

**ONTARIO PROVINCIAL POLICE DISCIPLINE HEARING
IN THE MATTER OF ONTARIO REGULATION 268/10**

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

**AND IN THE MATTER OF
THE ONTARIO PROVINCIAL POLICE**

AND

STAFF SERGEANT B.W. (Bradley) SAKALO #9305

CHARGE: NEGLIGENCE OF DUTY

DISPOSITION WITH REASONS

Before: Superintendent Lisa Taylor
Ontario Provincial Police

Counsel for the Prosecution: Mr. Adrien Iafrate
Ministry of the Solicitor General

Counsel for the Defence: Mr. James Girvin
Ontario Provincial Police Association

Public Complainant: Ms. Denise Lucier

Hearing Date: April 12, 2021

This decision is parsed into the following parts:

PART I: OVERVIEW;

PART II: THE HEARING;

PART III: ANALYSIS and FINDINGS; and,

PART IV: DISPOSITION

PART I: OVERVIEW

This misconduct matter stems from an investigation of a fatal motor vehicle collision (MVC) that occurred in the Essex County area in April 2017. Staff Sergeant (S/Sgt.) Sakalo was in charge of the Traffic Management Unit (TMU). His misconduct related to the supervision of P/C Tamminga, a member of the TMU, who had investigated the MVC wherein Ms. Lucier's husband was fatally injured and she herself sustained serious, life altering injuries.

This matter was not processed through the courts due to P/C Tamminga's failure to initiate a court file for the driver who had caused the collision. P/C Tamminga, as the investigating officer, was charged with neglect of duty. He pleaded guilty and was found guilty on October 17, 2019. A decision outlining the imposed sanction of a 120 hour forfeiture was delivered by the hearing officer on January 10, 2020.

S/Sgt. Sakalo pleaded not guilty and after a full hearing, he was found guilty of neglect of duty. An application for a stay of proceedings based on abuse of process was heard and denied just prior to the penalty hearing. This tribunal convened on April 12, 2021 to hear penalty submissions.

PART II: THE HEARING

Exhibits

The exhibits received during the penalty hearing are detailed within Appendix A.

Positions on Penalty

Mr. Iafrate, Ms. Lucier and Mr. Girvin made submissions regarding their respective positions on penalty. Defence counsel outlined a reprimand would be appropriate and the prosecution and the public complainant noted a six month demotion would be in order. Submissions are summarized in Part III of this decision.

Issue

At issue in this matter is the appropriate penalty to be imposed, having considered all of the circumstances in this matter.

Decision

I find the appropriate penalty to be imposed is a forfeiture of six days or 48 hours pay pursuant to section 85(1)(f) of the *Police Services Act (PSA)*. My reasons for this decision are as follows:

Part III: ANALYSIS AND FINDINGS

Summary of Submissions

(These summaries are not deemed to be exhaustive.)

Prosecution Submissions

Mr. Iafrate submitted that the public interest is a significant factor in determining a disposition. The primary function of police is to serve the public and this factor should always be considered. The trust and confidence of the public is a critical factor in successful policing.

Supervisors need to ensure that serious investigations do not fall through the cracks. It was submitted that S/Sgt. Sakalo should have taken some action to ensure this incident was investigated. S/Sgt. Sakalo was directly responsible for supervising the officer in this case and he shares some of the blame. He did not become involved until 14 months past the time of the collision. At that point no charges were before the courts and it was no longer possible given the pre-charge delay.

It was submitted that the OPP has recognized the importance of serious collisions being properly investigated and the professionalism required increases when there is a death involved. This requirement and the expectation of the OPP is in line with the expectations of family and friends of those who lose their lives as a result of collisions. This was a benchmark MVC and S/Sgt. Sakalo should have taken some action to ensure the investigation was completed properly.

The prosecution provided *Covey and OPP*¹ and noted it was very relevant. Public interest is a concern in this matter and it is an aggravating factor. Referencing the misconduct decision, page 60, wherein I noted:

A man lost his life and Ms. Lucier lost a limb and her partner. It does not get much more serious than that and this case deserved to be prioritized. As S/Sgt. Sakalo expressed to A/Inspector Quenneville, the role of case manager was a lot of responsibility. I agree but that was S/Sgt. Sakalo's role.

