

**CHATHAM-KENT POLICE SERVICE DISCIPLINE HEARING  
IN THE MATTER OF ONTARIO REGULATION 268/10**

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

**IN THE MATTER OF**

**CHATHAM-KENT POLICE SERVICE**

**AND**

**CONSTABLE ANDREW JACONELLI #7192**

**DISCREDITABLE CONDUCT (Seven Counts)**

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**DISPOSITION**

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

Counsel for the Prosecution: Mr. Ian Johnstone  
Ms. Allison Johnstone

Counsel for the Defence: Mr. Lucas O'Hara

Hearing Date: October 25, 26, & 27, 2022

## Background

Constable Andrew Jaconelli was charged with nine counts of discreditable conduct. He entered a guilty plea to seven counts of misconduct and a not guilty plea to the remaining two counts. Following a five-day hearing, I found Constable Jaconelli not guilty of the two matters challenged, and guilty of seven counts of discreditable conduct in a decision dated August 15, 2022. The following amended Agreed Statement of Facts which were admitted, accounted for the findings of guilty:

On November 24, 2017, Constable Jaconelli attended a Christmas party at the residence of a co-worker. The party was predominately attended by members of the Chatham-Kent Police Service and their family/friends, described as a platoon party. Constable Jaconelli was observed consuming red wine throughout the night and was described by all as intoxicated or “drunk” throughout the evening.

A.A.<sup>1</sup> is a civilian member of the Chatham-Kent Police Service. During the evening, while A.A. was standing in the area of the garage and speaking to a variety of people, Constable Jaconelli walked right up behind her and bumped into her left shoulder. At the same time, Constable Jaconelli used his right hand to intentionally grab the buttocks area of A.A.’s body. A.A. described this action to the investigator as follows:

I mean he still grabbed my bum, but he grabbed right in the crack of my bum, not like a cheek... It’s not like he touched my vagina. I didn’t feel any of that. There was... I couldn’t feel that. It was more my ass than anything else.

A.A. was startled by this. At some point later in the evening, A.A. stated out loud: Jaco just grabbed my taint.

A.A.’s reaction was generally described as shocked and offended. A.A. shook it off and did not say anything. Constable Jaconelli was laughing. As the evening progressed, two additional incidents occurred involving Constable Jaconelli.

Luxshana Chandra is a civilian member with the Chatham-Kent Police Service. During the evening, Constable Jaconelli approached Chandra from behind while she was sitting on a stool in the garage. Constable Jaconelli put his arm around her and held a dart to her neck area. This was observed by another civilian member of the Chatham-Kent Police Service who then yelled at Constable Jaconelli to stop, at which point he did. Constable Jaconelli did not touch Ms. Chandra with the dart,

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<sup>1</sup> Random initials used to anonymize this involved person and, B.B later in this decision.

but motioned as if he was going to. Ms. Chandra was silent and looked scared. Constable Jaconelli continued to play darts.

Constable Josh Rose arrived at the party at approximately 9 p.m. During the evening, Constable Rose sat down in the garage next to the homeowner, Mr. Bechard. Constable Jaconelli was playing darts behind them; however, the dart board was in the opposite direction, meaning that Constable Jaconelli would have been throwing darts in the opposite direction. According to Mr. Bechard, Constable Jaconelli “out of the blue” threw a dart at Constable Rose striking him in the shoulder. The two exchanged words and then Constable Jaconelli threw a second dart at Constable Rose. One of the darts stuck in Constable Rose’s jacket and had to be removed. Words were exchanged and Constable Jaconelli bumped Constable Rose into the garage door. Mr. Bechard took the darts away from Constable Jaconelli and asked him to leave, at which point he did. Mr. Bechard and Mr. Johnson both witnessed Constable Jaconelli throw two darts at Constable Rose.

On December 14, 2018, Constable Jaconelli was arrested and charged with sexual assault and assault with a weapon at the Chatham-Kent Police Service’s headquarters. Constable Jaconelli appeared before Justice of the Peace Calvin Hurst at the Ontario Court of Justice and was released on a Recognizance of Bail.

On November 23, 2020, Constable Jaconelli pleaded guilty to one count of sexual assault in the Ontario Court of Justice. Constable Jaconelli received a conditional discharge and was placed on a six-month probation period. The charge of assault with a weapon was withdrawn.

## **Positions on Penalty**

Mr. Ian Johnstone and Ms. Allison Johnstone represented the Chatham-Kent Police Service as prosecutors. They took the position that based on the totality of the evidence, Constable Jaconelli’s usefulness to the Chatham-Kent Police Service has been nullified and consequently, he ought to be dismissed. Mr. Lucas O’Hara, representing Constable Jaconelli, submitted dismissal was not warranted; a more fitting sanction is a demotion in rank from first-class constable to second-class constable for a term of two years.

## **Decision**

The evidence was clear and convincing and as such, I found Constable Jaconelli guilty of seven counts of discreditable conduct. This disposition hearing is to determine the appropriate sanction.

I find Constable Jaconelli has nullified his usefulness to the Chatham-Kent Police Service. Constable Jaconelli shall resign within seven days or face dismissal from the Chatham-Kent Police Service.

## **Reasons**

### Expert Witness

Before delving into my analysis on penalty, I must first address the issue of the witness called by Mr. O'Hara whom he sought to have deemed an expert. Exhibit #26 is Volume III of the Defence Book of Authorities and Supporting Documents. Contained therein are multiple medical reports and notes concerning Constable Jaconelli.

Dr. Chris Carreira is a clinical psychologist and in a medical letter dated June 13, 2019, he noted that Constable Jaconelli originally presented to his office on December 18, 2017. Dr. Carreira has been treating Constable Jaconelli since then. Initially, Dr. Carreira noted that Constable Jaconelli exhibited marked anxious and depressive symptomology as well as post-traumatic stress symptoms related to a workplace incident. This resulted in a diagnosis of Post-Traumatic Stress Disorder (PTSD) as well as Adjustment Disorder with depressed mood.

Dr. Carreira wrote another medical letter dated February 20, 2020, and a third medical update concerning Constable Jaconelli's medical status dated October 19, 2022. Mr. O'Hara sought to have Dr. Carreira deemed an expert witness so that he could speak to Constable Jaconelli's mental health at this disposition hearing.

Three consecutive days were set aside for this hearing. I heard from prosecution witnesses on day one, and the second day was set aside to hear from Dr. Carreira to allow me the opportunity to determine his suitability as an expert witness, followed by his testimony, if approved. After hearing from Dr. Carreira about his qualifications and the submissions from Counsel, it was necessary to inform Counsel immediately of my decision so that the hearing could proceed on schedule accordingly. I did not permit Dr. Carreira to provide expert testimony; I found that:

- Dr. Carreira had not been deemed an expert in the past, although this did not negate him being an expert for this proceeding.
- I did not find that Dr. Carreira’s credentials qualified him to meet the standard of an expert witness. This was not meant to be a slight against his ability as a medical practitioner, but an expert is not deemed as such simply because they are in the medical profession. For example, not every clinical psychologist would be deemed an expert based solely on their education.
- In this instance, Dr. Carreira testified that he had focused his professional attention in the area of trauma care and PTSD specifically for the past three years, accounting for approximately 50 percent of his business, yet his *curriculum vitae* which included an entry of professional experience since 2014, mentions briefly, “traumatic brain injury rehabilitation/remediation;” it is not the experience I would expect from an individual seeking to be an expert in this field.
- I accepted Dr. Carreira’s evidence that he understood the need to provide an unbiased and independent opinion, but in this case, he has been treating Constable Jaconelli for the past five years; I expect that they have built a relationship based on trust. In my opinion, anyone, even those professionally trained, would find it difficult to ensure that their evidence would be truly unbiased. If this were not the case, why then would there be a need for independent medical examinations?
- Furthermore, the prosecution was unable to delve into the area of fulsome communication between Mr. O’Hara and Dr. Carreira. This is not to suggest that either of them would intentionally conduct themselves in an unprofessional manner, but that correspondence, if disclosed, would have been determinative.
- I was also troubled by the fact that Dr. Carreira appeared to have either none, or at least, very limited knowledge about Constable Jaconelli’s current, unrelated criminal charges. The charges are not new, Inspector Domony testified that he thought they were laid sometime earlier this year and Mr. O’Hara confirmed the arrest actually occurred on November 11, 2021. Although Dr. Carreira indicated that he felt he had sufficient information to make the medical assessment that he did, it seemed obvious to me that this should have been disclosed by the client to his medical practitioner since the charges may have been relevant to the overall treatment and assessment.
- I indicated that I would provide more fulsome reasoning in my decision, but it was sufficient to say at the time that I was not convinced Dr. Carreira was able to provide evidence of an expert nature independently, objectively, and with the level of expertise required.

As noted at the time, fulsome reasons for denying expert witness status to Dr. Carreira would be forthcoming; I will address that issue at this time.

At tab MD7 of exhibit #26 is the *curriculum vitae* of Dr. Carreira. Dr. Carreira received his Bachelor of Arts in psychology from the University of Windsor in August 2003 and received his PhD in educational psychology in 2013 from Wayne State University, Michigan. Dr. Carreira's professional experience dates to 2001 as a child and youth worker with his most recent entry specific to his private practice from December 2014 to present as a clinical psychologist. This entry reads as follows:

- Counseling of individuals, couples, families, and groups using evidence based psychological interventions such as CBT, DBT, emotionally focused therapy, behavioural activation, systemic desensitization, etc.
- Assessment and report writing for various insurance companies, example WSIB, MVA, VA (DND), etc.
- Individual consultation with various health care professionals, and insurance companies.
- Traumatic brain injury rehabilitation/remediation.
- Supervision of interns/students for accreditation with their respective governing bodies.

As noted, his private practice commenced in December, 2014. The next professional experience indicates Dr. Carreira was a court clinical psychologist/forensic evaluator for the state of Michigan from May 2010 to October 2011. From October 2006 to August 2011, he was the head clinical psychologist for Case Management of Michigan. In 2008 and 2009 he was the clinical psychologist at the Training and Treatment Innovations Centre in Michigan.

Dr. Carreira testified that he had been practicing as a clinical psychologist in the state of Michigan since 2006 and in the province of Ontario since 2015. He is a member of the Ontario Psychological Association, licensed to work as a clinical psychologist in Ontario and Michigan. Dr. Carreira testified that in his capacity for the state of Michigan, he has been required to conduct mental health assessments which were used as accurate expert documents in court. During his testimony, he clarified, he had not been qualified as an expert witness in the state of Michigan or Ontario in the past. Dr. Carreira indicated that he conducts assessments and diagnosis with regards to PTSD, anxiety, and depression. He has been specializing in trauma disorders such as PTSD for the past three years. Dr. Carreira indicated he has agreements in place with certain associations and unions to provide preferred treatment for the respective first responders.

In 2015 Dr. Carreira made a presentation to the Royal Canadian Mounted Police (RCMP) titled, "Mental Health: Raising awareness in the RCMP" which addresses the cause of PTSD and treatments specific to police officers. Also in 2015, Dr. Carreira attended a workshop titled, "Developing Cultural Competency in Psychological Services for Police."

Dr. Carreira indicated the workshop assisted him in transitioning to working with first responders at that time. In 2022 Dr. Carreira presented “PTSD in Paramedics” to the Canadian Union of Public employees (CUPE) where he discussed the treatment, diagnosis, and causes of PTSD.

Exhibit #23 is an Acknowledgement of Expert’s Duty signed by Dr. Carreira dated October 15, 2022. Dr. Carreira acknowledged he had been “engaged by or on behalf of Lucas O’Hara, counsel to Andrew Jaconelli, to provide evidence” at this proceeding. Dr. Carreira acknowledged that it was his duty to provide evidence in relation to this proceeding as follows: to provide opinion evidence that is fair, objective, and non-partisan; to provide opinion evidence that is related only to matters that are within his area of expertise; and to provide such additional assistance as the tribunal may reasonably require, to determine a matter in issue. Dr. Carreira acknowledged that this duty prevailed over any obligation which he may owe to any party by whom or on whose behalf he is engaged. Dr. Carreira testified that if he were to be qualified as an expert, he would abide by the conditions outlined in the Acknowledgement of Expert’s Duty.

I am satisfied that Dr. Carreira had a comprehensive understanding of what his role and responsibilities would be as an expert witness. I am also satisfied that he would commit to this obligation to the best of his ability.

In his report providing an update about Constable Jaconelli to Mr. O’Hara dated June 13, 2019, Dr. Carreira indicated that his opinion was based on maintaining the standards of professional conduct as outlined by the Ontario Psychological Association. He testified that standard means that psychologists giving professional opinions must focus on the facts and only provide opinions when there is sufficient evidence to do so. He stated the same standard would apply to every report he drafted. Dr. Carreira testified that he authored the June 13, 2019, report. The report dated February 20, 2020 was supervised by Dr. Carreira but drafted by his colleague, Dr. Kristina Jurkovic. Dr. Carreira testified that he drafted the third report dated October 19, 2022.

In cross examination, Dr. Carreira stated that he considered himself independent and had no interest in the outcome; he would not be an advocate for Constable Jaconelli. Dr. Carreira acknowledged that he had authored and provided letters to other entities such as WSIB about Constable Jaconelli’s PTSD. Dr. Carreira testified that on those occasions, he was not acting as an independent medical examiner but as Constable Jaconelli’s psychologist.

Dr. Carreira testified that he was incorrect in his earlier testimony; he did not author the June 13, 2019 report which was signed by him and by Dr. Jurkovic, he supervised the letter. Dr. Carreira explained that he and Dr. Jurkovic would review the file and the test reports collaboratively. Dr. Carreira indicated that Dr. Jurkovic would have collected the information by talking to Constable Jaconelli and by conducting the psycho-therapy. After lengthy discussions with Dr. Jurkovic involving testing, and after looking at the numbers, he would have made the diagnosis. Dr. Carreira stated Dr. Jurkovic conducted the tests and by using the statistical software, he would have instructed her on what the scores meant as she was not a clinical psychologist, she was an intern at the time.

It was suggested to Dr. Carreira that physicians with more experience would have a better understanding at detecting disingenuous patients. Dr. Carreira stated he did not rely on objective answers, he relied on the validity of the numbers generated in the testing.

I find this evidence troubling given the fact that Mr. O'Hara is seeking to have Dr. Carreira testify as an expert witness. I acknowledge that in many instances, an expert witness does not even meet the patient in question; they merely review the medical evidence in existence and provide an expert opinion about the reliability of those reports. However, in this instance, the testing referenced in the first two reports was not done by Dr. Carreira himself, or even by a clinical psychologist, it was conducted by an intern.

Dr. Carreira acknowledged that all clinical psychologists are trained to assess and deal with anxiety, depression, and any disorder named in DSM-5 Manual and they treat patients with PTSD.

Dr. Carreira testified that he had been treating Constable Jaconelli since 2017. The frequency of those visits was dependent on the officer's needs. In the June 13, 2019 report, Dr. Carreira stated that Constable Jaconelli had been participating in weekly cognitive behavioural therapy sessions. The February 20, 2020, report stated that Constable Jaconelli had attended his appointments on a bi-weekly basis. In the report dated October 19, 2022 Dr. Carreira reported that Constable Jaconelli's frequency of sessions was once per week but that he would soon be transitioned to bi-weekly sessions. It appeared to me that during his testimony, Dr. Carreira was uncertain as to how often he had been meeting with Constable Jaconelli; he committed to it being on a weekly or bi-weekly basis depending on the need. I was troubled by this ambiguity and the fact that as the treating psychologist who was seeking to be deemed an expert, he did not have the requisite files before him which would have allowed him to respond with precision and confidence.



Dr. Carreira testified that within the previous two days, he was asked to gather his notes and correspondence in relation to this file but that was not sufficient time to do so; consequently, he did not rely on notes or reports during his testimony. Dr. Carreira added that letters were exchanged between himself and Mr. O'Hara and on one occasion recently, they had a discussion over the phone about this hearing.

The prosecution noted that in *Gutbir and University Health Network*, 2010 ONSC 6396, the medical practitioner referred to his medical notes. The prosecution submitted it is problematic that neither the prosecution nor the tribunal had the opportunity to review Dr. Carreira's medical notes or the correspondence between Dr. Carreira and Mr. O'Hara. The prosecution submitted Dr. Carreira relied on these documents to form his opinions found in the reports, consequently, they are foundational documents and ought to have been disclosed along with the correspondence with Mr. O'Hara.

The prosecution noted that in his submissions before Justice Fuerth, Mr. O'Hara stated the following:

I'd submit the medical evidence is capable of demonstrating how Mr. Jaconelli's mental illness contributed to his actions at the Christmas party and therefore it lowers the moral blameworthiness and because the mental illness caused or contributed, was contributing to the commission of the offence. It certainly doesn't excuse the behaviour but does lower the degree of responsibility in my submission, therefore a denunciatory or deterrent sentence to other individuals does not need to be as high when you're considering this as a first responder suffering from PTSD, coping with their symptoms through alcohol.

The prosecution submitted Mr. O'Hara's comments before the Court denotes the importance of having Dr. Carreira's correspondence and medical notes. There were submissions about the issue of litigation privilege which I need not delve into. This area was not so significant to influence me on the issue of Dr. Carreira's independence or bias. There was no overt evidence to suggest that Dr. Carreira was not effectively attempting to fulfill his role as an expert witness, but having the correspondence between him and Mr. O'Hara would have confirmed this.

The prosecution reviewed Dr. Carreira's professional website with him. Dr. Carreira stated it had not been updated for several years. He agreed that anyone trained as a clinical psychologist would be familiar with the material contained in his website. Dr. Carreira stated that the purpose of the website was to allow potential patients to know what his address and telephone number was, and how he could be contacted. Dr. Carreira stated that approximately 25 percent of his business dealt with family marriage therapy, 25 to

30 percent was individual therapy, with the remainder of his work being trauma related and PTSD the main diagnosis in that trauma.

Mr. O'Hara submitted that Dr. Carreira has the educational background, training, and professional experience to be qualified as an expert. Mr. O'Hara submitted Dr. Carreira had not been deemed an expert previously but that is not a prerequisite; every expert must have been qualified for the first time once. He noted that Dr. Carreira has focused on PTSD over the past three years and 50 percent of his business deals with the treatment of PTSD; providing expert evidence in this area is within the realm of his expertise. Mr. O'Hara acknowledged there are more qualified experts, but Dr. Carreira did not need to be the most qualified witness to be able to properly comment on his scope of his practice.

I agree that Dr. Carreira need not be the most qualified medical practitioner in his field to qualify as an expert witness. I also agree that having been deemed an expert previously is not a prerequisite. However, I am not convinced that Dr. Carreira's professional experience elevates him to the level of expert status. He testified that his website had not been updated for several years and he was unfamiliar with its content. This is not consistent with what I would expect from an expert medical practitioner. I do not accept Dr. Carreira's evidence that the purpose of his website was to allow potential patients to learn how to contact him. One would expect that the objective would be to provide an overview of his experience and services offered, including his area of expertise so that prospective clients can assess whether he would be an appropriate fit for their respective needs. This becomes even more important when a medical practitioner seeks a designation of expert witness in his field.

Exhibit #28 is a three-page document from Dr. Carreira's website. Of those three pages, the only reference to treating first responders reads as follows:

Recently, Dr. Carreira has been working with individuals diagnosed with trauma and stress related disorders, such as PTSD in first responders and veterans, and individuals involved in motor vehicle accidents.

Exhibit #29 is a six-page document taken from Dr. Carreira's website titled "Services." The first section is an overview of his approach to therapy, followed by four pages related to couples' therapy. The next heading is family therapy, followed by individual therapy, group therapy, online therapy, home based therapy, and psychological assessment. Nowhere in the six-page document does Dr. Carreira refer to working with first responders with PTSD, let alone having any degree of expertise in this area.

