 50619 (ON LA).
- Tab A-14: *Regional Municipality of York and York Police Association*, 2020 CanLII 25423 (ON LA).
- Tab A-15: *Cst. Harvey Sham v. Peel Regional Police*, Decision of Superintendent F. Roselli January 31st, 2012.
- Tab B-1: *RCMP – Commanding Officer “H” Division and Constable Troy Allen*, 2019 RCAD 10.
- Tab B-2: *RCMP – Commanding Officer “K” Division and Constable Kelly Brown*, 2019 RCAD 15.
- Tab B-3: *RCMP – Commanding Officer “E” Division and Constable Benjamin Caram*, 2017 RCAD 8.
- Tab B-4: *RCMP – Commanding Officer “E” Division and Constable Valerie Little*, 2020 CAD.
- Tab B-5: *RCMP – Commanding Officer “H” Division and Constable Devin Pulsifer*, 2022 CAD 06
- .Exhibit 15: Medical Documentation – NOT FOR RELEASE