The prosecution referred to comments of the hearing officer in *Covey* that are directly relevant to the matter at hand. The prosecution submitted that the public has an expectation that serious collisions will be investigated thoroughly by police and those responsible will be held accountable when required. It was submitted that enhanced oversight is required for fatal collisions as they are serious investigations that must be properly supervised; that is the very purpose of a supervisor. It was recognized that P/C Tamminga was directly responsible and his actions had undermined the course of this investigation. However S/Sgt. Sakalo shared some of the blame. It was submitted that as a result of officer misconduct on the part of P/C Tamminga and S/Sgt. Sakalo, Ms. Lucier was not able to access victim support services that would have assisted her greatly.

The prosecution highlighted that nature and seriousness of misconduct was an aggravating factor. It was submitted that one of the reasons this misconduct was particularly aggravating was the duration of the misconduct. *Kobayashi and Waterloo*² was provided to make the simple point that misconduct over a course of time is particularly aggravating. In the current matter, the time period was between April 2017 and June 2018. S/Sgt. Sakalo was the supervisor and he had failed to supervise. It was submitted that if he had checked in once, the circumstances may have changed. This matter does not involve a single isolated incident but was a prolonged failure to supervise and this is aggravating.

In terms of recognition of seriousness of misconduct, the prosecution submitted that S/Sgt. Sakalo never accepted responsibility for his duty in this investigation. This is not based on him defending himself against the *PSA* charge. It was submitted that S/Sgt. Sakalo casts blame on others and despite that P/C Tamminga stated S/Sgt. Sakalo was his supervisor, he has not accepted responsibility. While this cannot be held against him, it does not warrant mitigation.

¹ Exhibit 46: Prosecution Book of Authorities: Tab 2 – *Ontario Provincial Police v Covey*, OPPHD, [31Mar2004], Pg 3

² Exhibit 46: Tab 5 – *Kobayashi and Waterloo Regional Police Service*, [2015], ONCPC 12

In terms of disability or other relevant personal circumstances, the prosecution submitted there was no evidence before the tribunal and it was suggested this was a neutral factor.

In relation to S/Sgt. Sakalo's employment history, he has a previous misconduct from November 2017. Although that misconduct occurred after the benchmark MVC in question, it was prior to S/Sgt. Sakalo's misconduct starting. Further it was noted the past misconduct shared some similarities, specifically S/Sgt. Sakalo's failure in his capacity as supervisor. This is highly relevant and a penalty higher than 40 hrs is in order, in the context of progressive discipline. It was submitted that on the whole, employment history was aggravating because of past misconduct.

The prosecution submitted that the potential to reform or rehabilitate was a neutral factor as there was a lack of evidence or insight to assess S/Sgt. Sakalo's ability to reform. It was submitted that he has committed misconduct on two occasions and there is no evidence of remorse or acknowledgment. Had this occurred, it would have supported mitigation but a lack of any evidence makes this a neutral factor.

It was submitted that the effects on the officer and his family is always mitigating and the mitigation is not heightened in this case given only a six month demotion is being sought.

The prosecution submitted that deterrence is an aggravating consideration. General deterrence ties into the theme that neglect of duty is serious misconduct and it undermines the public trust. It is important to ensure serious cases do not get missed and for those of a higher rank, this expectation increases. It was submitted that a penalty of a demotion of six months sends a strong message to all senior officers.

In terms of specific deterrence, it was submitted that a demotion will send an important message to the officer that neglectful supervision can impede criminal charges and ultimately prevents justice from being done. The penalty will serve as a meaningful reminder to conduct himself differently. This misconduct involved prolonged inattention by S/Sgt Sakalo for over a year. It was highlighted in the evidence at the hearing, S/Sgt. Sakalo had been provided reminders as to his duties by Acting Inspector (A/Insp.) Quenneville but for whatever reason they were not acted on. More diligence was required. It was submitted both specific and general deterrence were aggravating factors and support the penalty position.