The website is consistent with Dr. Carreira's *curriculum vitae*. It notes the most recent work-related entry as follows: Counseling of individuals, couples, families, and groups... emotionally focused therapy, behavioural activation, systemic desensitization, etc.; assessment and report writing for various insurance companies...; individual consultation with various health care professionals, and insurance companies; traumatic brain injury rehabilitation/remediation; and, supervision of interns/students for accreditation with their respective governing bodies. Traumatic brain injury rehabilitation and remediation is not listed or presented to be his area of expertise. Both the *curriculum vitae* and the website focus on his counseling of individuals, couples, and groups; PTSD does not appear to be the focus of his professional attention.

Exhibit #27 is an Undertaking entered into by Constable Jaconelli before a Justice of the Peace dated November 15, 2021, and the related police reports are attached. The documents indicate that Constable Jaconelli was arrested on November 11, 2021, charged with two counts of criminal harassment, and released from custody four days later. Constable Jaconelli was also charged with forcible entry into a residence.

Dr. Carreira testified that he was unaware that Constable Jaconelli had been criminally charged in relation to matters unrelated to this proceeding. He later testified that perhaps, he had some recollection of there being recent charges. He further stated he did not recall receiving information about Constable Jaconelli having issues with alcohol in 2011 or 2014.

In the October 19, 2022, report Dr. Carreira stated, "with ongoing treatment his prognosis is good." Dr. Carreira testified that he could not be certain that knowing about the outstanding criminal charges would have changed the test scores. He was also not certain if knowing about prior alcohol events would have affected the test results.

I find this the most troubling area for consideration. Dr. Carreira testified that he was unable to state with absolute certainty that Constable Jaconelli would not engage in similar behaviour in the future. That is a sensible position to take, but he added that Constable Jaconelli is less likely to act in that way in the future. I question how he can make this statement with any degree of confidence after learning that Constable Jaconelli was less than forthcoming about previous issues with alcohol, and having been charged criminally with new, unrelated offences. Consequently, there is a void in Dr. Carreira's level of understanding of Constable Jaconelli previous behaviour and current events in his life. Ordinarily the issue of rehabilitation is one of the three essential disposition considerations in a dismissal case. Dr. Carreira's testimony on this particular point undermines his stated independence and impartiality; it diminishes his reliability as any type of expert witness.

In the matter of *Gutbir*, the Court stated:

I agree with the comments of Justice Rocco in *Williams (Litigation Guardian of) v. Bowler*, [2005] O.J. No. 3323 (S.C.J.), a medical negligence case tried without a jury where she stated :

A medical witness who wears two hearts and testifies both as a treating physician and as an expert may, depending on the circumstances of the case, be in the best position to offer first hand observations as to the patient's condition over the course of medical history; however, to the extent that the position has any personal interest in the outcome of the case or lacks the objectivity and independence essential to the medical expert, this may adversely affect the weight to be given to the expert testimony.

In the matter of *White Burgess Langille Inman v. Abbot and Haliburton Co.* (WBLI) 2015 SCC 23, the Court stated:

Underlying the various formulations of the duty [that an expert owes to the court at common law] are three related concepts: impartiality, independence and absence of bias. The expert's opinion must be impartial in the sense that it reflects an objective assessment of the questions at hand. It must be independent in the sense that it is the product of the expert's independent judgment, uninfluenced by who has retained him or her or the outcome of the litigation. It must be unbiased in the sense that it does not unfairly favour one party's position over another. The acid test is whether the expert's opinion would not change regardless of which party retained him or her... These concepts, of course, must be applied to the realities of adversary litigation. Experts are generally retained, instructed and paid by one of the adversaries. These facts alone do not undermine the expert's independence, impartiality and freedom from bias...

In my opinion, concerns related to the expert's duty to the court and his or her willingness and capacity to comply with it are best addressed initially in the "qualified expert" element of the *Mohan* framework... A proposed expert witness who is unable or unwilling to fulfill this duty to the court is not properly qualified to perform the role of an expert. Situating this concern in the "property qualified expert" ensures that the courts will focus expressly on the important risks associated with biased experts...

As noted earlier, I am concerned about Dr. Carreira's ability to maintain the requisite independence needed to deliver an unbiased perspective. The stance he took on this issue is indicative of a tendency to be an advocate for Constable Jaconelli. Rather than admit that having a patient not disclose new criminal charges would be cause for concern, and to acknowledge it might adversely affect his medical professional opinion that he is

unlikely to repeat misconduct, he deflected by suggesting that perhaps it was information he was familiar with and minimized its importance. I find this most troubling.

In the matter of *WBLI Chartered Accountants v. Abbott and Haliburton Company Limited* [2015] 2 S.C.R., at paragraph 23, the Court stated:

At the first step, the proponent of the evidence must establish the threshold requirements of admissibility. These are the four *Mohan* factors (relevance, necessity, absence of an exclusionary rule and a properly qualified expert) and in addition, in the case of an opinion based on novel or contested science or science used for a novel purpose, the reliability of the underlying science for that purpose. At the second discretionary gatekeeping step, the judge balances the potential risks and benefits of admitting the evidence in order to decide whether the potential benefits justify the risks. The required balancing exercise has been described in various ways. In *Mohan*, Sopinka J. spoke of the “reliability versus effect factor” (p. 21), while in *J.-L.J.*, Binnie J. spoke about “relevance, reliability and necessity” being “measured against the counterweights of consumption of time, prejudice and confusion”: para. 47. Doherty J.A. summed it up well in *Abbey*, stating that the “trial judge must decide whether expert evidence that meets the preconditions to admissibility is sufficiently beneficial to the trial process to warrant its admission despite the potential harm to the trial process that may flow from the admission of the expert evidence” ...

I accept that the potential testimony of Dr. Carreira could logically be considered relevant to this proceeding and could tend to make the existence of a fact more likely. I accept that disability is a relevant factor in disciplinary proceedings. I accept Mr. O’Hara’s submission that there is standardized testing used to identify and assess PTSD; it is legally relevant and the probative value may not be outweighed by prejudicial effect. Mr. O’Hara submitted that his position would not be that Constable Jaconelli is not responsible for his actions, but PTSD is a medical diagnosis and expert evidence would be more than helpful in this area.

I also accept that there is no exclusionary rule in effect which would prohibit expert testimony; the issue I have is the fourth component of *Mohan*, whether Dr. Carreira is a properly qualified expert. Mr. O’Hara submitted that Justice Fuerth referred to Dr. Carreira’s medical report when he sentenced Constable Jaconelli during the criminal proceeding. He noted that the anticipated evidence from Dr. Carreira is straightforward and not confusing. Dr. Carreira is aware of his responsibilities as an unbiased, objective expert witness. Mr. O’Hara submitted the last three years of Dr. Carreira’s professional experience with PTSD qualifies him as an expert in this field.

Of note, Justice Fuerth stated:

I have no reason as the sentencing judge to doubt the opinion or, and diagnosis of Dr. Carreira and the ultimate finding that the defendant suffered from PTSD on the evening of November 24<sup>th</sup>, 2017.

Justice Fuerth had no reason to question Dr. Carreira's medical opinion because it was not challenged by the prosecution. The agreed statement of facts at the criminal proceeding acknowledged that Constable Jaconelli had been diagnosed with PTSD.

Attached to Exhibit #22 is a document titled Principles Governing Communications with Testifying Experts, dated June 2014, by the Advocates' Society. The first two paragraphs read as follows:

For more than five hundred years, expert witnesses have played an important role in the litigation process. By at least as early as the 19<sup>th</sup> century, members of the judiciary had begun to express concerns about the objectivity and independence of experts, and about the quality and reliability of their evidence. Later, judicial concerns were expressed about the disproportionate weight likely to be given to expert evidence, particularly in jury trials.

Such concerns inevitably led to efforts to enhance the reliability of expert evidence. Thus, for more than 20 years, common law courts have insisted that experts: (i) be independent from the party that retained them; (ii) provide objective, unbiased opinion evidence in relation only to matters within their expertise; and (iii) avoid assuming the role of advocates for the parties that retain them.

I accept that it is not necessary for every witness to be at the top of their respective profession to qualify as an expert, but in this instance, I would expect Dr. Carreira's primary focus and experience, to be qualified as an expert, to be in the area of PTSD in first responders; more than simply an area of his attention over the past three years. If he were not Constable Jaconelli's treating physician, I question whether he would have been identified by Mr. O'Hara as an expert witness at this hearing. Furthermore, for the reasons listed above, I am not convinced Dr. Carreira would be able to provide unbiased evidence without being an advocate for Constable Jaconelli considering their five-year relationship, nor am I convinced that he has the level of expertise required.

I did not permit Dr. Carreira to testify as an expert witness.

### Prosecution Witnesses

Mr. O'Hara consented to A.A. reading her victim impact statement onto the record via Skype. I put onto the record and informed the media present, that information leading to the identity of this witness was not to be broadcast or disseminated; section 9(1) of the *Statutory Powers and Procedure Act* allows for taking hearings in-camera given the presence of certain circumstances. It states:

An oral hearing shall be open to the public except where the tribunal is of the opinion that:

(a)...; or

(b)intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of hearing to the principle that hearings be open to the public, in which case the tribunal may hold the hearing in the absence of the public.

Police disciplinary tribunals must adhere to the open court principle unless an exemption is created as per the *Statutory Powers and Procedures Act*. On such occasions, the hearing officer has the authority to hold parts of, or the entire hearing, in the absence of the public.

There was no suggestion that the hearing be held in-camera to protect the identity of A.A. but it was suggested that a publication ban would address any concern related to protecting A.A.'s mental health. The *Statutory Powers Procedure Act* does not specifically state that a hearing officer has the authority to issue a publication ban or to order that involved persons be anonymized. However, simple logic suggests that if a hearing officer has the authority to hold a hearing in-camera, away from the public domain, then surely, a hearing officer would have the authority to take the less intrusive measure of holding the matter in public but anonymizing a witness' identity. Doing so allows for transparency and accountability, while protecting the health of A.A. by prohibiting the release of identifying information.

While there may be a slight public interest in knowing the identity of A.A., failing to divulge this information would not risk the fairness of the hearing. Issuing a publication ban is the least intrusive way to address this issue, it allows for transparency of the proceedings for the public, and the media, while protecting the identity of this witness.

*Testimony of A.A.*

Exhibit #21 is the Prosecution Book of Documents. Found at tab 1 is the Victim Impact Statement of A.A. which she read into the record as follows (amended):

To say the last five years have not been easy, would be an understatement. The events that transpired on November 2017, will always be with me whether I like it or not. However, I will always know that I did the right thing by coming forward. And that also, will always be with me.

I think that Andrew needs to hear exactly how he made me feel that night and how I have felt every day since the assault. Andrew ruined my night at the platoon Christmas party which was designed to be a fun social occasion amongst colleagues. For that first year, I thought of that night and being assaulted every single day. I wondered if staying quiet was the right thing to do or not. It would have been the easiest thing to do but it certainly would not have made me feel any better. I have three daughters at home who my husband and I have always taught to stand up for themselves. Taught them that no one should touch you without your permission. I wouldn't be much of a role model to them had I stayed quiet. I felt like such a hypocrite that first year.

When I finally came forward, a little bit of a weight was lifted off me. I felt a little bit better knowing that this was something I needed to do. My husband was at that Christmas party and learned then that Andrew had assaulted me. He told me that it was my decision to tell someone or do nothing, but either way he would support me. When I told him that I was going forward with criminal charges he said "good" and that he would be there for me. I then told my dad who was a retired Ontario Provincial Police officer and had also just retired from the Special Investigations Unit. He also told me that I was doing the right thing in coming forward to report the assault and that he supported me.

The next year was very stressful. There were meetings with the Crown and phone calls from Victim Witness [Assistance Plan] giving me updates and letting me know how talks were going in the ongoing court process. I never seemed to get a break from thinking about a possible trial and having to testify. Certainly, I was willing to testify, but the thought of testifying and the stress it caused me was not easy to get through. Most days, my stomach was in knots. Much like it is right now as I write this and recalling everything from being assaulted that night. Then I got a call from Victim Witness advising that Andrew had agreed to plead guilty and that he would be in court in January of 2019, a little more than a year after his arrest. It took him an entire year to agree to a plea. A whole year where nothing had changed during



which time I was hoping for closure. Andrew had all the same information that he had the year prior. I wanted to be in court that day and got myself mentally ready for the proceedings. I showed up that morning only to learn that Andrew had withdrawn his plea late the night before because he didn't like the wording in the statement of facts that the Crown provided. He was pleading to simple assault, but the statement of facts read that he grabbed me between my buttocks and grabbed my perineum. He refused to agree to that. I was frustrated, knowing that I was going to have to go through all of this again. I was disappointed and frustrated that Andrew refused to do the right thing. Andrew knew what he did, and he knew it was wrong. He did not care what this was doing to me at all. It was another ten months before things were finally settled in court. Andrew pled to sexual assault with the statement of facts reading that there was no grabbing involved. I wanted this done with, so I agreed with the new statement of facts because he was pleading to sex assault thinking that he would get a bigger sentence than what he would get for simple assault. Only receiving a conditional discharge felt like a slap in the face.

The day before court where Andrew was finally pleading guilty to sex assault, I received an e-mail with an apology letter attached from Andrew. The so-called apology came four years too late. There was only one sentence saying that Andrew was sorry, and the rest was filled with excuses as to why he did what he did. If you follow up an apology with excuses, it isn't an apology. It's just a way to make you feel better for doing something you know you shouldn't have done. I have absolutely no respect for Andrew. He could have made things a lot easier for everyone involved. It took two years for him to agree to a plea and now another two years for the *Police Services Act* hearing to hopefully, finally be complete. Andrew has only been thinking of himself during this entire time. He should have pled guilty a lot sooner and he should have resigned from the police service. That would have been the right thing to do.

Andrew is a police officer. Someone who took an oath and promise to uphold the values of our service. My dad was a police officer for 30 years. I grew up respecting the police and their authority. I could never have imagined being sexually assaulted by one at a police platoon party.

I think it is important to know that I don't want to see Andrew ever again. And if he is allowed to keep his job, I most certainly will. How am I supposed to work with him now? I don't want to hear his voice on the radio, if Andrew is able to keep his job, most certainly I will hear his voice. I don't want to walk past him in the hallway. If he were to keep his job most certainly, I will. I don't want to see any emails that

he may send, because I will, should he be allowed to come back to work. If he were to keep his job, what does that say to me and any other victim afraid to come forward. It's already enough that Andrew didn't get any real sentence in the criminal case. These last four years, since Andrew's arrest, have been anything but therapeutic. It has had the complete opposite effect on me. When this is finished, I would like to be able to move forward and put this behind me. I want to be able to come to work and feel safe knowing I won't ever have to work with Andrew again.

And to you, Andrew, because of you I can't stand it when my mom is squeezing past me in my own kitchen and grabs my hips to get by me. When I am standing in any line, anywhere, I am always aware of how close the person is behind me. When I bend over to put on shoes, I backed myself up to a wall if there is anyone else around. When I sit in a restaurant, I ask for a table against the wall, so no one is behind me. I am quite sure that you don't give a damn about anything I have said here, but I think it is important for me to say and for others to hear.

A.A. informed the tribunal that her daughter is a newly hired constable with the Chatham-Kent Police Service; the thought of her working with Constable Jaconelli has her worried and has added to her stress level.

#### *Testimony of Inspector Mike Domony*

Inspector Domony testified that the Chatham-Kent Police service has approximately 230 members in total, 68 of which are civilians. Of those 68 civilian positions, 56 are female. Inspector Domony stated the Chatham-Kent Police Service has one headquarters police building, and four substations. He indicated that if Constable Jaconelli were to be accommodated, he would have to be assigned to headquarters due to the lack of supervision at the substations. Inspector Domony noted that the Communications Centre is situated directly across the hall from the Alternative Response Unit which is where Constable Jaconelli would likely have to be assigned due to his accommodation needs.

Inspector Domony testified that Constable Jaconelli's misconduct is the most serious that the Chatham-Kent Police Service has had to deal with. He noted that Chatham-Kent has a population of 105,000 people. Inspector Domony stated this matter has received significant media attention in and outside of the community which has adversely affected the reputation of the Chatham-Kent Police Service. He testified that the community expects members of the Chatham-Kent Police Service to uphold the law, not break it; the behaviour demonstrated by Constable Jaconelli is not the type of image the Chatham-Kent Police Service nor their members wish to portray.

At tab 6 of Exhibit #21 is the Oath of Office, Oath of Secrecy, and Oath of Honour, sworn by Constable Jaconelli when he joined the Chatham-Kent Police Service in 2006. Inspector Domony testified Constable Jaconelli has failed to conform with his sworn oaths.

Inspector Domony testified that other than a brief secondment to the Ontario Police College as an instructor, Constable Jaconelli has worked as a constable on the road since 2006. He has been a member of the honour guard and although Inspector Domony did not review his annual performance appraisals, he believed that they were “fair.” At tab 4 of Exhibit #21 is an inter-office memorandum wherein Constable Jaconelli received informal discipline in the amount of 12 hours for taking an unauthorized personal day off from work.

Inspector Domony testified that Constable Jaconelli has been dealing with alcohol related issues for over a decade. A tab 5 of Exhibit #21 is an inter-office memorandum dated July 4, 2011 submitted by Constable Jaconelli to Inspector Dore. It states:

I am submitting this memorandum voluntarily to provide you with an update to my current situation. I am enrolled in EAP counseling to assist me with my state of depression and life stresses that I have encountered recently. I am seeking this counseling to assist me with all aspects of my life from the death of my father, the breakdown of my marriage, to my misuse of alcohol. I feel the counseling is helping me and will continue to actively participate with my counseling, and seek help from my friends and colleagues. I am disappointed with myself and do not wish to bring any negative light to this police service or the great members that serve within it. I will live my life each day with this incident in the back of my mind knowing that there is a higher expectation demanded upon me.

Inspector Domony testified that the incident referred to in that correspondence involved excessive alcohol consumption where police were called to intervene at a restaurant in London; there was repetitive misconduct by Constable Jaconelli involving staff.

Inspector Domony stated that when Constable Jaconelli was an instructor at the Ontario Police College, there were reports about his conduct which resulted in terminating his secondment. Inspector Domony explained that a third party complained that Constable Jaconelli bumped into a female recruit, leaned in close to her and whispered something in her ear causing her to shove him and call him a “douche.” There was a second incident which occurred on Halloween. Constable Jaconelli was part of the festivities and dressed in a Batman costume. He had made inappropriate sexual comments to recruits at the gathering. Alcohol was a factor in both instances.

Inspector Domony could not recall the date, but he thought it was earlier in 2022 when Constable Jaconelli attended at his matrimonial home, broke a window, and unlawfully accessed the premises. Furthermore, he had been repeatedly contacting his wife. This resulted in criminal charges including criminal harassment, which were outstanding at the time of this hearing.

Inspector Domony explained that the Chatham-Kent Police service has a number of partnerships in the community such as the Women's Centre and the Sexual Assault Crisis Centre. Inspector Domony stated for the Chatham-Kent Police Service to have a member convicted of a sexual assault, it would undermine the relationship with these partnerships. Inspector Domony testified that Constable Jaconelli's future employment would adversely affect community relationships, and victims of abuse would lose faith in the Chatham-Kent Police Service's ability to assist them.

Inspector Domony testified that the other members of the Chatham-Kent Police Service would find it untenable for Constable Jaconelli to return to his employment. He testified that other members have indicated to him that Constable Jaconelli's return to the Police Service is unthinkable and that he should not maintain employment.