In terms of damage to the reputation of the OPP, the prosecution quoted the hearing officer in *Covey*,³ a case also dealing with a failure to properly supervise a fatal MVC, and:

It is our commitment and the Public's expectation that we (O.P.P.) conduct ourselves 24-7, three hundred and sixty-five days of the year with a degree of high professionalism and commitment for policing excellence. Nothing less is acceptable. Our Mission, Vision and Values exude these ethics. The Promise of the O.P.P. is to deliver these standards each and every day.

The prosecution submitted that this quote is applicable to the current matter. S/Sgt. Sakalo's misconduct has unequivocally damaged the reputation of the OPP. In this case, Ms. Lucier experienced this first hand. This matter dealt with a core responsibility of policing and it required Ms. Lucier to call the OPP on several occasions to bring forward her concerns. Although S/Sgt. Sakalo may not have been aware of every call, his actions fell short of meeting the public expectation of the police service. It was submitted that it was reasonable to draw the inference, S/Sgt. Sakalo's misconduct did damage the reputation of the OPP with the public and certainly with the crown counsel who were involved. They were clearly upset and this tarnishes the OPP's reputation. It was submitted this was an aggravating consideration.

In terms of the effects of publicity, the prosecution submitted a May 8, 2020 article⁴ that was in relation to P/C Tamminga's neglect of duty. The article detailed comments made by S/Sgt. Sakalo. The prosecution also outlined that I could consider what the public may hypothetically think about this matter but given this article, there is no need to hypothesize. The article constitutes negative publicity and the reputation of the OPP has been tarnished when this situation was preventable.

The prosecution submitted the following cases for comparison for the tribunal in respect to penalty consideration:

- *Andrews v. Midland Police Service, 2003 ONCPC 12*
- *Ontario Provincial Police v. Covey, OPPHD, 31 March 2004*
- *Ontario Provincial Police v. Moggy, OPPHD, 12 April 2017*
- *Ontario Provincial Police v. Neild, OPPHD, 3 November 2016*

³ Exhibit 46: Tab 2 – *Ontario Provincial Police v Covey, OPPHD, [31Mar2004]*, page 32

⁴ Exhibit 45: Prosecution Book of Documents, Tab 2 – CBC News article [08May2020]

In terms of legal principles for penalty hearings the prosecution relied upon:

- *Kobayashi and Waterloo Regional Police Service, 2015 ONCPC 12*
- *Martin v. Windsor Police Service, 2009 ONCPC 10*
- *Mauro v. Thunder Bay Police Service, 2013 ONCPC 9*

The prosecution submitted that in terms of consistency of disposition in cases involving neglect of duty with a supervisor, this matter is unique. It was submitted that the majority of factors are aggravating and the appropriate disposition of a six month demotion falls within the range of 24 hours to a permanent demotion. The current circumstances are not akin to other cases where the officer pled guilty, there was no past misconduct, there was exemplary employment history and or where the seriousness of misconduct was tempered by other factors. I will address those cases I found helpful within the *Analysis* section.

Public Complainant Submissions

Ms. Lucier made limited comments but indicated she felt a six month demotion was deserved. She noted the significant impact not only from the negligent investigation but that this process has had on her life; recovery takes a long time. She submitted that she feels she has been heard through this process. However she highlighted that S/Sgt. Sakalo [in the misconduct hearing] had apologized on behalf of the OPP but he had not done so in relation to his part.

Ms. Lucier kindly extended a hope for S/Sgt. Sakalo that he would move past this matter, would develop stronger skills and be a better supervisor with his fellow officers. She noted this was possible, if he could accept responsibility, move forward and was honest with himself. She hoped that he could see where he went wrong and develop strategies to enhance communication. She wished for him to get back and involved, noting that mentoring others can be valuable. She encouraged him to be a better version of himself and noted *“we all must move beyond this matter.”*

Ms. Lucier shared that she has decided this is the year she is going to move on with her life. She is not able to return to her work as a supervisor as she no longer has the ability or desire to take on those responsibilities which include checking and re-checking the work of others.