Inspector Domony acknowledged that the Chatham-Kent Police Service is obligated to protect their members, and offer them a safe work environment which includes protection from psychological abuse. Inspector Domony stated that it would be difficult for all staff, but especially the female staff, just having Constable Jaconelli working on site.

Inspector Domony testified that the public would question how Constable Jaconelli could maintain employment as a police officer having committed this type of misconduct which includes a criminal conviction for sexual assault.

In cross examination, Inspector Domony acknowledged that the alleged misconduct related to B.B. which resulted in not guilty findings, contributed to his conclusion that Constable Jaconelli is not suitable for employment. Having said that, Inspector Domony stated he would come to the same conclusion having extracted that information from his consideration.

Inspector Domony acknowledged that another member of the Chatham-Kent Police Service entered a guilty plea to assaulting a co-worker and he has remained a member of the Service. Inspector Domony acknowledged that another officer, Constable Lunn was found guilty of the criminal offence of assault and he also remains employed with the Police Service.

Inspector Domony reiterated that there is no supervisory staff at the Chatham-Kent Police Service suboffices and stated to the best of his knowledge, members have not been assigned non-frontline duties at those substations. Inspector Domony conceded that hypothetically, it was possible for an accommodated officer to be assigned to a substation, but noted, that had not been their policy due to the lack of supervision on site.

Inspector Domony testified that A.A. is assigned to a platoon, it would be possible for Constable Jaconelli to be assigned to another platoon working a different schedule. Inspector Domony added that because, often, platoons overlap due to overtime commitments, it would be difficult for the organization to ensure Constable Jaconelli did not encounter A.A. in the work environment.

Inspector Domony acknowledged that the incident in London in 2011 and the incident at the Ontario Police College both resulted in informal discipline.

Inspector Domony acknowledged that there is policy in place informing members that they are not permitted to give character references without the permission of the Chief of Police.

In reply, Inspector Domony noted that the unrelated misconduct incidents involving other members of the Chatham-Kent Police Service involved assaults, not sexual assaults and he was not certain as to whether the Police Service sought termination in those cases. He added that despite the policy that exists for character references, there is no policy in place preventing any member from testifying at a *Police Services Act* hearing.

#### *Testimony of Staff Sergeant Kate McArthur*

Staff Sergeant McArthur is in her 30<sup>th</sup> year of policing which includes 13 years in Major Crime, two years in the Domestic Violence Unit, and 16 years as a frontline officer and supervisor. Staff Sergeant McArthur testified that the consensus among co-workers is that they do not want to have Constable Jaconelli return to his employment. She stated the majority of the membership takes pride in the uniform and Constable Jaconelli has brought disrespect and dishonor to the Chatham-Kent Police Service. Staff Sergeant McArthur noted A.A. is an employee of the Chatham-Kent Police Service and as such, she should be assured that her place of employment is a safe environment. Staff Sergeant McArthur is aware A.A. does not want to see, hear, or deal with Constable Jaconelli at work, and she should not have to worry about doing so.

Staff Sergeant McArthur stated that as a female, she has no interest in working with Constable Jaconelli, nor does she wish to attend calls for service with him. As a supervisor, Staff Sergeant McArthur stated she did not wish to worry about the safety of

other females that she supervises which would occur if Constable Jaconelli returns to work. Staff Sergeant McArthur noted that most of the civilian staff at the Chatham-Kent Police Service are female and they did not wish to work directly with Constable Jaconelli.

Staff Sergeant McArthur also expressed concern about the vulnerable women in the community and how they would react to learning that Constable Jaconelli maintained employment as a police officer after having been convicted of a sexual assault. Staff Sergeant McArthur is familiar with social media posts by members of the community containing an overall context that Constable Jaconelli is a disgrace to the community and to the Chatham-Kent Police Service; that he should not be a police officer any longer.

Staff Sergeant McArthur is familiar with sexual assault and domestic violence boards in the community and she was confident that they would not support the Chatham-Kent Police Service employing a police officer with a criminal conviction for sexual assault. Staff Sergeant McArthur noted that it is difficult, it takes a great deal for a victim of a sexual assault to come forward; having a member with this background would make it even more difficult for victims to do so. Staff Sergeant McArthur stated it would be impossible for Constable Jaconelli to return to frontline duties; he simply cannot associate with vulnerable women in the community.

Staff Sergeant McArthur testified that she did not believe Constable Jaconelli should be allowed to continue employment as a police officer due to the utter lack of trust associated to him. The community has a high standard for police officers and Constable Jaconelli maintaining employment, would erode that trust.

In cross examination Staff Sergeant McArthur conceded that her opinion was based on a combination of everything known to her, including the information associated to B.B.; the charges Constable Jaconelli was found not guilty of. Staff Sergeant McArthur acknowledged that when she supervised Constable Jaconelli in the past, he was a good road officer and she had no personal issues with him then.

### Analysis

Constable Jaconelli pleaded guilty and was found guilty of seven counts of discreditable conduct. Before delving into my analysis of the evidence, I will first consider Mr. O'Hara's submission that the *Kienapple* principle ought to be employed while considering the appropriate disposition in this case.

## *Kienapple Principle*

Essentially, the *Kienapple* principle means that an individual cannot be sanctioned for more than one offence arising from the same event if no additional or distinguishing elements exist. Mr. O'Hara submitted that I must look at the elements of the offences and determine whether they are repeated in other counts of misconduct; if so, the *Kienapple* principle is engaged. Mr. O'Hara submitted that the first two counts of discreditable conduct are verbatim; there is no presence of distinguishing elements that go to the finding of guilty. Mr. O'Hara submitted the same argument applies to counts six and seven which are verbatim, and to counts eight and nine. Mr. O'Hara submitted the elements that make up the facts contained in the Notice of Hearing are the same. I was the hearing officer in the matter of *Cudney and St. Thomas Police Service*, March 21, 2021. Mr. O'Hara submitted I ought to apply the same concept as I did in that matter; the sanction ought to be based on the behaviour, not the multiple findings of guilty for the same acts.

As noted, I was the hearing officer in *Cudney*, where I addressed this very issue. The matter of *Sowa and Durham Regional Police Service, 2017*, OCPC was given to me in *Cudney* for my consideration and it was also presented in this matter. The Commission in *Sowa* noted:

Although the penalties under the *Police Services Act* do not involve a loss of liberty, they are nonetheless serious and may include the termination of employment or a demotion with concomitant implications for the officer's pension. It is our position that the same principles of fairness, which preclude someone from being punished twice for the same actions in the criminal law context, should apply to cases under the *Police Services Act*.

As I noted in *Cudney*, *Sowa* is useful for the purpose of confirming that the *Kienapple* principle ought to be applied in *Police Services Act* proceedings where applicable. In the matter of *Durham Regional Police Service v. Sowa*, 2019 ONSC 1902, the Court stated:

I start by noting that the *Kienapple* principle is a rule against multiple convictions. Courts have held that in order to prevent an accused from being punished twice for the same cause or matter, the appropriate remedy is to stay the lesser of the two charges.

In *Sowa*, the Court also stated:

The elements underlying the *Kienapple* principle were comprehensively set out by this court in *Carruthers v. College of Nurses of Ontario* (1996), 31 O.R. (3d):

What underlies the rule invoked by the appellant is the principle that there ought not be multiple convictions for the same "delict", "cause", or "matter." In the context of criminal proceedings, if there is a verdict of guilty on the

first count and the same or substantially the same elements make up the offence charged in a second count, the rule against multiple convictions will be engaged. The relevant inquiry is whether the same cause or matter, rather than the same offence, is comprehended by two or more offences.

The test for the application of the rule is not framed in terms of whether the offences charged were “the same offences” or included offences. It is formulated, rather, in terms of whether the same “cause”, “matter”, or “delict” is the foundation for both charges. The jurisprudence also acknowledges that “offence,” as used in the rule, is a term of art. One offence cannot be “the same as” or “included in” another offence, absent a precise correspondence in the respective definitions.

The *Kienapple* rule erects no bar to several or a multiplicity of convictions, each in respect of a different factual event. There is no alteration of the principle that holds offenders criminally liable for each occasion on which they have transgressed the law. The rule is only engaged where the offences arise from the same transaction.

There must first be a factual nexus between the charges. For the rule to be implicated, the same act of the accused must ground each of the charges.

There must also be a sufficient legal nexus between the offences to sustain the application of the rule. The inquiry focuses upon the presence of distinguishing elements, not shared elements, to determine the applicability of the rule. The requirement of legal proximity is only met where there is no additional and distinguishing element that goes to guilt contained in the offence for which a conviction is sought to be precluded under the rule.

As noted, Mr. O’Hara requested that I take a similar approach in this matter that I did in *Cudney*. I did not accept that the *Kienapple* principle applied but did not find it fitting to increase the sanction because there were two findings of discreditable conduct. I determined a sanction based on the behaviour demonstrated by the officer.

In this matter, the prosecution submitted the charges are not the same; assaulting another person is very different from bringing or likely to bring discredit to the police service; the elements of the offence are disparate and there are different factors to be considered in each count.



The first, second, and third counts of discreditable conduct read as follows:

Count #1 - Constable Jaconelli committed discreditable conduct in that he did act in a manner likely to bring discredit upon the reputation of the police force, contrary to Section 2(1)(a)(xi) of the Code of Conduct, Ontario Regulation 268/10, therefore contrary to section 80(1) of the *Police Services Act*.

The particulars of allegations state:

On November 24, 2017, Constable Jaconelli sexually assaulted co-worker A.A. by intentionally grabbing her buttocks area without her consent. This occurred while at a Christmas party at a work colleague's residence in Chatham, Ontario.

Count #2 - Constable Jaconelli committed discreditable conduct in that he did assault any other member of a police force, contrary to Section 2(1)(a)(vii) of the Code of Conduct, Ontario Regulation 268/10, therefore contrary to section 80(1) of the *Police Services Act*.

The particulars of allegations state:

On November 24, 2017, Constable Jaconelli sexually assaulted co-worker A.A. by intentionally grabbing her buttocks area without her consent. This occurred while at a Christmas party at a work colleague's residence in Chatham, Ontario.

Count #3 - Constable Jaconelli committed discreditable conduct in that he has been found guilty of a criminal offence, contrary to Section 2(1)(a)(ix) of the Code of Conduct, Ontario Regulation 268/10, therefore contrary to section 80(1) of the *Police Services Act*.

The particulars of allegations state:

On November 23, 2020, Constable Jaconelli entered a plea of guilty to one count of sexual assault in the Ontario Court of Justice in Chatham, Ontario.

Count #3 is a direct result of the guilty finding in criminal court; the factual foundation is different than those found in the other counts of misconduct and would not be subject to the *Kienapple* principle. Counts #1 and #2 however, share the exact same particulars of allegations. It is the same act that is grounded in the charges which is the first rule associated with the *Kienapple* principle. It is my position that the requisite legal nexus is lacking; although both charges are discreditable conduct, section 2(1)(a)(vii) is very exact, it deals with the subject officer assaulting another member of a police service, while

section 2(1)(a)(xi) is a catch-all section suggesting the behaviour in question is likely to bring discredit to the reputation of the police service. Section 2(1)(a)(xi) deals with the subjective assessment of bringing discredit to the reputation of a police service, an element of the offence not found in section 2(1)(a)(vii).

The same concept applies to Counts #6 and #7, and to Counts #8 and #9; they read as follows:

Constable Jaconelli committed discreditable conduct in that he did act in a manner likely to bring discredit upon the reputation of the police force, contrary to Section 2(1)(a)(xi) of the Code of Conduct, Ontario Regulation 268/10, therefore contrary to section 80(1) of the *Police Services Act*.

The particulars of allegations state:

On November 24, 2017, Constable Jaconelli assaulted co-worker Josh Rose by intentionally throwing and striking him with a dart. This occurred while at a Christmas party at a work colleague's residence in Chatham, Ontario.

Constable Jaconelli committed discreditable conduct in that he did assault any other member of a police force, contrary to Section 2(1)(a)(vii) of the Code of Conduct, Ontario Regulation 268/10, therefore contrary to section 80(1) of the *Police Services Act*.

The particulars of allegations state:

On November 24, 2017, Constable Jaconelli assaulted co-worker Josh Rose by intentionally throwing and striking him with a dart. This occurred while at a Christmas party at a work colleague's residence in Chatham, Ontario.

Constable Jaconelli committed discreditable conduct in that he did act in a manner likely to bring discredit upon the reputation of the police force, contrary to Section 2(1)(a)(xi) of the Code of Conduct, Ontario Regulation 268/10, therefore contrary to section 80(1) of the *Police Services Act*.

The particulars of allegations state:

On November 24, 2017, Constable Jaconelli assaulted co-worker Luxshana Chandra by grabbing her and pointing a dart toward her neck. This occurred while at a Christmas party at a work colleague's residence in Chatham, Ontario.

Constable Jaconelli committed discreditable conduct in that he did assault any other member of a police force, contrary to Section 2(1)(a)(vii) of the Code of Conduct, Ontario Regulation 268/10, therefore contrary to section 80(1) of the *Police Services Act*.

The particulars of allegations state:

On November 24, 2017, Constable Jaconelli assaulted co-worker Luxshana Chandra by grabbing her and pointing a dart toward her neck. This occurred while at a Christmas party at a work colleague's residence in Chatham, Ontario.

As noted, I find there to be a significant difference between the misconduct which is likely to bring discredit upon the reputation of a police service and that of committing an assault on other members of Constable Jaconelli's police service. However, I will take the same approach that I did in *Cudney*. I will not increase the sanction simply because there are multiple findings of discreditable conduct, I will determine a suitable sanction based on Constable Jaconelli's overall behaviour; while off-duty he assaulted two members of his police service, and sexually assaulted another, resulting in a guilty finding in criminal court. In so doing, Constable Jaconelli's behaviour is likely to bring discredit upon the reputation of the Chatham-Kent Police Service.

#### *Dismissal of a Police Officer*

Constable Jaconelli has been found guilty of seven counts of misconduct; he physically assaulted two co-workers and sexually assaulted another while at a platoon work party which resulted in a guilty finding in criminal court. The prosecution submitted that the misconduct is at the extreme end of the seriousness of misconduct spectrum which ought to result in the dismissal of Constable Jaconelli. Mr. O'Hara submitted that dismissal was not a fitting sanction, a demotion in rank was more appropriate.

There is a considerable disparity in the positions taken by Counsel in respect to a fitting disposition; dismissal versus a demotion of one rank, from first-class constable to second-class for a period of two years. Before determining an appropriate sanction, I will first consider the circumstances which must exist for a police officer to be dismissed from employment.

In *Favretto v. Ontario Provincial Police*, 2002 CanLII 76732 (ON CPC) the Commission stated:

Dismissal should be reserved for the most egregious offences which nullify the usefulness of the officer and cause serious damage to the reputation of the police service.

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

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

Exhibit # 35 is volume I and volume II of the Prosecution's Book of Authorities. At tab 1 is the matter of *Williams and Ontario Provincial Police* (1995), 2 O.P.R. 1047 (OCCPS) wherein the Commission stated:

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

In *Reilly v Brockville Police Service*, 1997 CanLII 22045 (ON CPC), the Commission stated:

In *Williams and the OPP*, the Commission identified three key elements to be taken into account. These include 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 if the officer remained on the force.

There are also other factors which can be relevant, either mitigating or aggravating the penalty depending on the particular misconduct in question. They include the officer's employment history and experience, recognition of the seriousness of the transgression, and handicap or other relevant personal circumstances.

Finally, other considerations could include provocation, the need for deterrence and concerns arising from management's approach to the misconduct in question.

When imposing penalty it is also important to take into account prior disciplinary cases dealing with similar types of misconduct. The reason for this is simple. As

the Commission stated at page 615 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 facts, and consistent with similar cases that have been dealt with on earlier occasions.”

The Commission reiterated this position in the matter of *Armstrong v Peel Regional Police Service*, 2002 CanLII 74563 (ON CPC) and once again in *Krug and Ottawa Police Service*, 2003 CanLII 85816 (ONCPC) where the Commission stated:

This Commission in previous cases has identified various matters that [it] must take into consideration when determining penalty. Paul Ceysens, at page 5-129 of “Legal Aspects of Policing” summarized the factors which may be either mitigating or aggravating as follows:

1. public interest;
2. seriousness of the misconduct;
3. recognition of the seriousness of the misconduct;
4. employment history;
5. need for deterrence;
6. ability to reform or rehabilitate the police officer;
7. damage to the reputation of the police force;
8. handicap and other relevant personal circumstances;
9. effect on police officer and police officers’ family;
10. management’s approach to the misconduct in question;
11. consistency of disposition;
12. financial loss resulting from unpaid interim administrative suspension;
13. effect of publicity.

The Commission noted that there is no requirement that anyone factor be given more weight than another, the seriousness of the offence alone for example may justify dismissal. Aggravating factors can serve to diminish the weight of any mitigating factors.

In some cases, the seriousness of misconduct alone can be so egregious as to cause irreparable harm to the police service if the officer were to remain employed. In those instances, the potential to reform is surpassed by the seriousness of misconduct and in most cases, it is unlikely that an opportunity to rehabilitate would correct a fundamental character flaw of such magnitude.

Constable Jacconelli has been found guilty of the criminal offence of sexual assault. Additionally, he was found guilty of discreditable conduct associated to assaulting members of his own police service while off-duty. It could be argued that on its face, a guilty finding of sexual assault is egregious enough to warrant dismissal regardless of

other factors such as ability to rehabilitate. However, I take note of the following comments by Justice Fuerth when sentencing Constable Jaconelli:

I concluded that while the offence was serious his moral culpability in the commission of the offence was reduced. As such, I concluded that this was an exceptional case in that regard and in my view called out for careful consideration on sentencing. Granting a conditional discharge on these facts was not contrary to the public interest. Indeed, there were many, excuse me, many consequences to the defendant that have already been imposed upon him. That includes the public nature of these charges, the loss of his reputation. Certainly, the discord with his fellow officers, the findings of guilt and the entering of his plea in this proceeding in a public way and of course the unknown consequences with respect to his continued employment. So, in the circumstances I've decided that an appropriate fit sentence is to discharge Mr. Jaconelli with respect to the charge and I've decided that it needed to be conditional on completion of a period of probation... So, the discharge will be granted on condition that he completes six months of probation. I don't think at this point in time, it needs to be longer. Simply make sure that he continues on the rehabilitative path that he's currently on.

Constable Jaconelli was found guilty of committing sexual assault. This in and of itself causes the misconduct to land on the extreme end of the seriousness of misconduct range; it is serious enough to justify the dismissal of the officer.

In *Groot and Peel Regional Police Service*, April 5, 2002 (ON CPC) the Commission stated:

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

I am mindful of the comments in *Groot*; just because Constable Jaconelli has been found guilty of a criminal offence, does not automatically mean that that individual cannot continue to serve as a police officer; the seriousness of each transgression must be weighed and assessed against the factors identified above. In terms of the sexual assault spectrum, I agree with Justice Fuerth in the sense that this misconduct could be viewed as being situated near the lower end of that continuum. Regardless, I find it is misconduct which is so egregious that it could result in dismissal, and perhaps, so grievous, that it must result in dismissal even if some potential for rehabilitation exists. I will expand on this issue further into this decision.

Furthermore, Justice Fuerth did not consider Constable Jaconelli's behaviour as it related to Ms. Chandra or Constable Rose; it was not misconduct which was properly before him. It is, however, behaviour which adds to the overall seriousness of misconduct at this proceeding. The seriousness of Constable Jaconelli's misconduct requires considerable analysis. In keeping with *Williams*, it is also incumbent upon me to consider Constable Jaconelli's ability to reform or rehabilitate and the damage to the reputation of the Chatham-Kent Police Service that would occur should he remain employed as a police officer.

As noted in the annotated *Police Services Act*:

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

The first principle is that the disposition should fully accord with the purposes of the police discipline process, which are as follows: the employer's interest in maintaining discipline in the workplace; the rights of a respondent police officer suspected of misconduct being treated fairly; the public interest: ensuring a high standard of conduct in the constabulary, and public confidence in the constabulary...

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

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

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

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

It is a fundamental proposition that a disposition must be proportionate to the misconduct given due regard to those special considerations applicable to service in the police force. Proportionality is arguably the most complex of the five

principles that govern the process of crafting an appropriate disposition and requires three decisions:

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

In determining the most fitting sanction, I must be guided by the above noted principles. I understand Constable Jaconelli must receive the least onerous disposition available, that a corrective disposition ought to be imposed if possible, and that the disposition must be consistent with previous, similar fact matters.

Since the *Krug* decision in 2003, the list of penalty factors to be considered has expanded. In this decision, I will address the disposition factors considered relevant by Counsel and/or by this tribunal. I will determine whether each of the individual factors is aggravating, mitigating, or neutral, and ultimately, I will determine the appropriate weight to be applied to each factor considered.

### **Public Interest**

In Legal Aspects of Policing, Mr. Ceysens states:

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

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

Given the circumstances in this case, public trust is a significant aggravating factor. Constable Jaconelli not only has lost the trust of his peers and his employer, but his behaviour undermined the public's trust in him and the Chatham-Kent Police Service. The public, rightfully so, expects the Chatham-Kent Police Service to respond accordingly; with an appropriate and fitting sanction.



The public has an interest in ensuring police officers achieve and maintain an extraordinarily high standard of conduct. The public must have confidence that police officers will always act professionally, whether on or off-duty. Public trust is eroded when an officer fails to meet those expectations.

In his text, Mr. Ceyssens cites the following passage from the dissenting judgement in *Montreal (City) v. Quebec, 2008 SCC 48*:

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

Constable Jaconelli assaulted another uniformed member of his police service by twice throwing, and striking him with a dart, assaulted a civilian member by holding a dart to her neck in a threatening manner, and he sexually assaulted a civilian member from his own police service. This behaviour must have created public concern; it must have caused the public to question what this behaviour implies about Constable Jaconelli's character and his ability to be trusted in the role of police officer. While the sexual assault could possibly be viewed as being at the lower end of the spectrum of sexual assaults, it was not a straightforward touch with a sexual purpose; Constable Jaconelli bumped into A.A. and reached with his hand, grabbing A.A. "right in the crack of my bum, not like a cheek..." This was a deliberate, sexual act, which, especially when combined with the other incidents, would be considered deplorable behaviour by the public.

Police services and their members require the public's trust in order to be successful. For these relationships to succeed, they must be based on respect and professionalism, an unachievable objective if the public cannot trust its officers to exhibit strong values such as ethical judgement and professionalism. Whenever an officer breaches the public's trust, the public expects that officer to be held accountable accordingly.

Mr. O'Hara conceded that public trust is an aggravating factor for consideration, but he noted the offences do not include deceit. He submitted that a conviction for deceit would impair Constable Jaconelli's ability to testify in court. Mr. O'Hara submitted a sanction in the form of a two-year demotion in rank is capable of instilling public confidence in the Chatham-Kent Police Service.

I do not agree. I do not accept that a sanction less than dismissal would have the ability to re-instill public confidence in the Chatham-Kent Police Service. Inspector Domony and Staff Sergeant McArthur both testified that based on their communications with the public, it was their belief that the public would be appalled to learn that Constable Jaconelli

maintained his employment as a police officer in the wake of this behaviour. The public expects that the sanction imposed be commensurate with the seriousness of misconduct.

At tab 10 of Exhibit #35 is the matter of *Buks v. Durham Regional Police Service*, 2006 ONCPC 4 (CanLII) wherein the Commission found the hearing officer properly considered the sentencing factors and noted:

The Hearing Officer held that the public interest requires that police officers possess both the character and the ability to carry out the required duties and responsibilities of the office they hold.

I consider Constable Jaconelli's behaviour offensive to the public. Constable Jaconelli put himself above the law when he began throwing darts at a colleague, held a dart to another co-worker's neck, and sexually assaulted A.A. Clearly, this behaviour is the antithesis of what the public expects from a member of the Chatham-Kent Police Service; it is criminal behaviour, the type of behaviour that police officers are sworn to defend, not commit. It is behaviour which must cause the public to question whether Constable Jaconelli possesses the necessary characteristics to remain in the employ of the Chatham-Kent Police Service.

At tab 9 of Exhibit #35 is the matter of *Chief John Gauthier of the Timmins Police Service*, 2015 ONCPC 19 wherein, the Commission stated:

Public interest is also a key sentencing factor that informs the decision on penalty.

The public's trust in police and policing is a crucial element of effective policing, every time that public trust is undermined, effective policing is at risk.

The people of Ontario expect police to treat everyone fairly. Police services and Ontario should always exemplify the fair administration of justice for all. The public interest requires that conduct be set firmly in the democratic and fundamental principles of equality and justice for all.

Police services in Ontario put considerable effort into establishing and upholding a positive public image. Public trust is fragile. To maintain that trust, the public must be assured that misconduct of this nature will attract an appropriate sanction. The public must have confidence that the Chatham-Kent Police Service will hold members accountable for their actions.

Constable Jaconelli committed serious misconduct which has been well documented in the media. I have no doubt that members of the community expect behaviour of this nature to generate a sanction which corresponds to the seriousness of the misconduct. It

is my position that the public will be more than disappointed by Constable Jaconelli's actions; it is appalling and distasteful behaviour. The question then becomes, will the public be satisfied with any sanction that does not include dismissal? I find the testimony of Staff Sergeant McArthur and Inspector Domony significant; they were clear that the members of the public they have heard from, are opposed to such a result. A significant sanction is necessary in order to contribute to the process of re-instilling public confidence in the Chatham-Kent Police Service, knowing he was held accountable for his actions and that the matter was taken seriously by his employer.

I find Public Interest to be an aggravating factor, one which necessitates a considerable sanction. I am not convinced that a demotion in rank would sufficiently address this penalty factor.

### **Employment History**

The prosecution led evidence from Inspector Domony about two previous matters which resulted in Constable Jaconelli being disciplined informally and the fact that Constable Jaconelli currently faces criminal charges unrelated to this matter. Mr. O'Hara took issue with the admissibility of this evidence. I heard the evidence and indicated to Counsel that I would address the issue of its admissibility in this written decision.

At tab 3 of Exhibit #21 is an inter-office memorandum from Staff Sergeant Stezycki addressed to Mr. Johnstone dated October 24, 2022. The correspondence indicates that Constable Jaconelli has a court date scheduled for November 23, 2022, in relation to two counts of criminal harassment and one count of forcible entry contrary to the *Criminal Code*.

The prosecution submitted there is an inference to be drawn from Constable Jaconelli's outstanding criminal charges that he is unlikely to be on the path of rehabilitation as suggested by Dr. Carreira. Mr. O'Hara acknowledged Constable Jaconelli faces these outstanding charges but submitted they ought not to be considered an aggravating feature; they have not been proven; they are mere allegations.

Inspector Domony testified about two historical incidents; Constable Jaconelli's arrest at a restaurant in London, and his unwanted and inappropriate comments while instructing at the Ontario Police College. Both matters resulted in informal discipline.

Mr. O'Hara submitted the matter of *Green and Lakey and Toronto Police Service, 2012 ONCPC 8* wherein the Commission addressed the issue of whether the hearing officer

erred by considering prior informal discipline, expunged from the officer's employment record. The Commission stated:

The appellant was correct that section 64(16) of the *Act* requires an employer to remove from personnel files certain entries pertaining to discipline imposed. He relied on the principles outlined in *Hampel*, supra. However, the facts in this appeal are not the same.

As Mr. Solomon noted, in *Hampel*, supra, the service had failed to expunge the disputed records. The hearing officer improperly considered them in assessing penalty.

In this case, evidence relating to the informal discipline for Detective Lakey was introduced in oral testimony and thus was part of the record which the hearing officer was entitled to take into account.

Mr. O'Hara submitted that in this matter, Constable Jacconelli did not raise the matters of previous informal discipline, it was the prosecution who did so, consequently, they are not properly before this tribunal. In the matter of *Hampel and Toronto Police Service*, 2008 OCCPS, the Commission noted:

The appellant raised a number of arguments as to the hearing officer's assessment of penalty. In particular, the record disclosed that Constable Hampel had two previous informal disciplinary documentations...

Two sections of the *Act* must be noted. First, section 68(9):

The chief of police... may cause an entry concerning the matter, the action taken and the reply of the... police officer against whom the action is taken, to be made in his or her employment record, but no reference to the allegations of the complaint or the hearing shall be made in the employment record, and the matter shall not be taken into account for any purpose relating to his or her employment unless,

- a) the complaint is proved on clearing convincing evidence; or
- b) the chief of police, deputy chief of police, or other police officer, resigns before the matter is finally disposed of.

More to the point section 64(16) states:

An entry made in a police officer's employment record under paragraph 2 of subsection (15) shall be expunged from the record two years after being made if during that time no other entries concerning misconduct or unsatisfactory work performance have been made in the record under this Part.

By the application of 64(16), these informal documentations were deemed to be expunged from Constable Hample's employment record at the time of his conviction for insubordination. The employment record containing those matters should not have been admitted as an exhibit at the hearing and those prior matters should not have been considered by the hearing officer in imposing penalty. To do so was an error at law.

Mr. O'Hara submitted the whole purpose of expunging informal discipline matters is to ensure that information is not utilized by the prosecution at a formal proceeding. Mr. O'Hara submitted that in this instance, there is no information that accurately depicts the previous incidents. Inspector Domony was not even certain of the details when testifying about the matters. If the informal discipline matters were documented and presented, at least the tribunal would be aware of the facts admitted by Constable Jaconelli at the time. Mr. O'Hara submitted that the previous misconduct was not serious in nature, otherwise, it would not have been resolved informally; it is information that cannot be relied upon.

In the matter of *White and St. Thomas Police Force*, OCPC 1979, the Commission stated:  
The question of punishment presents more difficulty. Section 8 of the *Statutory Powers Procedure Act* provides as follows:

Where the good character, propriety of conduct or competence of a party is an issue in any proceedings, the party is entitled to be furnished prior to the hearing with reasonable information of any allegations with respect thereto.

It is obvious from the record that this section was not complied with in the introduction of the record of the constable. The purpose of this section is to ensure that the accused person is not taken by surprise by the introduction of evidence, as to his conduct, which he might have countered if he knew about it before the trial.

Mr. O'Hara submitted that the prosecution did not provide the requisite notice which was referred to in *White* and for all the reasons noted, this tribunal ought not to rely on the previous misconduct of Constable Jaconelli which was resolved informally.

I note that the tribunal was not presented with the actual informal resolution or any specific documentation providing the details of Constable Jaconelli's behaviour at the Ontario Police College or at the restaurant in London which resulted in his arrest. In his internal correspondence to Inspector Dore in 2011, Constable Jaconelli acknowledged there was an incident and alluded to having brought negative light to his employer.

At tab SD5 of Exhibit #26, are Constable Jaconelli's Performance Review and Development Plans. The Performance Review and Development Plan for the reporting period of April 2014 to April 2015 includes the following supervisor commentary:

Although last year was not the most positive year for Andrew professionally, as it relates to his unplanned early departure from his Ontario Police College instructor's secondment, he has taken his licks and moved forward, back on platoon, picking up the ball where he left off. His attitude regardless has been positive, and he continues to take on his extra duties as outlined above. So as not to harp on it too much more, I can't help but comment on his comments under the integrity competency, "I have learned from past shortcomings that it is more important to set a high standard at all times and maintain it at all costs." This is the third assessment consecutively that Andrew has made this statement.

The prosecution submitted that it was proper for this tribunal to rely on the previous behaviour of Constable Jaconelli to support the assertion that there is a pattern of misconduct involving inappropriate behaviour and alcohol abuse since 2011. Mr. Johnstone submitted that as noted in *Green*, it is permissible for evidence of this nature to be properly introduced in oral evidence. He noted that the informal resolutions have been appropriately expunged, but Inspector Domony is permitted to discuss the incidents in his testimony.

I do not accept that the informal disciplinary matters can be used for the purpose of progressive steps of discipline; they cannot be used in the assessment of this penalty factor of employment history. To establish the range of available penalties in consideration of the penalty factor consistency of penalty, I will take the position that Constable Jaconelli has no prior disciplinary history.

However, I do find it appropriate to consider the previous behaviour of Constable Jaconelli as it relates to his character, his ability to rehabilitate, and his further usefulness to the Chatham-Kent Police Service. It matters not that there was some form of penalty imposed and agreed upon, it is the behaviour that is relevant to this proceeding, not whether it resulted in informal discipline. Similarly, I will not be influenced by the fact that Constable Jaconelli is facing criminal charges currently. Of note however, I am impacted by the fact that he suppressed this information from Dr. Carreira. I will expand on that further into this decision. I will now turn my mind to the remaining particulars related to Constable Jaconelli's employment history.

Mr. O'Hara submitted that Constable Jaconelli's Performance Review and Development Plans have been positive over the course of his career; he has been viewed as a leader and high achiever. Mr. O'Hara also noted that during the hearing, Staff Sergeant McArthur

testified that Constable Jaconelli was a “great officer” while she was his direct supervisor. Mr. O’Hara made note of the 22 letters of recognition in Constable Jaconelli’s file including a citation for bravery, which suggest this behaviour was out of character for him.

It is my position that employment history is an important factor for consideration; it has the potential to provide insight into the character of the involved officer and often, closely aligns with his ability to rehabilitate. In this instance, all the evaluations that were tendered for my consideration are positive.

Constable Jaconelli commenced his career with the Chatham-Kent Police Service in 2006. It was noted in his initial performance appraisal that Constable Jaconelli was a well liked and respected member of his platoon. In the Performance Planning and Appraisal Report dated January 2009, Sergeant Biskey stated:

Constable Jaconelli is a reliable, consistent, and committed police officer... Constable Jaconelli is a highly regarded member of the platoon and continues to work professionally in that role... In the fall of 2008 Constable Jaconelli encountered a frustrating situation in London. The matter was investigated, and he expressed a deep desire to “make things right.” That particular matter was out of character for him and does not speak to his overall commitment, professional nature and work ethic for Chatham-Kent.

The annual appraisals dated April 3, 2010, April 17, 2011, and July 28, 2012, contain similar comments. The appraisal dated April 29, 2013, notes:

Constable Jaconelli is ethical and honest in his business dealings in dealing with people... This officer appears to hold himself to a high moral and ethical standard and it shows in the way he carries himself out in the street and when dealing with his peers. He is well respected by his fellow officers.

Staff Sergeant Barry Childs noted:

I have watched you throughout this term accept your shortcomings as things that can happen. This has not stopped you from first accepting it and putting in a plan to overcome them. In my view that while you still have work to do, you have succeeded in this...

The annual appraisal for the reporting period of April 2013 to April 2014 includes the following supervisor comments:

He has certainly proven himself to be a professional, competent officer... Andrew holds himself to a high standard and can be relied upon to be a trustworthy, honest person. He is consistently making every effort to do the right thing ensuring the best interest of the public is of the utmost importance... Andrew is well respected

by his peers and all of his supervisors and in turn, he is very respectful to them and recognizes and adheres to the chain of command. Andrew is a pleasure to work with and consistently ensures a positive image and professional approach is portrayed throughout his policing duties.

A secondary supervisor comment (signature illegible) stated:

Andrew is a solid police officer. He exemplifies what an officer should be on the job, with his extra duties with the drill team and the college. Andrew is an asset to the community and the police service.

The annual appraisal from April 2014 to April 2015 was also positive other than the previously noted commentary in regard to the Ontario Police College incident. In the annual appraisal from April 2015 to April 2016, his supervisor recommended that Constable Jaconelli consider writing the promotional examination. The final annual appraisal submitted for my consideration included the reporting period of April 2016 to April 2017 and it is a positive review.

At tab SD6 of Exhibit #26 are a series of letters of recognition or appreciation, the most recent letter dated in 2018 acknowledged Staff Sergeant McArthur, Constable Jaconelli, Constable Tremblay, and Constable Rose for their life saving efforts associated to the incident which gave rise to Constable Jaconelli's PTSD diagnoses. The recommendation for a Board Citation noted that on July 1, 2017, the officers saved the life of a male who poured gasoline onto himself and ignited it with a lighter setting himself ablaze.

Constable Jaconelli's annual evaluations were positive, consistent with the testimony of Staff Sergeant McArthur, illustrating that he once held the necessary attributes required of a police officer and had a promising career ahead. The prosecution submitted that he no longer possesses the necessary attributes required of a police officer. The issue becomes whether he now has a character flaw so significant that it nullifies his usefulness to the Chatham-Kent Police Service.

In *Groot*, the Commission noted:

Constable Groot appears to have used this time productively he has obtained two university degrees, written a book, and been called to the bar. He has been a good student. He has the respect of many fellow students, teachers, and legal colleagues. In the words of Mr. Justice Hill. "He has demonstrated himself to be a person of present good character" The Hearing Officer 'applauded' these accomplishments and found the appellant to be "of good character today."



That being said, the Hearing Officer appears to have concluded that this alone, in the absence of other significant mitigating factors, was insufficient in her mind to warrant a penalty other than dismissal. While we may have concluded otherwise, if the matter was ours to determine in the first instance, we are not satisfied that this assessment is so patently unreasonable or incorrect in principle that it should not be permitted to stand.

I take a similar approach in the sense that, while Constable Jaconelli's employment history and post offence behaviour does not mirror that of Constable Groot, it is a mitigating factor for consideration; but it is insufficient to warrant a penalty less than dismissal.

Constable Jaconelli has a history of being an asset to the Chatham-Kent Police Service and if he were to return to front-line duties, it is theoretically possible that that trend might continue. For that to occur however, he would require the public's trust, and that of his peers; elements that no longer exist.

I find Constable Jaconelli's Employment History to be a mitigating factor.

### **Nature and Seriousness of Misconduct**

In the text, Legal Aspects of Policing, Paul Ceyssen's addressed the penalty factor of seriousness of the misconduct. He stated:

Seriousness of the misconduct is a fundamental consideration, and necessarily arises in all disposition decisions... Although seriousness of the offence alone may justify dismissal, even reprehensible misconduct may not be determinative, because the law requires an appropriate balancing of all relevant mitigating and aggravating disposition factors... Some decisions have favoured the view that some categories of discipline offences are intrinsically more serious... One arbitrator has offered the following analysis on the approach to momentary-isolated-atypical cases:

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

There is no dispute that the misconduct in question is of a very serious nature. The misconduct is multifaceted; Constable Jaconelli sexually assaulted a co-worker, held a dart to the neck of another co-worker, and twice, threw a dart at a third co-worker.

Inspector Domony testified that this incident was perhaps the most serious internal matter the Chatham-Kent Police Service has ever had to address.

Police officers, by virtue of their office, are granted extraordinary power; they are authorized to carry a firearm, detain, and question members of the public, and to legally apply force on another person. Even though this misconduct occurred while off-duty, it happened at a work-related social event, an extension of the workplace. As in the usual course of any police officer's professional relationships, Constable Jaconelli's position was one of authority whether in the office or in the community. The role of civilian members in a police service is that of "support staff," to support police officers. Constable Jaconelli's actions were a gross abuse of that position. His co-workers expected to attend a work-related social function where all persons would act with honesty, integrity, and not abuse their powers; they expected Constable Jaconelli to act in a manner which would not discredit his police service.