Defence Submissions

Defence counsel submitted that a review of S/Sgt. Sakalo's career profile and his performance reviews are demonstrative that he is an exemplary OPP officer, conscientious and hard-working. It was submitted that unfortunately in this matter there was a confluence of factors in relation to the day in question and by the OPP.

Defence counsel noted that it was troubling that the prosecution chose to overlook the reality that had transpired the day in question. It was submitted that S/Sgt. Sakalo was not involved in the chain of command. Sergeant (Sgt.) Blanchard and S/Sgt. Bertram were part of the chain of command and they were directly involved on the day in question.

It was submitted that from the stand point of the organizational chart, the focus has been on S/Sgt. Sakalo. It was only brought to Ms. Lucier's attention at the time of hearing about the clear role of Sgt. Blanchard and S/Sgt. Bertram, while the OPP was aware at the outset of the two other supervisors involved on the day of the MVC. Defence counsel submitted that it was his understanding that as a result of what transpired in this matter, the OPP has updated and revised its process in order to mitigate the chance it may happen again. It was submitted this was a unique situation and it happened for a number of reasons. Defence counsel agreed that the public does have an interest in police officers performing their duties but the public also has an interest in the way the OPP conducts its operations.

In terms of penalty, when viewed in totality, the appropriate penalty is a reprimand. It was submitted that the fact the OPP has chosen to put forth a position for demotion seems to be outside of the facts and circumstances that arose in this matter. It was submitted this was done to distance the OPP from any responsibility for what had transpired. The reality, as had been noted, is this misconduct was at the low end. S/Sgt. Sakalo was entitled to a hearing.

Defence counsel noted that S/Sgt. Sakalo's employment history was mitigating and it was submitted that any effort to suggest otherwise was misleading and ignored 20 years of positive service. Defence counsel submitted that in fact, S/Sgt. Sakalo's employment record was exemplary. The reviews are all positive and chronical his dedication and the activities he has undertaken. It was submitted that all of these positive examples of contributions are consistent and indicative of who S/Sgt. Sakalo is as an officer.

Further, as referenced in his affidavit for the motion, S/Sgt. Sakalo successfully obtained funding for a grant for at-risk youth in Essex County in *Project Safe as*

Possible. He was involved in supporting and mentoring members in acting sergeant positions in Essex County and in the promotional processes of other supervisors. He was successful in returning members to the workplace, despite the inherent complexities of a sizable human resources component.

Contrary to the prosecution's perspective, it was submitted these are examples, in the practical day in and out, that S/Sgt. Sakalo is an exemplary representative of the OPP, notwithstanding the finding of guilt in this matter. It was submitted that the prosecution has negated the contributions that S/Sgt. Sakalo had made to members of the community in his more than 20 years of service. It was submitted S/Sgt. Sakalo's contributions were above and beyond the call of service.

In relation to the matter of previous discipline, defence counsel submitted that the discipline was informal and while the prosecution has tried to connect it to the misconduct in this matter there is zero connection. It was dealt with informally, little weight can be placed on it as aggravating and there is little to connect it to a finding of guilt in relation to supervisory duties.

Defence counsel submitted that procedural fairness should be a consideration in relation to the OPP's response to what has transpired, including the significant delay in the misconduct decision being received. This issue, as well as the fact the OPP has revised its process to ensure the structural failure of the OPP does not occur again, deserves mitigation. Defence counsel submitted that the prosecution did not acknowledge the structural failure but it was noted in the misconduct decision. Defence counsel also submitted that it was aggravating when a front line officer does not perform their duties and is not forthright. This can exacerbate what happens and this is a weakness in any system. It is difficult for a supervisory system to detect such misconduct in a timely manner.

Defence counsel submitted that the prosecution, when addressing damage to the reputation of the police service, neglected to indicate any responsibility for the OPP itself. It was submitted the OPP set up this process; the OPP must accept some responsibility and it is not solely on S/Sgt. Sakalo. It was noted that the OPP has changed its process to reduce the possibility to ensure it does not happen again. Although S/Sgt. Sakalo happened to be the only person being found guilty of misconduct, there were clear identifiers and acknowledgements of the role of other supervisors in the process.