As the Commission noted in *Groot*, each transgression must be weighed and assessed. As stated earlier, being found guilty of sexual assault could suggest to members of the public that the guilty finding in and of itself, warrants dismissal; it seems illogical that any police officer could maintain employment after having been found guilty of sexual assault. As I have noted, Constable Jaconelli's behaviour could be viewed by some as being at the lower end of the sexual assault spectrum so theoretically, maintaining employment is possible. I, however, take a divergent perspective. Constable Jaconelli is a police officer. He felt as though he could use his right hand to intentionally grab the buttocks area of A.A. with impunity. It was clearly, an unwanted sexual act by a male police officer, accustomed to holding a position of power and authority, on a female civilian employee.

I accept that there are varying degrees of sexual assault but I find it irritating that this misconduct could be described as "being at the lower end of the spectrum;" women do not wish to be grabbed or groped by any man let alone a serving police officer at a work-related social function. It is inexcusable behaviour.

At times, Staff Sergeant McArthur, and Inspector Domony referred to Constable Jaconelli as having been convicted of sexual assault; in fact, he was found guilty of sexual assault. A conditional discharge disposition means there is not a conviction and no criminal record. Misconduct that involves a criminal conviction may be considered more serious than conduct that does not, but also, a guilty finding in criminal court may be deemed more serious than misconduct that does not result in the same consequence. Therefore, being found guilty of sexual assault is an aggravating feature, but not as severe as what a conviction would have carried. In any event, it is the actual behaviour perpetrated by Constable Jaconelli which requires the most scrutiny.

In her statement to police, A.A. indicated Constable Jaconelli “grabbed right in the crack of my bum...” and in her victim impact statement, A.A. noted “he grabbed me between my buttocks and grabbed my perineum.” This sexual assault was not a matter of Constable Jaconelli touching her on the cheek of her bum, it was very offensive behaviour, a violation of A.A.’s personal and sexual integrity. Compounding the behaviour, Constable Jaconelli was seen laughing about sexually assaulting A.A. immediately thereafter.

Constable Jaconelli was at an off-duty work-related function with both uniform and civilian members in attendance including, some spouses. While there, he approached a female civilian member whose husband was also present. Constable Jaconelli bumped into A.A., immediately following this he placed his hand fully into and around her buttock cheek. He then laughed about it afterwards.

This behaviour suggests a complete lack of respect towards A.A., if not towards women in general. Constable Jaconelli acted with impunity and total disregard towards A.A. in placing his hand upon her in a sexual manner and then laughing about it afterward. As a male police officer, he abused his position when he sexually assaulted a civilian member from his own service. The authority granted to police officers is easily eroded when such trust is abused.

Mr. O’Hara acknowledged that the impact Constable Jaconelli’s behaviour has had on A.A. is an aggravating factor but noted it is only one factor for my consideration. I agree with Mr. O’Hara’s submission that I must consider and adhere to the Court’s comments in the matter of *R. v C.C.*, 2018 ONCJ 542, pertaining victim impact statements. The Court stated:

The sentencing provisions of the *Criminal Code* recognize this ability and permit judges to simply disregard any irrelevant information contained in the statements. This authority to disregard the inadmissible or irrelevant does not mean that there are no limits to the contents of a victim impact statement... Before the amendments to the *Code* allowing judges to disregard the irrelevant, in the decision of *R. v McDonough*, Justice Durno directed that victim impact statements should not contain certain information and he emphasized the important role that the Crown plays in assisting victims with properly preparing and circumscribing these statements:

There are other comments that appear all too frequently in victim impact statements that do not describe the harm done by or loss suffered as a result of the Commission of the offence. While there is no exhaustive list of items that should be excluded from the statements, the following should not appear in victim impact statements:

- Criticism of the offender, which has the potential to tilt the adversary system and risk the appearance of revenge motivation.
- Any comment that amounts to offender bashing.
- Assertions as to the facts of the offence.
- Recommendations as to the severity of the punishment.
- Statements addressed to the offender. The victim impact statement is not an opportunity to confront the offender in tell him or her what the victim thinks of him or her or the crime.

I will disabuse my mind from the portions of A.A.'s victim impact statement that do not relate to the assessment of the harm caused by Constable Jaconelli's behaviour. In C.C., the Court also stated:

Obviously, the contents of the Victim Impact Statements may have some influence on the determination of a fit sentence. The Ontario Court of Appeal aptly observed in *R. v A.G.*:

...it is not an error in principle for a sentencing judge to determine that the impact of the crime on a victim, as described in a victim impact statement, is an aggravating factor. If it were otherwise, victim impact statements would have limited utility and the mandate to consider them as part of the sentencing process found in section 722 of the *Criminal Code* would be rendered meaningless.

I find it noteworthy that A.A. testified virtually, via Skype, despite being situated in the same building as the tribunal at the time of her testimony. The prosecution submitted A.A. is so petrified of Constable Jaconelli because of his misconduct, she cannot be in the same room as him. This not only speaks to the harmful effect that Constable Jaconelli's behaviour has had on A.A., but it also speaks to the seriousness of his misconduct.

I find the statement provided by A.A. particularly impactful; obviously, Constable Jaconelli's behaviour is still having a profound, negative effect on A.A. in her daily life. If Constable Jaconelli were to return to work as a member of the police service, it would not just negatively influence the day-to-day life of A.A. at work, but she has made it clear that it would harm her mental well-being. Having him return to her work environment would undoubtedly have the ripple effect of adversely impacting A.A.'s private life as well. A.A. insinuated that she would not feel safe at work if she is subjected to hearing Constable Jaconelli's voice, and/or having to see him directly, and simply reading his emails would undermine her mental health. The consequences of Constable Jaconelli returning to his employment, would result in long-term harmful effects on A.A.; this is as a direct result of his behaviour.

In *Gulick v. Ottawa Police Service*, 2011 ONCPC 5 (CanLII), the Commission stated:

The evidence at the disciplinary hearing disclosed that these events had a serious impact on the officers involved... they reported suffering from nightmares, flashbacks, hyper-vigilance about their surroundings and having constant fear of repercussion by Constable Gulick. They even reported a fear of encountering Constable Gulick in a parking lot. One officer remains on extended leave, having been diagnosed with post traumatic stress disorder that following year.

Constable Jaconelli experienced trauma that led to increased alcohol consumption and likely to PTSD, so he ought to understand better than most, the extent to which A.A. has been traumatized by his behaviour.

According to the Agreed Statement of Facts, A.A.'s reaction at the time was that of being shocked and offended. Since then, the impact that Constable Jaconelli's actions has had on A.A.'s life has been significantly greater. This is exacerbated by the fact that A.A.'s daughter has recently become employed by the Chatham-Kent Police Service. As a parent, the potential for her daughter to be a co-worker of Constable Jaconelli, has created genuine concern and stress for A.A.

While at the same social function, Constable Jaconelli approached a civilian member with the Chatham-Kent Police Service from behind. Ms. Chandra was sitting on a stool in the garage when Constable Jaconelli put his arm around her and held a dart to her neck area. He stopped after another member intervened by yelling at him. Ms. Chandra was silent and looked scared while Constable Jaconelli continued to play darts. It was unprovoked behaviour of a violent nature.

In addition to this conduct, Constable Jaconelli, threw a dart, striking another member of his police service. There was no precursor to this, no incident which gave rise to a reaction, it was an intentional, random act of violence. In fact, the dart board was in the opposite direction of where Constable Rose was situated; it was unprovoked behaviour which caused the officers to exchange words. Rather than admit to his mistake, Constable Jaconelli threw a second dart at Constable Rose. One of the darts actually stuck in Constable Rose's jacket and had to be removed. Words were exchanged and Constable Jaconelli then bumped Constable Rose into the garage door.

I find this behaviour dreadful. The "dart" incidents were unprovoked, uncalled for, violent behaviour, which could have resulted in significant injury. It was reckless and dangerous. The behaviour only ended when others intervened. It begs the question, what type of person acts in this manner? I question what motivated Constable Jaconelli to throw a dart at another person, let alone a fellow officer and not once, but twice, and to hold a dart

against the neck of a female co-worker? It is reprehensible behaviour causing me to conclude he no longer possesses the necessary attributes to remain employed as a police officer.

Crown Attorneys are required to disclose matters of internal formal misconduct such as this; often referred to as “*McNeil* obligations.” It is fair to conclude that police officers who have a negative disciplinary record will be scrutinized in court in relation to the conduct that gave rise to said record. These seven counts of discreditable conduct would negatively impact Constable Jaconelli’s ability to testify which adversely affects his future utility to the Chatham-Kent Police Service. The very nature of these charges bring Constable Jaconelli’s integrity and professionalism into question.

The Chatham-Kent Police Service is a smaller sized service, it does not have the same luxury afforded to larger police services of being able to effortlessly assign an officer with significant *McNeil* issues to non-traditional policing roles to minimize the likelihood of them having to testify in court. An accommodation of this nature would have an adverse effect on the resources and workforce capacities of a police service of this size. Any sanction short of dismissal will put the Chatham-Kent Police Service in a disadvantaged position. An employer ought to be able to expect their members to be assigned to front-line duties, that includes being deployed to all types of calls for service necessitating testimony in court, and to incidents of violence and sexual assault. Conceivably, Constable Jaconelli’s *McNeil* issues related to this misconduct would significantly affect his credibility and reliability in court when testifying at these types of trials, rendering him an ineffective employee.

This *McNeil* issue adds to the seriousness of misconduct, it is not insurmountable, but it can quite conceivably have a damaging impact on Constable Jaconelli’s credibility depending on the situation before the court, and his role in the investigation being scrutinized therein.

Mr. O’Hara submitted the misconduct in question was not a case where it occurred over time, it all occurred on the same night at the same party. He submitted that despite the three separate events, the misconduct ought to be considered an isolated incident. Mr. O’Hara submitted it was one act of frailty, a momentary lapse of judgement over a short period of time. Mr. O’Hara submitted that there was no deliberation, there is no evidence suggesting that the events were planned or that it was a pattern of behaviour. Mr. O’Hara submitted the sanction ought to be based on the totality of the events rather than looking at each act of misconduct individually and in the context of someone suffering from significant mental health issues and alcoholism, acting outside of his typical character.

I accept it is less than likely that Constable Jaconelli planned in advance to throw darts at Constable Rose and to threaten Ms. Chandra. There is no evidence that Constable Jaconelli planned to sexually assault A.A. However, his behaviour was not unintentional, he purposely sexually assaulted A.A. and he senselessly and intentionally assaulted two other members with a weapon. It is behaviour which goes well beyond unacceptable, it is deplorable behaviour which simply cannot be tolerated.

Granted, the behaviour was isolated to this one platoon party, but there were three distinct incidents. I acknowledge that the two incidents of throwing darts at Constable Rose can easily be considered one event because they occurred so close in time, but the matter of holding a dart to Ms. Chandra's neck and sexually assaulting A.A. are separate, unrelated matters altogether. Constable Jaconelli's behaviour occurred during the course of the evening, providing ample opportunity for him to consider his actions and to not continue acting so unethically, in fact, I note that Constable Jaconelli's wife attended to extricate him from the party, but he refused to leave with her. I do not consider this a momentary lapse of judgement or one act of frailty, rather it was three distinct, unrelated incidents that occurred during one night.

Mr. O'Hara submitted that Constable Jaconelli was suffering from mental health issues at the time and combined with his level of intoxication, it contributed to his behaviour. I understand that Justice Fuerth gave this some consideration in his decision, but it is noteworthy that it was uncontested evidence before him. That is not the case here, there was no such concession made by the prosecution and I did not permit Dr. Carreira to provide expert testimony. I take no issue noting Constable Jaconelli was intoxicated, or that he likely suffered from PTSD at the time of this misconduct, [he was not diagnosed with PTSD until after this date] but I do not accept that therefore, PTSD and/or alcohol contributed to his behaviour.

Constable Jaconelli was intoxicated at the time of his misconduct; most people and most police officers have consumed alcohol to excess at a work party or function at one time or another, but to act out in this manner is not just shameful, it is inexcusable. I fail to see the nexus between having been intoxicated and the behaviour exhibited by Constable Jaconelli on this occasion. As noted, many people including many police officers have been intoxicated at a party; the resulting consequence is not an act of violence or sexual assault. I do not accept that there is a nexus between any potential mental health issue and/or the significant alcohol consumption and the behaviour exhibited by Constable Jaconelli. I will not give any weight to the suggestion that Constable Jaconelli's mental health contributed to his behaviour.

The behaviour exhibited by Constable Jaconelli calls into question his judgment, integrity, character, and overall suitability as a police officer. His behaviour is nowhere close to meeting the expectations of a police officer. The public does not expect perfection from its officers, but it does expect police officers to exude professionalism not only while on-duty, but also while off-duty.

In addition to assaulting two individuals, Constable Jaconelli committed the offence of sexual assault. In swearing to the Oath of Office, Constable Jaconelli committed to preserving the peace. In the Oath of Office he swore, Constable Jaconelli made the following vow:

On my honour, I will never betray my profession as a police officer, my integrity, my character, or the public trust bestowed upon me...

Over the course of the evening, Constable Jaconelli sexually assaulted a female civilian member of his service; he then held a dart to the neck of another. These are not simply drunken hijinks at a social gathering. This behaviour is predatory and domineering – it is designed to embarrass, humiliate, or scare. It not only shocked those whom he assaulted but also those around him. He then threw a dart, not once but twice, at a co-worker. This is dangerous, reckless, and plain stupid. All these incidents clearly demonstrate that Constable Jaconelli does not possess the moral character, maturity, and integrity required of a police officer. His behaviour towards the members of his own service is degrading and inexcusable. Given how he acted towards his colleagues, it is apparent that Constable Jaconelli is not fit to therefore serve or protect the public.

Constable Jaconelli's behaviour offends the core qualities, attributes, and characteristics that police services and the public expect of their police officers. Consequently, it is behaviour that is clearly at the serious end of the misconduct spectrum. Furthermore, the long-term consequences that flow from this misconduct are very apparent in A.A.'s victim impact statement. Staff Sergeant McArthur and Inspector Domony expressed concern about Constable Jaconelli's potential return to work; they were both opposed to the notion. They each testified about hearing the same concerns about the viability of Constable Jaconelli's future employment directly from sworn and civilian members of the Chatham-Kent Police Service, and from members of the public.

At tab 25 of Exhibit #35 is the matter of *Guenette and Ottawa-Carleton Regional Police Service*, (OCCPS) 1998 in which the Commission noted:

Police officers are held to a higher standard than the average citizen and trustworthiness is a basic essential requirement of this profession.



I accept the Commission's position in *Guennette*, consequently, there is no dispute that a significant sanction is warranted. Mr. O'Hara agreed; the two-year demotion in rank he proposed is a significant penalty. Mr. O'Hara submitted a two-year demotion in rank is the most fitting sanction, while the prosecution submitted the appropriate penalty is that of dismissal. In the Annotated *Police Services Act*, Ceysens stated:

The Supreme Court of Canada articulated the law in *Levis (City) v Fraternite des policiers de Levis*. Under section 119 of the Quebec *Police Act*, a police officer found guilty of certain criminal offences must be automatically dismissed, "unless the police officer... shows that specific circumstances justify another sanction." The judgment examined the ambit of "special circumstances," beginning with this statement of principle:

In deciding whether there are specific circumstances, the arbitrator must not lose sight of the special role of police officers and the effect of a criminal conviction on their capacity to carry out their functions. A criminal conviction, whether it occurs on-duty or off-duty, brings into question the moral authority and integrity required by a police officer to discharge his or her responsibility to uphold the law and to protect the public. It undermines the confidence and trust of the public in the ability of a police officer to carry out his or her duties faithfully...

I am not suggesting that Constable Jaconelli must be dismissed because he was found guilty of sexual assault. It is my position however, that a reasonable person in the community would expect a police officer to be dismissed from their employment in situations where they demonstrated: behaviour that directly conflicts with the characteristics valued by the public in its police officers; behaviour that brings into question the moral authority and integrity required by a police officer to discharge his or her responsibility to uphold the law and to protect the public; behaviour that undermines the confidence and trust of the public in the ability of a police officer to carry out his or her duties faithfully. I find that the misconduct in question exemplifies this type of behaviour.

By behaving in the manner he did, Constable Jaconelli's integrity has been eroded; he cannot be trusted by the public or his peers. He directly assaulted his co-workers, violating their trust and, that of the public.

The Nature and the Seriousness of Misconduct is the most significant aggravating factor for consideration in this particular matter; it necessitates the dismissal of Constable Jaconelli.

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

Mr. O'Hara submitted the matter of *Purbrick and Ontario Provincial Police, 2011 ONCPC 7 (CanLII)*. In *Purbrick*, the Commission commented about the Appellant entering guilty pleas in criminal court and before the tribunal. The Commission stated:

Pleading guilty is one of the most indisputable forms of admission of culpability, wrongdoing, and responsibility.

Constable Jaconelli entered a plea of guilty to sexual assault. Furthermore, Constable Jaconelli entered guilty pleas before this tribunal in relation to seven counts of alleged misconduct. There may or may not have been triable issues, but it is not lost on me that his actions were committed upon members of his own police service and witnessed by multiple, other members of the Chatham-Kent Police Service in attendance. The inference being the strength of the case may have influenced Constable Jaconelli's decision to enter guilty pleas. Nonetheless, he does receive mitigation for pleading guilty, and for apologizing to everyone affected by his behaviour.

Constable Jaconelli submitted a written apology in accordance with his guilty plea in the criminal proceedings:

First and foremost I want to apologize to A.A. for my inexcusable behaviour back in November 2017. I am sorry that these proceedings are taking place and for what you have been through over the past three years because of my actions. The past three years of my life have been dark times for me. I've been struggling with a work related post-traumatic stress injury, a new medical condition in my child, anxiety, depression that was all being fueled or suppressed by my alcoholism.

I am actively continuing mental health counseling for my PTSD and depression. I have also been working with addiction services as well as my general practitioner to address my alcoholism and seek sobriety.

I realize however that no matter what I may have been experiencing in my life at the time of this incident, it cannot and does not excuse or justify my behaviour. I am deeply sorry for what I did and for the impact that my actions have had on you.

Before Justice Fuerth, Constable Jaconelli stated:

First and foremost, I wanted to once again apologize to A.A. for my completely inappropriate actions and for the impact my actions have caused on her. I do stand by the apology letter that my lawyer provided to the court and hope A.A. can also receive a copy of that letter. I'd like to take the opportunity to apologize to the Chatham-Kent Police Service and my fellow police officers for any negative

betrayal of the service that my actions in these proceedings may have caused. I've been following the directions and guidance of my medical professionals and will continue to do so in the hopes to gain back the trust I have broken. Thank you judge for the opportunity to say something.

Exhibit #44 is an apology letter read into the record by Constable Jaconelli before this tribunal. It reads as follows:

First of all, I stand by the letter of apology I delivered in my criminal proceeding concerning A.A. and want to take this opportunity to once again directly apologize to her for my actions and for the pain and suffering she has experienced as a result.

I want to take this opportunity to apologize directly to Josh Rose and Luxshana Chandra for my actions on November 24, 2017. I am aware there is no excuse for how I acted. I also need to apologize to my spouse Kelly, for all of the pain and embarrassment I have caused to her, my children and family members for not being engaged and distant when I was struggling. Lastly I want to apologize to the Chatham-Kent Police Service for any negative light that my actions have shined on the service and my fellow officers.

I am not proud of the current status of my career. I believe in the profession of policing and the calling to serve the public that it demands.