Defence counsel provided cases for consideration of the tribunal including: *Gottschalk v Toronto Police Service*⁵; *Moore v Ontario Provincial Police*⁶; *Pigeau v Ontario Provincial Police*⁷; *Chouryguine v Toronto Police Service*⁸; *Rose and Ferry v Toronto Police Service*⁹; *Mulville and Azaryev v York Region Police*¹⁰ and submitted that based on the totality of the circumstances, a reprimand is the appropriate disposition. Defence counsel also provided *Neild*¹¹ noting it was most closely related in terms of penalty, 24 hrs, but what was distinguishing was that Sgt. Neild was directly involved in the matter.

In the current matter, it was suggested *Hartling*¹², a criminal case would indicate the penalty should be lowered. *Hartling* was a Court of Appeal case that dealt with post-verdict delay prior to sentencing. At paragraph 96, the court noted:

The post-verdict delay is another matter. It took 14 months after conviction for the sentence to be imposed. This delay was not caused by ineffective judicial management. It was not caused by the appellant, nor was it caused directly by the actions of the prosecutor. It was caused by the lack of institutional resources to obtain a Gladue report.

Defence counsel addressed the penalty factors of procedural fairness and the employer's approach to this matter. Defence counsel submitted that as noted by way of the motion [for abuse of process] that was brought forth, the practical reality is that the longer this goes on, it impacts all those involved. In particular, it negatively impacts the ability for S/Sgt. Sakalo to advance in his career while this remains outstanding.

It was submitted that this matter involved a unique set of circumstances and this particular disposition does not have tremendous value in terms of specific and general deterrence. Defence counsel submitted that S/Sgt. Sakalo did not have direct supervisory responsibility when this matter arose and this minimizes the value of this factor.

⁵ Exhibit 47: Defence Book of Authorities, Tab 1 – *Gottschalk*, [2003] CanLII 75465

⁶ Exhibit 47: Tab 2 – *Moore*, [2008] CanLII 90935

⁷ Exhibit 47: Tab 3 - *Pigeau*, [2009] CanLII 93058

⁸ Exhibit 47: Tab 4 - *Chouryguine*, [2016] CanLII 63925

⁹ Exhibit 47: Tab 5 - *Rose & Ferry*, [2016] CanLII 84144

¹⁰ Exhibit 47: Tab 6 - *Mulville and Azaryev*, [2017] CanLII 19496

¹¹ Exhibit 47: Tab 7 - *Neild* penalty decision, [Dec2016]

¹² Exhibit 47: Tab 8 - *R v Hartling*, [2020]

Prosecution Reply

The prosecution submitted that in terms of procedural fairness there has not been unreasonable delay and this is not the proper forum to re-litigate those issues. In terms of structural failures, it was the prosecution's submission that there were no issues with consistency nor was there any evidence that any other case fell through the cracks.

The prosecution stressed that defence counsel submissions regarding Ms. Lucier's complaint to the OIPRD is not relevant to the current matter. While S/Sgt. Sakalo is still of the belief that other officers share some responsibility, this is not the forum.

The prosecution submitted that a reprimand was not an appropriate penalty. It would be insufficient and inadequate; it would leave the impression that senior officers are treated more leniently and it would fly in the face of general deterrence. The cases provided by defence counsel have no bearing in respect to what occurred in the current matter and as such, they are of little use to the tribunal. *Gottschalk* includes no analysis to refer to and consider whether it is relevant to the current matter. *Moore* case facts have no bearing on the circumstances before the tribunal. *Neild* does involve very similar facts.

Analysis

The following analysis is based on submissions of the public complainant, the prosecution and defence counsel. To assist me in this process, I will rely upon commonly held proportionality considerations relevant to this matter. In my analysis, mitigating and aggravating factors will be balanced and weighed. Once I define a range of possible sanctions, these factors will provide me guidance to determine the most appropriate sanction within that range.

S/Sgt. Sakalo has been found guilty of neglect of duty. As the trier-of-fact, I must ensure any disposition imposed will strike a balance between the expectations of the community, the needs of the organization and fairness to the officer. I must be satisfied the determined sanction meets the goals of the discipline process including to: correct officer errant behaviour, deter others from similar misconduct, and reassure the public.