I want to apologize to the community of Chatham-Kent. Every person of a community deserves the reassurance to know that when they go to work, when they sleep, they will be protected by sworn officers ready to answer the call and be the fine line between good and evil. I believe I have served the community of Chatham-Kent each and every day while on shift with that profound respect that the community deserves. Today, I feel remorse each and every day and the willingness to correct my faults. I believe that I have a career that can still be fruitful and productive.

To those I've affected I can certainly offer my apologies, but they are just words. What I am committed to doing is offer my actions and show them that I am a changed person. I can show them that, if given an opportunity to rejoin the community, I can flourish it would not take for granted that privilege.

I began speaking to a therapist shortly after the incidents at this Christmas party. It was almost one year later I was arrested and charged with the allegations before you today. The Police Act charges and the hearing unleashed new levels of stress and anxiety that I and my family had to bear. Although I had been working with a

therapist for many years, it drove me back into a very lonely and dark place, where the hauntings of my past consumed me and where I tried to end my life.

I knew I needed an in-patient treatment program, fought very hard to get myself into the program for first responders that specializes in trauma therapy and addictions at Homewood. I fully embraced the Guardians Program and made a resolve to remain sober, which I have been since November 2021, almost a full year.

I have now developed healthy coping skills to deal with stress and anxiety versus turning to alcohol. I know I have the long road of redemption to walk down and I have relationships to rebuild and trust to regain. I am walking a different path than I was before. This is a path of sobriety, better mental health coping skills and the experience of not wanting to ever negatively impact someone again like I have impacted A.A.

As I have said before, nothing that I went through on July 1, 2017 or afterwards, excuses or justifies what I did on November 24, 2017. To those that I have impacted, I will continue to demonstrate through my actions that I am a changed person.

The prosecution submitted that Constable Jaconelli's apology was not presented to this tribunal until after the prosecution submitted that he had not offered an apology; hence, very little weight ought to be attributed to it. The prosecution added, Constable Jaconelli's apologies were replete with excuses, disingenuous, submitted years after the fact, and only for self-serving purposes. A hearing officer is entitled to consider not only the timing of an apology but whether it was genuine.

There is merit to the prosecution's position pertaining to the timing of Constable Jaconelli's letter of apology before this tribunal. It was not tendered until after the prosecution made detailed submissions specific to Constable Jaconelli's lack of recognition of the seriousness of his misconduct. However, I accept Mr. O'Hara's submission that the apology was forthcoming irrespective of the prosecution's submission based on the fact Constable Jaconelli submitted a similar apology before Justice Fuerth. Had that not occurred, I would have given his apology before this tribunal very little weight and would have deemed it submitted solely in response to the prosecution's notation that no apology had been presented.

I note that in her victim impact statement A.A. stated:

There was only one sentence saying that Andrew was sorry, and the rest was filled with excuses as to why he did what he did. If you follow up an apology with excuses, it isn't an apology. It's just a way to make you feel better for doing something you know you shouldn't have done.

Clearly, A.A. has not found Constable Jaconelli's apology to be sincere or genuine. On face value, the apology presented to this tribunal appears genuine, he acknowledged and addressed each of the parties he offended. However, I find it difficult to assess whether Constable Jaconelli has truly accepted responsibility for his actions since he has made other, similar apologies in the past and subsequently, he has been unable to live up to the standard expected of a police officer. I also note that he did not take advantage of the ample time provided to apologize to those he affected, it was one-year after the incidents before a complaint was filed and before an investigation commenced. There was no apology issued by Constable Jaconelli during that time. Therefore, there is merit to the prosecution's submission that the apologies could be nothing more than self-serving attempts to portray himself in better light; he did not offer up an apology until issuing one that benefitted him. This was even though he had commenced his counselling with Dr. Carreira.

This is not Constable Jaconelli's first alcohol related, inappropriate behaviour issue. He acknowledged this in his correspondence to Inspector Dore dated July 4, 2011. He had enrolled in the Employee Assistance Program for counseling then, for issues that included alcohol abuse. Inspector Domony's testimony about Constable Jaconelli's previous behaviour was not detailed, but it went unchallenged. The incidents at the Ontario Police College and at the restaurant in London involved alcohol and/or inappropriate comments made to females. Of further concern is the supervisor commentary found in the 2014/2015 Performance Review and Development Plan which noted:

...I can't help but comment on his comments under the integrity competency, "I have learned from past shortcomings that it is more important to set a high standard at all times and maintain it at all costs." This is the third assessment consecutively that Andrew has made this statement.

This is not information to be relied upon in progressive steps of discipline, however, it does illustrate that Constable Jaconelli has a history of making what appeared to be sincere apologies that turned out to be hollow. He apologized in his letter to Inspector Dore, an apology worded remarkably similar to the one presented to this tribunal only to behave in manners which necessitated further apologies in the coming years. It is this history which causes me concern about accepting his most current apology as being a genuine one.

Constable Jaconelli receives slight mitigation for Recognition of the Seriousness of his Misconduct.

### **Ability to Rehabilitate**

As noted in *Favretto*, it is necessary to consider whether Constable Jaconelli can be rehabilitated and reformed to the extent that he can be an asset to the Chatham-Kent Police Service and to the general community as a police officer.

In the matter of *Andrews and Midland Police Service*, 2003 CanLII 75388 (ON CPC) the Commission stated:

... we believe that rehabilitation is a very important and significant factor when considering an appropriate penalty. A community, in which a police officer serves, has made a significant investment in every police officer. The prosecutor had sought a penalty of dismissal and the hearing officer did consider this penalty. In fact, he stated that dismissal was in the appropriate range given the seriousness of the misconduct. However, the Commission believes that unless the offence is so egregious and unmitigated the opportunity to reform should be a significant consideration... Unless the officer is beyond rehabilitation (in which he would be a candidate for dismissal) the door should be kept open for the officer to be rehabilitated. The penalty should be tailored to provide him with the opportunity to do so.

Based on this premise in *Andrews*, if Constable Jaconelli is a candidate for rehabilitation, he should be given the opportunity to do so, unless other aggravating factors nullify his usefulness as a police officer.

I have found that the public's confidence in, and their ability to trust Constable Jaconelli has been severed because of the seriousness of his behaviour. Additionally, he has lost the trust and support of his employer and his peers. Staff Sergeant McArthur and Inspector Domony both conversed with sworn and civilian members who were united in their position that Constable Jaconelli's potential return to employment was not welcomed. I accept that some members may have been deterred from providing character letters because of existing policy, but any member could have testified before this tribunal in support of Constable Jaconelli. There was no suggestion that Staff Sergeant McArthur was deterred from testifying about Constable Jaconelli's previous positive employment history; it was open for anyone to do so at his disposition hearing. For example, the President of the Chatham-Kent Police Service Association exhibited support for his membership by attending each day of the hearing and disposition hearing; he too, could have been called as a defence witness. The lack of support from other

members of the police service is not an aggravating feature, but had it existed, it may have refuted the positions put forth by Staff Sergeant McArthur and Inspector Domony.

I have found employment history to be a mitigating feature, but the seriousness of this misconduct has critically affected Constable Jaconelli's ability to be respected, and supported, by his supervisors and peers alike.

In the apology submitted to this tribunal, Constable Jaconelli stated that he began speaking to a therapist shortly after the incidents. These incidents occurred on November 24, 2017. According to the letter from Dr. Carreira dated June 13, 2019, Constable Jaconelli first presented to Dr. Carreira's office on December 18, 2017, less than one month after the incidents occurred. This is a significant indicator that Constable Jaconelli recognized he needed help and took the initiative to seek it prior to a complaint being filed about his behaviour. He is to be commended for taking that action.

Mr. O'Hara suggested that PTSD and alcohol played a role in Constable Jaconelli's misconduct. Constable Jaconelli may have had PTSD and likely was intoxicated at the time of these incidents, but I do not accept that therefore, there is a nexus between his mental health and his behaviour. I note that prior to the call for service on July 1, 2017 that gave rise to the PTSD diagnosis, there is documentation in Constable Jaconelli's file referencing his ongoing issues with alcohol. Therefore, while it is possible that he may have been turning to alcohol to cope with his PTSD at the time of this misconduct, alcohol was a significant factor in his life long before July 1, 2017. He had been arrested in London and removed from his secondment at the Ontario Police College long before July 1, 2017; he had behavioural issues, albeit not to this degree, but long before being diagnosed with PTSD.

As noted earlier, I am troubled by the fact Constable Jaconelli failed to mention his current outstanding criminal charges to Dr. Carreira. I find it troubling that Dr. Carreira took the position that not knowing about these criminal matters would not have potential to impact his assertion that Constable Jaconelli was unlikely to reoffend. I question how his medical opinion could be expected to be accurate and relied upon when the patient in question has been less than forthcoming about relevant information concerning his behaviour?

Constable Jaconelli suppressing this information from Dr. Carreira, causes me incredible concern when considering his ability to reform. I question how it is that Constable Jaconelli can assert that he is a strong candidate for rehabilitation based on how well he appears to be recovering, when he is being dishonest with the medical practitioner who is providing that professional opinion. I use the term dishonest, not because he necessarily told a lie, but suppressing impactful events in his life from his treating

psychologist is just as significant; it was meant to deceive. Constable Jaconelli was seeking counselling in relation to his poor and unprofessional behaviour, presumably, for the purpose of improving his mental health. How can his clinical psychologist provide the necessary assistance to him if he is not fully informed?

I question why Constable Jaconelli would not be open and transparent, why would he have been motivated to keep his arrest and subsequent criminal charges hidden from his treating psychologist, the one person he is relying upon to help him heal and improve? I note that at the time he was arrested and charged in 2021, he was already facing these *Police Services Act* charges and Dr. Carreira had already provided professional medical letters of opinion. It seems logical to conclude that Constable Jaconelli anticipated that Dr. Carreira's medical opinion could be instrumental in assisting him at this tribunal. Suppressing the fact that he was arrested and charged with multiple criminal offences, could have been deemed beneficial for him, whereas conversely, divulging this information had the potential to adversely affect Dr. Carreira's opinion about his potential to reform.

In *Purbrick*, the Commission noted the importance of the officer undergoing therapy to resolve his mental health issues. I reiterate, Constable Jaconelli is to be commended for attending for such counselling shortly after the incidents in question, but him failing to be transparent to Dr. Carreira about the more recent criminal charges and the associated behaviour is more than concerning, I find it most worrisome. It is not simply the fact that he is facing new criminal charges that needed to be disclosed, it is the manner in which he was behaving at the time that would have been relevant to Dr. Carreira's professional medical opinion, and treatment.

Exhibit #27 is Constable Jaconelli's release order regarding his current outstanding criminal charges dated November 15, 2021. The attached general and supplementary occurrence reports provide details about his ex-spouse's level of concern for his well-being describing him as "a Jeckyll and Hyde." I recognize the allegations have not been proven, but Mr. O'Hara was aware that this report was before the tribunal; there was no evidence presented to discredit the reports. This is the type of information that Constable Jaconelli suppressed, the type of information that Dr. Carreira needed to make a thorough assessment.

I am not focusing on the fact that Constable Jaconelli was charged, but the facts as presented by his ex-spouse are concerning. In part, the police reports state:

She advised that through the years, his drinking became heavier and more often and is the main reason for the marriage breakdown with contributing factors of the



*Police Services Act* hearing. The relationship started deteriorating when Andrew was first arrested.

Andrew [attended her residence] however could not get through the next door as deadbolts had been installed and she had wedged a piece of wood between the door handle and the wall. [The ex-spouse] had this done shortly after Andrew left on the [October] 1<sup>st</sup> for her safety. Andrew grabbed a screwdriver and began chiseling at the door until he finally got past the deadbolt however could not open the door due to the piece of wood wedged between the door in the wall. Andrew then began banging on the door yelling... In the process of banging on the door, he broke a pane of glass in the door to move the piece of wood to enter... Before he could enter this door, police arrived on scene...

[The ex-spouse] advised that his drinking has gotten worse and that her concern had become greater for the safety of her and her children.

Documented in these reports is additional behaviour detailing Constable Jaconelli's issues with alcohol and ongoing mental health concerns. However, the above noted excerpts sufficiently illustrate why it would have been important for him to share this information with Dr. Carreira, and why Dr. Carreira's professional opinion may have been influenced had he been aware of this information.

His lack of transparency with Dr. Carreira brings Constable Jaconelli's integrity further into question; it causes me to conclude that he cannot be trusted. By being disingenuous with the truth to his own psychologist, he attempted to mislead the tribunal when he sought to have Dr. Carreira testify as an uninformed expert witness.

With Constable Jaconelli's lack of integrity established, it affects everything he says, such as being sober for nearly the past year. There is no evidence to suggest this assertion is not accurate however, so I consider his attendance at Homewood, and his participation in Alcoholics Anonymous mitigating.

In each of his three apologies, Constable Jaconelli referred to his involvement in a recovery plan. His apologies before Justice Fuerth were on or about November 23, 2020. The issues described by his ex-spouse in Exhibit #27, continued right up until his arrest (or beyond) in November 2021, one full year later despite him "working with addiction services as well as my general practitioner to address my alcoholism..." and "following the directions and guidance of my medical professionals and will continue to do so in the hopes to gain back the trust I have broken." I understand that alcoholism and alcohol

issues can be a constant battle for some, but the repeated lapses merely diminish the weight that I can apply to his most recent apologies and commitments to sobriety.

The prosecution submitted that the incidents at the Ontario Police College and at the restaurant in London involving excessive alcohol consumption resulting in his arrest, and inappropriate sexual comments, support a pattern of behaviour. A pattern of behaviour could be defined as: a recurrent way of acting by an individual toward a given object or in a given situation. I would expect that proximity of time would also be an essential element. This is not a situation where the prosecution is seeking to introduce similar fact evidence, it is merely an assertion that Constable Jaconelli's previous behaviour is a similar pattern. It is unnecessary to conclude that the behaviour meets a definition of similar pattern of behaviour, what is important is that I find it worrisome that on two occasions, while at the Ontario Police College as an instructor, he was involved with alcohol and inappropriate sexual behaviour. I recognize this matter was addressed informally, so it may not have been deemed worthy of proceeding formally with *Police Services Act* charges, or perhaps, the complainants did not wish to pursue the matter. Either way, it is behaviour which speaks to Constable Jaconelli's character. He was in a position of authority while teaching at the College, and not once, but twice, engaged in inappropriate sexual behaviour leading to the termination of his secondment.

Furthermore, Inspector Domony testified that Constable Jaconelli was arrested by the London Police Service for being intoxicated in a bar and showing repeated, unwanted attention to staff member(s).

The above noted incidents occurred prior to the offences listed in the Notice of Hearing, and prior to July 1, 2017, the date of the call for service where Constable Jaconelli observed the male set himself ablaze. This not only illustrates that his poor behaviour is not tied solely to that incident, but it also suggests that he has a lack of respect for women and colleagues, akin to the misconduct in this matter.

The issue is not simply whether Constable Jaconelli can remain sober, it is whether he, if given the opportunity to return to his employment, can be trusted to act with honesty and integrity; can he be trusted by his peers, his employer, and by the public? His most current behaviour, in conjunction with his past behaviour, suggests not.

Exhibit #26 contains letters of reference submitted on behalf of Constable Jaconelli. The first letter is addressed to Justice Fuerth and dated November 2020 submitted by Constable Jaconelli's common-law spouse at the time. Of note, she is the complainant associated to the criminal charges that he currently faces, so I question whether the

commentary that was applicable then, remains so. The letter is assistive in that it provides a general summary of the issues he was dealing with at the time of this behaviour.

Mark Cowderoy has known Constable Jaconelli for 44 years and they are close friends. Mr. Cowderoy stated that the behaviour exhibited by Constable Jaconelli on November 24, 2017 is completely out of character for him and he would not expect it to be repeated, especially now, considering that he has quit drinking. While I do not question the heartfelt support of his friend, I am curious as to whether he is aware of the incidents related to the Ontario Police College, his arrest in London and the current outstanding criminal charges when he described this misconduct as being out of character.

Melanie Burden has known Constable Jaconelli since 1985 and they have been close friends since then. Ms. Burden highlighted the changes in his personality following the July 1, 2017, incident, his subsequent addiction to alcohol, and the person he has become since he quit drinking. Of note, this letter is dated October 6, 2022. Ms. Burden stated:

...He is trying to work on rebuilding his relationship with his partner, to regain the trust she lost. I noticed, Andrew is also recognizing and applying the lessons he learned in treatment and sharing this knowledge with his partner in hopes she can utilize them in her journey too.

Constable Jaconelli's release order regarding his current outstanding criminal charges is dated November 15, 2021, when, he was prohibited from communicating with his spouse subject to a family court order. Perhaps the conditions of his release have been amended which would permit communication with his ex-spouse, but there is no evidence before the tribunal indicating so. I am left asking how he could be "rebuilding his relationship with his partner." I question whether Constable Jaconelli has been truthful with Ms. Burden about the status of his relationship and his current criminal charges or whether he has omitted this information in the same manner as he did with his medical practitioner.

Paul Umrysh has known Constable Jaconelli for 36 years and they have remained close friends over that time. Mr. Umrysh provided a summary of Constable Jaconelli's positive attributes prior to July 1, 2017. He noted that the events of that evening "fundamentally changed the person I knew... he turned to negative coping mechanisms to escape the horror of it all." Mr. Umrysh noted that Constable Jaconelli initiated counselling immediately after the incidents and after being arrested and charged, he expressed genuine remorse for his actions. Mr. Umrysh described the incidents as being out of character.

It is entirely possible that Constable Jaconelli's behaviour deteriorated after July 1, 2017, but based on his behaviour at the Ontario Police College and his arrest in London, his actions are not solely attributed to that incident.

Mr. Umrysh indicated that since Constable Jaconelli's relationship ended with his spouse in November 2021, he stopped drinking and successfully completed the live-in rehabilitation at Homewood Health Centre. He is to be commended for this and I consider it the most significant mitigating feature for my consideration.

In *Gulick*, the Commission stated:

The Hearing Officer acknowledged that Constable Gulick had been undergoing counseling for his problems but, had "difficulty" with the "inability of Constable Gulick to deal with the stresses of life, even after going through years of therapy." He was not persuaded by the evidence that Constable Gulick could safely return to policing.

Finally on page 50, the Hearing Officer offers his final comments on the rationale for his decision: "I must admit determining the career of a veteran police officer is not an easy task. However I would be derelict in my duty, and unfair to all other members of this police service, if I were to inflict on them someone with all these problems to continue to be a serving officer."

... the hearing officer concluded "the extent of this misconduct was to such a degree that the suitability of Constable Gulick remaining a police officer in this police service has been nullified by his conduct in this case. He has denied his Oath of Office and neither this police service, nor the community it serves, can or will condone or tolerate a law enforcement officer acting in the manner described here." It is within the scope of the Hearing Officer's mandate to reach this conclusion. We defer to his findings.

I accept that those who submitted reference letters on behalf of Constable Jaconelli were being honest and forthright, to support Constable Jaconelli and to properly inform this tribunal. However, I do not find that they were very assistive in speaking to his future potential usefulness to his employer unlike the testimony of Staff Sergeant McArthur and Inspector Domony.

According to Staff Sergeant McArthur and Inspector Domony, two people well situated to comment on this issue, the Chatham-Kent Police Service and its members are not convinced that Constable Jaconelli can safely return to policing, to allow it, would be unfair to them and to the community they serve. I agree.