I am reminded of the importance of proportionality in a disposition. In his book *Legal Aspects of Policing*, Paul Ceysens¹³ explained proportionality and that:

¹³ Excerpt, Ceysens, Paul. *Legal Aspects of Policing*, page 315

It is a “fundamental proposition” that a disposition must be proportionate to the misconduct, “given due regard to those special considerations applicable to service in the police force.”

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

- *First, a decision–maker must identify which disposition considerations are relevant to the matter in question.*
- *Second, a decision-maker must determine whether the relevant disposition considerations are mitigating or aggravating or neutral.*
- *Third, the decision–maker must properly balance...the identified relevant considerations in accordance with the factual background of the matter and the competing interests...In Ontario... the Commission [Ontario Civilian Police Commission] ...has stated that “there is no requirement that any one factor be given more weight than another”, while at the same time stating that a hearing officer need not give all factors equal weight and one factor can support the highest penalties, if appropriate.*

Proportionality, by its very nature, precludes automatic dispositions, whether dismissal or otherwise.

The prosecution provided *Andrews and Midland Police Service*¹⁴ although it dealt with the issue of supervisory misconduct, the circumstances in *Andrews* was more serious and not on point to the matter at hand. Regardless, the Commission in the appeal decision outlined a reminder about penalty factors to be considered including:

In Williams and OPP (December 4, 1995, OCCPS) 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.*

¹⁴ Exhibit 46: Tab 1 – *Andrews v Midland Police Service*, [2003] ONCPC 12

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.

I have kept these principles in mind as I moved through my analysis and considered penalties for misconduct of a similar nature while taking into account the circumstances unique to this matter.

Public Interest

The prosecution provided *Covey and OPP*¹⁵ in which the hearing officer wrote:

It is common knowledge that the public holds police in a position of high trust and accountability. It is therefore extremely important that the Ontario Provincial Police demonstrates that members will be held to that very standard.

The public has a right to expect that thorough and complete investigations be conducted by all members regardless of rank into any matter that is reported.

...professionalism and completeness increases when the matter involves death. In these circumstances, five members of one family lost their lives in a motor vehicle collision. The expectation of family members, friends and Community share in this belief.

This quote is relevant to the current matter. Police officers need to be accountable to the public they serve. The public interest and the public's confidence are undermined when police officers do not perform their duties properly especially in terms of serious MVCs or other death investigations. Given the misconduct involved, there is also a need to demonstrate confidence in the OPP and its disciplinary process.

The public would expect police officers in a supervisory capacity to make diligent efforts to ensure these very serious investigations are properly addressed. There are already systems and tools in place that S/Sgt. Sakalo had access to that would have assisted him

¹⁵ Exhibit 46: Tab 2 – *Ontario Provincial Police v Covey*, OPPHD, [31Mar2004], page 3

in ensuring P/C Tamminga's met the timelines required by legislation. Ms. Lucier, a member of the public, was specifically impacted by the lack of action on the part of P/C Tamminga and she brought this to S/Sgt. Sakalo's attention. The public would expect S/Sgt. Sakalo, as the supervisor of P/C Tamminga, would make efforts to ensure all necessary investigative and court steps were taken. Through his failure to do so he has breached the public trust and negatively impacted the trust and confidence Ms. Lucier has in the OPP.

I find the public interest an aggravating factor for consideration.

Nature and Seriousness of Misconduct

Police officers are held to a higher standard than an ordinary citizen. This standard rises in accordance with the rank level of the respondent officer. S/Sgt. Sakalo's misconduct was serious. Due to his failure to supervise and case manage the benchmark MVC involving Ms. Lucier and her husband, charges in the matter were not properly processed and the other driver was not held accountable. The impacts on Ms. Lucier were significant as, due to the lack of charges, she was not able to access victim services that otherwise may have been available to her. Further, she was not given the opportunity to experience justice. This matter involved the tragic death of Ms. Lucier's husband and life-changing injuries to her. One of those factors alone is significant and serious but together the level of seriousness is heightened.