I share the same perspective of the hearing officer in *Gulick* in the sense that I have grappled with this issue of dismissing an officer who at one time had been a contributing member of the Chatham-Kent Police Service. I am very concerned that in his attempt to address his mental health issues via weekly and/or bi-weekly sessions with his psychologist, he failed to disclose his ongoing issues with his ex-spouse. That was over a period of approximately one year, meaning that during, somewhere between 26 to 52 sessions, he purposely suppressed this information rather than to share it with the medical practitioners attempting to help him recover. It causes me to conclude that despite some positive character references, I am not convinced the behaviour will not be repeated.

I find that the misconduct in *Gulick* was more serious than in this matter, but the behaviour is so significant that he has nullified his usefulness to the Chatham-Kent Police Service; it was unprovoked behaviour of a violent nature which has undermined the public's trust in his ability to perform his duty. With his integrity eroded, the lack of trust of his peers, his supervisors, and his community, Constable Jaconelli no longer has the ability to adhere to his Oath of Office or to uphold the law and to protect the public.

Constable Jaconelli's utility, or usefulness to the Chatham-Kent Police Service and their ability to accommodate him and A.A. in the same work environment must be considered. As noted, Constable Jaconelli's employment history is positive. I do find it noteworthy that Staff Sergeant McArthur testified that despite Constable Jaconelli being a "great officer" prior to this misconduct, she found he had nullified his usefulness to the Chatham-Kent Police Service as a police officer when he committed the misconduct in question.

Staff Sergeant McArthur is very experienced having served in many capacities during her 30-year policing career including 13 years in Major Crime and two years in the Domestic Violence Unit. I found her to be a credible, reliable, witness. She answered questions honestly and forthright, without any suggestion that she was biased in any way. Staff Sergeant McArthur is well situated to provide this tribunal with the Chatham-Kent Police Service's perspective as to whether Constable Jaconelli is suitable for employment.

I accept Staff Sergeant McArthur's testimony as it pertained to the general consensus of staff, both civilian and sworn members, who are opposed to Constable Jaconelli's return to work. She explained, and I agree, that he has brought disrespect and dishonor to the Chatham-Kent Police Service.

Staff Sergeant McArthur articulated that all members of the Chatham-Kent Police Service ought to feel comfortable and safe in their respective work environments. Staff Sergeant McArthur testified that as a female officer, she no longer has any interest in working with

Constable Jaconelli; she did not wish to attend calls for service with him, and as a supervisor, she did not want to be concerned about the safety of other females in the work environment which would occur if Constable Jaconelli were to return to his position. Staff Sergeant McArthur added, A.A. was adamant that she did not wish to have any contact with Constable Jaconelli, directly or indirectly.

Staff Sergeant McArthur and Inspector Domony noted that most of the civilian staff at the Chatham-Kent Police Service are female and they too, do not wish to work directly or indirectly with Constable Jaconelli. Inspector Domony testified that the Chatham-Kent Police Service is obligated to protect their members by offering them a safe work environment, one which includes protection from psychological abuse. Inspector Domony stated that it would be difficult for all staff, but especially the female staff, just having Constable Jaconelli's presence at headquarters. Inspector Domony testified that other members of the Chatham-Kent Police Service find it untenable that Constable Jaconelli could return to his employment. He noted that the overall sentiment is that he should not maintain employment based on his misconduct.

I agree that every employee ought to feel safe in their environment. This issue would be of even greater concern had the misconduct occurred on-duty, but a workplace social event can be considered an extension of the workplace where those in attendance would have expected to feel safe and secure. Constable Jaconelli targeted three different members of his police service, two of whom are females holding civilian positions and the third being a fellow police officer. I can see why this behaviour would result in fellow employees being concerned about their safety, especially considering that he has a history of apologizing for his behaviour in the past, only to regress afterwards.

I accept the testimony of Inspector Domony, Chatham-Kent Police Service is relatively small in size and consequently, it would be difficult at best to ensure that Constable Jaconelli would not have direct or indirect contact with A.A. should he return to work. Similarly, I do not see what role he could serve where he had none to limited contact with female staff, and/or how he could be supervised at all times. It is noteworthy that 56 of the 68 civilian staff are female members.

All employees require supervision to varying degrees. Given the nature of this misconduct, remote supervision would not satisfy the needs of the organization; Constable Jaconelli would require direct supervision if he were to return to employment. Only one police station exists and the sub-offices do not have supervisory staff assigned. Therefore, Constable Jaconelli would have to be assigned to the headquarters building where most of the civilian staff are employed. This is problematic, it would create a significant burden in the administration of the Chatham-Kent Police Service.

Prior to my career with the Ontario Provincial Police, I was an officer with Peel Regional Police Service (1984-1996) and with the Haldimand-Norfolk Regional Police Service (1996-1998). As a result of my time with the Haldimand-Norfolk Police Service, I experienced, and understand, the difficulties associated with a smaller police service having to accommodate members with employment restrictions. If Constable Jaconelli were to return to his position, it would create a multitude of human resource difficulties such as but not limited to, scheduling, work assignments, increased supervisory responsibilities and employee well-being obligations.

The challenges do not relieve the Chatham-Kent Police Service from their duty to accommodate and I note that there are a number of factors that must be considered in that process. I note that other members of the Chatham-Kent Police service do not wish to work with Constable Jaconelli, but this alone cannot be cause for Constable Jaconelli's dismissal; it is but one factor for consideration.

In addition to the membership's concern, there is the obvious public concern that would come with the knowledge that a police officer maintained employment after having committed this type of misconduct, including being found guilty of sexual assault. I accept the testimony of Staff Sergeant McArthur who stated she was familiar with social media posts by members of the community denoting that Constable Jaconelli is a disgrace to the community and to the Chatham-Kent Police Service; that he should not be a police officer any longer. This is an important matter for consideration. Any penalty imposed must correspond to the seriousness of the misconduct from the perspective of the reasonable person fully informed of all the facts. The community members posting that Constable Jaconelli has nullified his usefulness as an officer, may not be fully informed, but this matter has received significant media attention, so it is likely that they are aware of the elements of the misconduct.

Staff Sergeant McArthur and Inspector Domony testified that the community partnerships that exist such as the Women's Centre and the Sexual Assault Crisis Centre, would not support the Chatham-Kent Police Service employing a police officer with a criminal conviction for sexual assault. I am aware of the disparity between a guilty finding and a criminal conviction, but from the perspective of the average person in the community, this is a moot point, he was still found guilty of sexual assault. I understand this sentiment, it makes sense that the partner relationships could be undermined by employing an officer with this type of employment history. As noted by Staff Sergeant McArthur, it takes a lot for a victim of a sexual assault to come forward as evidenced by A.A. taking a year before generating the courage to complain. Similarly, B.B. not testifying before this tribunal exemplifies difficulties that complainants can face. Having a serving member of the police service with this misconduct history, could compound matters for potential complainants

of sexual assault. Staff Sergeant McArthur stated it would be impossible for Constable Jaconelli to return to frontline duties; he simply cannot work with vulnerable women in the community. I agree.

In *Galassi v. Hamilton Police Service*, 2005 CanLII 20789 (ON SCDC), the Court stated:

It is important to keep in mind that the police discipline process is not a criminal proceeding, but is rather an employment process. In *Burnham v. Metropolitan Toronto Police Association*, [1987] 2 S.C.R. 572, the Supreme Court of Canada adopted the following passage from the reasons of Morgan J.A. in the court of appeal,

In my view, a Police Act discipline proceeding is not a criminal or penal proceeding within the purview of s. 11 [of the *Canadian Charter of Rights and Freedoms*]... 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.

I find it unlikely that Constable Jaconelli has the ability to rehabilitate, at best, it is minimal. His apologies are hollow, they cannot be relied upon, they are too similar to his previous promises to reform, which did not materialize. His lack of transparency in communicating with Dr. Carreira and the impact this would have on his treatment, causes me to doubt his sincerity and question whether he is likely to commit misconduct in the future.

I will grant slight mitigation consideration to Constable Jaconelli for the penalty factor of Ability to Rehabilitate. However, I find that the sexual assault of A.A. and the assaulting of Constable Rose and Ms. Chandra with the darts, resulted in the erosion of the public's ability to trust Constable Jaconelli in the future; a sanction that does not result in dismissal, will call police accountability and integrity into question. Consequently, Constable Jaconelli has nullified his usefulness as a police officer despite the possible existence of some limited potential to reform.

### **Specific and General Deterrence**

In the matter of *Sloot and Brantford Police Force*, OCCPS #87 - 18, the Commission stated:

Deterrence: the principle of general and specific deterrence has always been a part of the sentencing process. The tribunal asks: how can we bring home to this accused and his colleagues that if they do some given prohibited act there will be



a given penalty? The theory is that such a penalty will act as a deterrent for others against doing such an act. This theory is referred to in the case of Constable Edward Batorski, April 6, 1976, reported in the Ontario Police Commission Appeal Reports, Vol. II, p. 301 at p. 304, “The Commission is of the opinion that in order to maintain proper discipline the punishment awarded must be of sufficient severity as to lessen the probability of a recurrence, either by the appellant or by fellow officers.”

The prosecution submitted that a sanction less than dismissal would fail to adequately address this penalty factor; members must understand that behaviour of this nature will attract a fitting sanction which is dismissal in this matter.

If I were to impose any sanction less than dismissal, a significant demotion would be necessary to satisfy the matter of specific deterrence. Because my finding is that Constable Jaconelli’s usefulness to the Chatham-Kent Police Service has been nullified, specific deterrence is no longer a relevant consideration. General deterrence however remains an appropriate factor. All police officers must understand and appreciate that conduct of this nature cannot be tolerated; it will be taken seriously by their employer, and it will have significant consequences.

General Deterrence is an aggravating factor.

### **Damage to the Reputation of the Chatham-Kent Police Service**

There are two components to this penalty factor. It is essential that the sanction imposed is fitting so it can re-instill public trust and help repair the damage done to the reputation of the Chatham-Kent Police Service, and second, I must consider the potential damage to the reputation of the Police Service if Constable Jaconelli maintains his employment.

Tab 2 of Exhibit #21 includes media reports related to Constable Jaconelli’s conduct. The dates range from 2018 to June 2022. There are multiple news stories documenting the many *Police Services Act* hearing appearances and the conditional discharge he received in criminal court related to the sexual assault guilty finding. Inspector Domony testified that additionally, these incidents attracted extensive on-line chatter.

This type of police misconduct attracts the community’s attention. As expected, members of the media were present for this disposition hearing and undoubtedly, regardless of the outcome, my decision on disposition will attract further media attention and community scrutiny. In each instance, Constable Jaconelli is identified as being a member of the

Chatham-Kent Police Service. Every time this incident is reported on in the media or discussed on-line, it further damages the reputation of the Chatham-Kent-Police Service. I need not repeat my findings associated with other penalty factors such as public interest, it is sufficient to note that the public, fully informed of the facts, would be appalled by the behaviour of Constable Jaconelli. Public confidence in Constable Jaconelli has been shattered. Public confidence in the Chatham-Kent Police Service has been undermined as result of his behaviour. To order any sanction less than dismissal would reinforce the loss of public trust. It is important that the sanction imposed, serves to re-instil confidence that the community has lost in the Chatham-Kent Police Service, confirming that this type of behaviour will not be tolerated.

Staff Sergeant McArthur testified, the lack of trust in the Chatham-Kent Police Service is high because of this incident and if Constable Jaconelli remains employed as an officer, the public's confidence in the police service would diminish even further. I agree. It is my position that a reasonable person in the community, fully aware of the facts, would find that this type of behaviour would seriously harm the reputation of the Chatham-Kent Police Service if Constable Jaconelli remained employed as a police officer in their community.

The likely damage to the reputation of the Chatham-Kent Police Service resulting from Constable Jaconelli's behaviour is apparent. It is my position that if the public became aware of the specific details of this matter, the potential damage to the reputation of the Chatham-Kent Police Service would be substantial. Furthermore, if the public then learned Constable Jaconelli received a sanction less than dismissal, the damage to the reputation of the police service would be compounded. The public expects sanctions to be fitting so their trust can be re-instilled, helping to repair the damage done to the reputation of the Chatham-Kent Police Service.

I find the Damage to the Reputation of the Chatham-Kent Police Service to be an aggravating factor. The seriousness of Constable Jaconelli's misconduct has severely damaged the reputation of his employer, and if he were to maintain his employment as a police officer, it would further disparage the reputation of the Chatham-Kent Police Service.

### **Disability**

The prosecution submitted the only evidence suggesting that Constable Jaconelli has PTSD is in the form of reports authored by his treating psychologist, Dr. Carreira. To rely on PTSD as a disability, it must be proven that it exists, not simply referenced in a letter.

I agree with the prosecution's position on this issue; it has not been proven that Constable Jaconelli has PTSD, but for the purpose of this penalty factor, I will presume that to be the case. I will rely on the fact that Dr. Carreira diagnosed him with PTSD and has been treating him for approximately five years for PTSD in support of that assertion.

Exhibit #34 is a USB flash-drive containing a recorded interview of Pat Stone. Ms. Stone attended the party on November 24, 2017. Ms. Stone stated Constable Jaconelli enjoyed her company at the time and made it clear he wanted to talk to her. She described him as being "clingy" and slightly intoxicated. She noted that Constable Jaconelli's wife attended the party and tried to get him to leave but he would not go. Ms. Stone stated that she had contact with Constable Jaconelli several times at the party and he kept wanting to talk "as if he was looking to unburden his soul." She described him as "mushy" when he was recounting a bad experience; Constable Jaconelli informed Ms. Stone that he could not get the image of the male who set himself on fire out of his head.

Ms. Stone stated that Constable Jaconelli was a sloppy drunk that no one wanted to be around. Ms. Stone was not present, or if so, was unaware of the incidents that occurred at the party in relation to this *Police Services Act* hearing.

Mr. O'Hara submitted Ms. Stone's interview suggests Constable Jaconelli was thinking about the individual who set himself on fire on the night of this incident. While there may be merit to this, there is no evidence before this tribunal which suggests that there is a nexus between how Constable Jaconelli was dealing with that incident, and the behaviour he exhibited on the night in question.

Mr. O'Hara submitted that Constable Jaconelli's mental health does not excuse his behaviour, but it ought to mitigate any disposition. Mr. O'Hara discussed the nature of the call for service from July 1, 2017 and took my attention to it in the exhibits included the Board Citation he received. In her letter of reference, Constable Jaconelli's ex-spouse indicated that he changed after this call for service, becoming more irritable and his drinking increased.

Mr. O'Hara submitted alcoholism is a disease and alcohol is widely acknowledged to be a disinhibitor. Mr. O'Hara submitted there is a nexus between Constable Jaconelli's alcohol consumption and his actions.

In *Kramp v. Durham Regional Police Service*, 2020 ONCPC 9 (CanLII), the Commission stated:

In *Orser v. Ontario Provincial Police*, the subject officer pled guilty to one charge of discreditable conduct under the *Police Services Act*. The hearing officer

accepted that the subject officer had PTSD, and still imposed a penalty of dismissal unless the subject officer resigned within seven days. In dismissing the appeal, the Commission found that even though the subject officer had PTSD there was not a sufficient nexus between his disability and his behaviour.

Similarly, in this case, the Commission finds that the hearing officer did in fact consider alcoholism a disease, however, he did not find a sufficient nexus between her illness and her misconduct. The hearing officer at page 67 of the penalty decision held:

The actions as displayed by Constable Kramp were grossly inappropriate and lacked any logical reason for her to have engaged in this type of conduct. This is conduct that cannot be tolerated by the Durham Regional Police Service.

The Commission finds that the hearing officer did in fact acknowledge and consider the appellant's alcoholism but determined that the appellant failed to establish the necessary nexus between her alcoholism and the offences.

I accept that Constable Jaconelli was likely intoxicated at the time of this misconduct, but there is no evidence indicating a relationship existed between his alcohol consumption and his behaviour. Common sense suggests that it may have had some impact on his behaviour, but, although the conduct is not similar, the analysis in *Kramp* is applicable; the actions of Constable Jaconelli were grossly inappropriate and lacked any logical reason for him to have engaged in this type of conduct. I fail to accept that alcohol consumption causes an individual to, without any provocation, suddenly threaten a female co-worker with a dart, throw two darts at another co-worker, and touch a third co-worker in a sexual manner. Again, I note that Constable Jaconelli's issues with excess alcohol consumption was not confined to that evening or to the time period following July 1, 2017.

In *Moraru v. Ottawa Police Service*, 2008 ONCPC 1 (CanLII) the Commission stated:

All parties acknowledge that Constable Moraru was suffering from a mental illness (PTSD) arising from the circumstances of his employment at the time of the incident...

The reputation of the Service requires that the Service be mindful of its treatment of individuals with mental illness. We agree that the dismissal of an individual who contracted a mental illness during the course of his employment must be undertaken with extreme care, and only in circumstances which clearly warrant such action.

In *Moraru*, the Commission determined that the officer's usefulness had not been annulled because there was an opportunity for his continued rehabilitation. There was uncontradicted medical evidence in *Moraru* which established that the officer was a healthy person dealing with stress in the normal way after having been treated and counselled. In this matter as indicated earlier I am not convinced Constable Jaconelli is a likely candidate for rehabilitation for all the reasons previously explained in this decision.

Mr. O'Hara submitted the matter of *Toronto (City) Police Service v. Kelly*, [2006] O.J. No. 175 to illustrate the employer's need to accommodate, suggesting that there are roles available within the Chatham-Kent Police Service for Constable Jaconelli. In *Kelly*, the officer had an exemplary employment history, there was "undisputed medical evidence that there is a low risk of relapse," and the Court found that the Toronto Police Service could accommodate the officer "without undue hardship."

Constable Jaconelli's employment history is a mitigating factor, but it was not considered exemplary. Dr. Carreira testified that he was unable to assure the tribunal that Constable Jaconelli would not commit similar behaviour in the future, and I have already expressed concern about how challenging it would be for the Chatham-Kent Police Service to eliminate or limit contact between Constable Jaconelli and A.A. and female civilian staff in general.

Mr. O'Hara conceded that after showing improvement, Constable Jaconelli relapsed in 2021 but followed that up with successful treatment at Homewood. Constable Jaconelli was abusing alcohol at the time of his misconduct and likely had PTSD. While I do not find that there is a nexus between Constable Jaconelli having PTSD and/or his alcohol consumption and his behaviour, Disability as a penalty factor is worthy of slight mitigation consideration.

### **Effect on Constable Jaconelli and his Family**

Mr. O'Hara submitted that Constable Jaconelli has been married since 2011. Constable Jaconelli supports his former spouse and three children financially. Mr. O'Hara submitted that a two-year demotion would have a significant monetary impact on Constable Jaconelli and his family; it results in a loss of income of over \$20,000. Mr. O'Hara submitted that clearly, dismissal would be far harsher, it would result in the loss of health benefits and income that the family relies upon.

Mr. O'Hara submitted that the publicity this matter has received has negatively impacted Constable Jaconelli and his family, having to deal with the multitude of ongoing media reports and on-line attention.

The financial impact on Constable Jaconelli resulting from his dismissal is obvious and significant, and it is a mitigating factor. However, the aggravating factors are so substantial that the related financial burden is a necessary consequence.

### **Consistency of Penalty**

In *Schofield and Metropolitan Toronto Police Service*, OCPC #84-12, the Commission stated:

Each case must be judged on the facts peculiar to it. Consistency in the discipline process is often the earmark of fairness. The penalty must be consistent with the facts, and consistent with similar cases that have been dealt with on earlier occasions.

This consistency in penalty principle has been relied upon in *Police Services Act* hearings since *Schofield* in 1984. For example, in *White and Windsor Police Service*, November 10, 2000, OCPC 00-09, the Commission noted:

The penalty also must be consistent with similar cases in order to maintain consistency in sentencing. While fact situations vary, a spectrum of misconduct and resulting penalties can provide a good comparative analysis to assist the Commission and determining an appropriate and fair penalty.

*Schofield* and *White* accurately express the purpose of this penalty factor. Consistency in penalty is essential to ensure the sanction is not only fitting, but within the range of other sanctions regarding similar misconduct. It would be unrealistic to expect Counsel to identify cases that are exactly on point factually, however, the cases submitted for consideration will be used to assist me in establishing a spectrum of penalties available, applicable to the misconduct in this matter. It is permissible for a hearing officer to order a sanction outside the range established during this process, but justification would be warranted and a full explanation of the rationale, necessary.

The prosecution submitted that there is precedent for dismissal considering the facts in this matter. Mr. O'Hara submitted there is a wide range of dispositions which could be considered comparable to this matter. He submitted demotion is within that range, but dismissal is not appropriate. Approximately 50 cases were submitted for consideration. Rather than review each of them, I will provide an overview of those cases which Counsel heavily relied upon, and/or, that provided meaningful guidance to my decision.

*Brudlo v. Toronto Police Service, 2005 ONCPC 8 (CANLII)*

The officer was found guilty of discreditable conduct for having contact of a sexual nature with a civilian employee; the officer touched the complainant's thigh, back, and rib cage. The hearing officer categorized the offence as being serious in nature and concluded the officer repeatedly demonstrated a bias and lack of sensitivity towards women. Despite a positive employment history, the hearing officer felt a character flaw rendered him unlikely to rehabilitate and he was subsequently terminated. The Commission upheld the officer's dismissal.

In *Brudlo*, the hearing officer accepted the complainant's version of events as factual:

She [M] stated that when Constable Brudlo found her alone in the garage, he would make unwanted comments of a sexual nature. M testified that Constable Brudlo bragged about his sexual abilities, asked whether or not she liked to engage in mutual oral sex, suggested that she leave her boyfriend for him and talked about how well he would treat her. This included bringing her breakfast in bed.

M also indicated that on one or two occasions Constable Brudlo touched her on the upper thigh while she was sitting on a chair in the garage. She further testified that when she tried to leave the garage, Constable Brudlo would follow her and rub her back, touch her from behind in the area of her rib cage, or try to hug her.

M testified that she first attempted to ignore Constable Brudlo and send him a clear signal that she was not interested. She stated that despite her efforts, Constable Brudlo's behaviour persisted. She testified that she was extremely uncomfortable.

The fact that this behaviour occurred at work and on more than one occasion could deem it more serious than the Jaconelli matter. Conversely, the fact that Constable Jaconelli grabbed A.A. publicly, in the manner that he did, and that it resulted in a finding of guilty for sexual assault, could consider his matter more serious in nature. The facts are not on point, but they are similar enough to establish that dismissal can easily be considered an appropriate sanction for the behaviour demonstrated by Constable Jaconelli as it pertained to A.A. exclusively. I do note however, that aggravating factors existed in *Brudlo* that do not exist here; the Commission noted:

It [this misconduct] occurred while Constable Brudlo was on probation for assaulting his common law spouse and during a time period when he was facing disciplinary actions for that incident.

Constable Brudlo's actions were unmitigated by handicap, provocation or questionable management response... the hearing officer spent a significant

portion of his penalty decision dealing with the question of the potential rehabilitation of Constable Brudlo. He acknowledged the positive aspects of Constable Brudlo's work history but expressed grave reservations about his disciplinary record.

As noted, no two cases are identical. Constable Jaconelli's misconduct concerning A.A. is in the same range of seriousness of misconduct as that of Constable Brudlo. I note that that matter is from 2005, some 17 years ago. In *Orser and Ontario Provincial Police, 2018 ONCPC 7 (CanLII)*, the Commission noted:

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

It is my position that society views misconduct of this nature differently now than it did 17 years ago. Police misconduct of a sexual nature attracts greater attention in today's policing environment than it did in 2005. Consequently, penalties for misconduct of this nature can be expected to attract greater sanctions. I find that when the other two counts of misconduct are also factored in, *Brudlo* illustrates that not only is dismissal within the range of penalties available to this tribunal given all the circumstances, it is a very fitting sanction.

*Krug and Ottawa Police Service, 2003 CanLII 85816 (ON CPC)*

The officer was charged with four counts of discreditable conduct related to allegations of inappropriate comments or touching of a sexual nature over a four-month period. The incidents involved different women on separate occasions while the officer was on duty. The hearing officer was not convinced that the officer would not repeat the same misconduct and the officer was dismissed. The penalty was upheld upon appeal.

In *Krug*, the first two allegations concerned female members of the public. Constable Krug made several inappropriate statements and inquiries of a sexual nature in relation to the first allegation. Secondly, Constable Krug made several inappropriate comments. The fourth matter involved Constable Krug making personal and graphic inquiries as to a female colleague's sexual preferences and practices.

Again, the facts are not analogous, but it is my position that from the perspective of seriousness of misconduct, they are similar enough to conclude that dismissal in this



case is in the range of available penalties. Granted, in *Krug*, there were four distinct instances of misconduct, but the matter involving A.A. is more serious than any of the four matters in *Krug*. Then, there are the other two matters of misconduct in relation to Constable Rose and Ms. Chandra.

*Krug* resulted in dismissal in 2003. It illustrates that sexual misconduct was taken very seriously by the Commission and the public even at that time. As noted, I find that the public views misconduct of this nature more harshly now than it did 20 years ago, resulting in increased sanctions.

*Toronto Police Service v. Blowes-Aybar*, 2004 CanLII 34451 (ON SCDC)

While the officer and complainant were on vacation, the officer forced her to engage in oral and vaginal intercourse. The officer was found guilty of discreditable conduct. The Commission overturned that finding, which itself was overturned in divisional court. The original finding of guilty by the hearing officer and the hearing officer's penalty of dismissal were reinstated.

The seriousness of misconduct in *Blowes-Aybar* is more aggravating than in this case, but it does illustrate that sexual misconduct is taken very seriously.

*Ashby and the Board of Commissioners of Police for the City of Brockville*, 1990 CanLII 10506 (ON CPC)

The prosecution submitted that in *Ashby*, the officer was found guilty of six counts of discreditable conduct. The misconduct did not involve sexual touching, rather it was behaviour that carried unwelcome sexual overtones which resulted in his dismissal, held upon appeal.

Like *Krug*, the fact that there are multiple acts of misconduct is an aggravating feature, but I note that the behaviour amounted to sexual harassment, less serious than that of a sexual assault.

In *Ashby* the Commission stated

In commenting upon the seriousness of the behaviour, the learned judge had this to say:

It is quite clear that Ashby, although a good and useful policeman in other areas, cannot be trusted to behave in a professional manner around women. Ashby gave evidence and it became apparent that he considered the impugned conduct to be part of his private life and therefore did not

affect his function as a policeman. I do not agree. I do not think he is any longer of any use to the Brockville Police Force.

We agree with the learned judge that in the circumstances of this case the appropriate penalty is an order that the officer resign.

*Ashby* is from 1990. I have already articulated the significance of how society views misconduct of this nature today versus 30 years ago, yet the misconduct still resulted in dismissal.

*Ashby* can be relied upon to demonstrate that dismissal is a reasonable penalty when all penalty factors are taken into consideration.

*Hinds and Ontario Provincial Police, 1990 CanLII 10505 (ON CPC)*

The prosecution submitted that even in 1990 officers were dismissed for similar conduct. In *Hinds* the officer was convicted of sexual assault in Criminal Court where he received a conditional discharge. The Commission stated:

The sexual assault was the touching of the private parts of a female person without her consent. The application of force was minimal and Constable Hinds desisted when the women's refusal to participate became clear to him.

The prosecution submitted the public views misconduct of this nature far more serious in 2022 than in 1990; penalties for such misconduct have increased accordingly. In *Cudney*, I spoke to this issue, noting :

*Gulliver* was 23 years ago; policing standards and public expectations of police officer behaviour has increased since that time.

In *Hinds*, the officer was given a conditional discharge, but dismissed from employment. The offence was isolated, he touched the private parts of a female and stopped when it became clear she was not consenting. I would suggest that the behaviour in this matter is at minimum, equivalent to that of Constable Jaconelli as his behaviour relates to A.A., and less severe when the matters concerning Constable Rose and Ms. Chandra area also considered.

*Hinds* is assistive; it illustrates dismissal is a sanction within the range of available penalties for behaviour of this nature.

*Burrows v. Ontario Provincial Police, 2012 ONCPC 13 (CANLII)*

The officer in *Burrows*, assaulted his wife on three occasions which resulted in a demotion in rank for term of 16 months, upheld upon appeal.

*Burrows* demonstrates that Mr. O'Hara's submission of a two-year demotion in rank can be considered within the range of available penalties. It seems reasonable to conclude that an officer assaulting his spouse on three occasions, once while she was pregnant, could be considered in the same realm as the misconduct in this matter.

*Kunkle and Ontario Provincial Police, 1993 CanLII 14136 (ON CPC)*

A probationary officer grabbed the complainant's breast in a bar. Although the prosecution argued for dismissal the Commission upheld a demotion in rank for a term of one year.

The Commission provided the following context to this offence:

The complainant touched Kunkel's side and felt a roll of fat and teased him about it by saying "what is that?" Kunkel reached out grasped her left breast and said, "what is that?"

The Commission added:

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.

At trial, the prosecution had argued for dismissal and Mr. Temple had argued that the event was not sufficiently serious to terminate this young man's career, particularly in view of the performance appraisals which he had earned. The hearing officer accepted Mr. Temple's position and imposed the demotion previously mentioned [one year].

In our opinion the penalty imposed is the least acceptable penalty for this conduct and accordingly the appeal is dismissed.

In my opinion Constable Kunkel's misconduct is not as serious as that of Constable Jaconelli's. Yet, in 1993, the Commission found that a one-year demotion in rank was the least acceptable penalty for that conduct. As I have noted elsewhere in this decision society views this type of inappropriate sexual behaviour in a far different light today than it did 30 years ago, consequently, sanctions have increased at a corresponding rate.

I find Constable Jaconelli's behaviour far more significant than that in *Kunkle*. *Kunkle* is assistive, it illustrates that a demotion in rank for one year would not be considered appropriate. I would suggest that a demotion of two years would then be considered the absolute minimum sanction, establishing the low end of the penalty spectrum, and that does not take into account the matters concerning Constable Rose or Ms. Chandra.

*Cate and Peel Regional Police Service, July 17, 1998 (ON CPC)*

While on duty Constable Cate initiated an unwelcome, sexually suggestive conversation with a young woman working alone at 3 a.m. He then invited unwelcome physical contact in the guise of a back rub. The penalty of dismissal was overturned upon appeal and the officer received six-month demotion in rank.

I note that in *Cate*, a staff sergeant, a sergeant, and a retired superintendent testified about Constable Cate's usefulness as a police officer having not been annulled, a situation which does not exist in this matter. Without repeating myself, I take note of the date of *Cate*, applying the same principles as it relates to historical decisions of a sexual nature. I also note that the misconduct in *Cate* is less serious than that of Constable Jaconelli.

*Waterloo Regional Police Service and Gent, Disposition March 8, 2019*

Constable Gent was found guilty of engaging in physical and sexual contact and making comments towards the complainant that he ought to have known were unwelcome, unwanted, offensive, and inappropriate. This misconduct resulted in a penalty equivalent to a demotion of 12 months.

I was the hearing officer for this matter. Of note, the prosecution in that matter submitted that based on a medical report, the officer was not expected to repeat this type of behaviour, a significant disparity. The penalty proposed in *Gent* was a joint submission. Often, joint penalty positions are on the lower end of the sanction spectrum for reasons not always revealed to the tribunal.

While the behaviour in this matter is more serious than that in *Gent*, *Gent* does suggest that a demotion of two years could be considered in the range of available penalties.

*Lunn and Chatham-Kent Police Service, December 15, 2020*

In *Lunn*, the officer was found guilty of three counts of discreditable conduct. The officer threatened to strike his wife with a fist and pushed her against a wall resulting in a guilty

finding in criminal court where he received a suspended sentence. Additionally, the officer called his spouse at work and yelled that he was going to harm her. Thirdly, the officer had brought his service issued firearm home without permission. The hearing officer accepted the joint penalty position and Constable Lunn was demoted in rank for 18 months.

The facts are not on point obviously, but I would consider this serious misconduct which resulted in a demotion in rank, not dismissal.

*Brayshaw and Ontario Provincial Police, 1992 CanLII 12273 (ON CPC)*

Detective Sergeant Bradshaw was found guilty of two counts of discreditable conduct for making unwelcome sexual comments and advances to a co-op student and a civilian dispatcher. Mr. O'Hara noted that the conduct was described as sexual harassment and although the service sought dismissal, the officer received a reduction in rank to first-class constable. After one year, the officer was permitted to apply to the promotional process in accordance with normal force rules and policies.

I note, this matter is from 1992, and even then, the Commission stated:

In our opinion the penalty imposed was the lowest penalty that could be acceptable under all the circumstances... It is our conclusion that any lesser penalty than the one imposed in this case would have been inappropriate.

The Commission also stated:

In 1992 sexual harassment in the workplace is a particularly serious offence. This may not have been so some years ago but it is today.

That same concept of penalties evolving over time based on the way the public views various types of misconduct is applicable to this matter; the sanction of a one-year demotion in rank would no longer be considered adequate 30 years later. While the misconduct is not quite analogous, this case is assistive in that misconduct of a sexual nature has always been considered very serious and worthy of a significant sanction.

*Kavanaugh and Metropolitan Toronto Police Force, September 12, 1992*

While at a bar and having consumed alcohol, the officer grabbed the breast of another officer's wife seated nearby. Officer Kavanaugh pled guilty to sexual assault in criminal court where he received a conditional discharge. He attended a rehabilitation facility to receive treatment for alcoholism and ultimately received a penalty of a forfeiture of 20 days.

I note that in that matter, “many senior officers testified on his behalf regarding his excellent character, ability, and potential... The officers were supportive of Officer Kavanaugh continuing with his policing career.” That is a feature which does not exist here, and again, I note that the matter is 30 years old.

### Steers and Ontario Provincial Police July 31, 2012

Inspector Steers had placed a camera in a bathroom and bedroom to secretly film his wife and her sister nude. The officer was found guilty of two *Criminal Code* offences and sentenced to a conditional discharge. This was another joint penalty position resulting in the officer being demoted to the rank of staff sergeant with a requirement to undergo counseling.

Of note, the misconduct had occurred in 2001 but was not detected until 2010. A medical assessment by doctor Gojer found that the officer did not have a personality disorder or a character flaw which would affect his ability to rehabilitate.

I find that the behaviour in this matter was egregious and could have easily resulted in a sanction far greater than a demotion of only one rank. This matter supports Mr. O’Hara’s assertion that a demotion in rank is within the range of available penalties; dismissal is not the only option available.

In summary, the principle of consistency of penalty is essential; it ensures that whatever sanction is imposed is not only fitting, but is within the range of other sanctions regarding similar misconduct. Counsel were unable to identify cases precisely on point which is to be expected. The cases that were submitted for my consideration were assistive; they illustrated that Counsel’s submissions on penalty were reasonable and I was able to establish a range for available sanctions for comparable misconduct from a significant demotion in rank, at minimum, two years, up to and including dismissal.

### **Conclusion**

I must be guided by *Williams*; it is imperative that I adhere to the principles of proportionality to arrive at a fair and appropriate sanction.

It is important to note that I am aware that Constable Jaconelli was alleged to have sexually assaulted B.B.; I made a finding of not guilty in relation to that matter. It would be an error for me to be influenced by this accusation while considering an appropriate sanction. If dismissing Constable Jaconelli was my primary objective, I would have found him guilty of that offence, the seriousness of which was so significant that it would have

clearly ended in his dismissal. Instead, I carefully considered all the facts, and made findings based on clear and convincing evidence. Similarly, in deciding that dismissal is the appropriate penalty, I did not consider B.B., nor was I influenced by his outstanding criminal matters (other than in the manner described, i.e. the suppression of this allegation from his treating medical practitioner); I was guided by the appropriate penalty factors, I considered and balanced the aggravating and mitigating features that exist.

The community of Chatham-Kent and its police service have invested in Constable Jaconelli's career since 2006. Consequently, he ought to be afforded all reasonable opportunity to rehabilitate and to continue serving the public; dismissal should only be used as a sanction as a last resort; when the usefulness of the officer has been annulled.

As stated in *Williams*, numerous penalty factors must be considered in matters of potential officer dismissal, including: 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.

I find dismissal is warranted on the strength of the seriousness of misconduct on its own. Constable Jaconelli demonstrated an utter lack of integrity, professionalism, and common decency; attributes which are integral to the character of a police officer.

Furthermore, I find a reasonable person in the community would be offended if Constable Jaconelli remained employed as a police officer with the Chatham-Kent Police Service assuming they were fully informed of the facts. Having Constable Jaconelli maintain employment would further damage the reputation of the Chatham-Kent Police Service beyond repair.

Constable Jaconelli has not convinced me he has anything more than a slight possibility of rehabilitation. He purposely suppressed significant information specific to his personal life from his treating physician. This intent to deceive the people in place to assist him in his recovery is another illustration of his lack of integrity and honesty; it causes me to question his trustworthiness and consequently, his ability to rehabilitate.

Constable Jaconelli sexually assaulted A.A., he held a dart to the neck of Ms. Chandra, and twice, threw a dart at Constable Rose and then bumped him into a garage door. All three persons involved were Constable Jaconelli's co-workers with A.A and Ms. Chandra being in subordinate positions as civilian members of the police service. The unprovoked incidents occurred at the residence of another co-worker who was hosting a work "platoon-party" which can easily be interpreted as an extension of the workplace.

I have found that Constable Jaconelli's behaviour directly conflicts with the characteristics that the public values in police officers. It was behaviour that calls Constable Jaconelli's moral authority and integrity into question. These are traits necessary in order for a police officer to discharge his responsibility, to uphold the law, and to protect the public. It was behaviour that undermined the confidence and trust of the public in Constable Jaconelli's ability to carry out his duties faithfully.

It is such serious misconduct that despite his reasonably strong employment history, and the character references in support of Constable Jaconelli from his close friends, he has irreversibly harmed his relationship with the community and with the members of the Chatham-Kent Police Service. The public and his peers deserve to be able to trust fellow members of their police service.

In *Williams*, the Commission stated:

These actions, afforded the opportunity of reasoning, indicate a serious lack of moral judgemental qualities required in a police officer. It is very doubtful that an opportunity for rehabilitation would correct what would be a fundamental character flaw.

I find those comments appropriate to this proceeding. Constable Jaconelli's behaviour has revealed a flaw in his character that cannot be overlooked by his community or his employer; it has nullified his usefulness as an officer.

In the matter of *Trumbley*, the Court stated:

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.

In proceedings such as this, corrective dispositions should take precedence over punitive dispositions wherever possible; Constable Jaconelli must receive the least onerous disposition available while still satisfying proportionality and other penalty factors. However, I find the aggravating factors far outweigh the mitigation afforded to the penalty factors of employment history, effect on Constable Jaconelli and his family, and recognition of the seriousness of misconduct, disability, and the slightest potential to rehabilitate. As a result, I find it necessary to sever the relationship between Constable Jaconelli and the Chatham-Kent Police Service.



## Disposition

I found Constable Jaconelli guilty of seven counts of discreditable conduct. After carefully reviewing the evidence, the submissions of Counsel, and the jurisprudence provided, I find dismissal is the most fitting sanction. Dismissal meets the goals of the discipline process: to strike a balance between community expectations, fairness to Constable Jaconelli, and the needs of the organization.

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



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

Delivered orally, in person: January 20, 2023