The Commission in *Gottschalk*¹⁶ highlighted the importance of proper supervision:

There is no doubt senior police officials have a duty to properly supervise subordinate officers and those under their command. This would include an obligation to follow up on allegations of potential serious misconduct or dereliction of duty. This is a responsibility that is both implicit in the nature of command...

This matter is serious from a couple perspectives. S/Sgt. Sakalo failed in his technical responsibilities as a supervisor to ensure a member of his team completed requisite processes related to court and as a result, the driver responsible was not held accountable and Ms. Lucier was not given supports she was due. S/Sgt. Sakalo also failed in a leadership role by failing to recognize and address the struggles of a subordinate and to act on the frustrations of Ms. Lucier, the victim of a horrific MVC.

I find nature and seriousness of misconduct an aggravating factor.

¹⁶ Exhibit 47: Tab 1 – *Gottschalk*, [2003] CanLII 75465 para 56

Recognition of Seriousness of Misconduct

In reply, the prosecution addressed defence counsel submissions regarding Ms. Lucier's complaint to the OIPRD about two other officers, noting it was not relevant to the current matter. I concur. Defence counsel noted that Ms. Lucier had made complaints against Sgt. Blanchard and S/Sgt. Bertram. I agree with the prosecution that any further OIPRD complaint is not relevant to my analysis. With respect, a complaint that appears to have been made after the hearing would have been prior to this tribunal completing a detailed analysis of all of the evidence which was subsequently shared with the parties involved. I give no weight to any other complaints. After a fulsome hearing, I conducted a detailed analysis and found there was clear and convincing evidence to support a finding of guilt against S/Sgt. Sakalo. Although there could have been better communication, this misconduct was in relation to S/Sgt. Sakalo's failure to lead and failure to supervise.

S/Sgt. Sakalo had the right to make full answer and defence in this matter. He exercised that right and a full hearing was held. I hold no aggravating consideration against S/Sgt. Sakalo in this respect but I must consider whether, he has in fact recognized the seriousness of his misconduct.

S/Sgt. Sakalo read a statement to the tribunal outlining an apology including:

I take tremendous pride in being a member of the OPP. Ms. Lucier to you, I apologize for what occurred in relation to this investigation. It is not the standard that I or anyone would have expected or that the OPP requires or that you and the people of Ontario deserve. While this has been a challenging experience for me as a supervisor it is my responsibility to ensure that officers perform their duties in a diligent and timely manner I have learned from this experience and will share these experiences with colleagues and those I supervise so that a situation like this does not occur in the future. Thank you

Again in penalty submissions, defence counsel outlined that despite the finding of guilt and S/Sgt. Sakalo being identified as the supervisor of P/C Tamminga, the chain of command flowed from P/C Tamminga to Sgt. Blanchard to S/Sgt. Bertram. It was submitted that S/Sgt. Sakalo had no direct involvement. I will not reiterate the findings in my misconduct decision but S/Sgt. Sakalo, whether he was in attendance at the benchmark MVC or not, was responsible for oversight of this investigation. He was P/C Tamminga's direct supervisor, approved the related report, and was arranging participation in a case conference. Further, in January 2018, he received a list of outstanding occurrences including the Lucier investigation which noted the date of the collision and P/C Tamminga, as the investigating officer. Also in January 2018, Ms. Lucier in a call with S/Sgt. Sakalo, outlined her concerns about P/C Tamminga and the

investigation. There is a difference in supervising a scene at the time versus supervising an investigation overall. I found S/Sgt. Sakalo was the person responsible for case managing this matter.

In his statement (noted verbatim above) delivered in the course of the penalty hearing, S/Sgt. Sakalo apologized to Ms. Lucier for what happened and noted that this investigation did not meet the standard expected by the OPP. He acknowledged as a supervisor it is his responsibility to ensure officers perform their duties diligently; he had learned from this experience and he has shared these experiences to ensure a situation like this does not occur in the future.

I am fairly optimistic that S/Sgt. Sakalo has learned from this matter and that he would approach future investigations in a different manner. However, his statement to the tribunal is crafted in such a manner, that I remain uncertain as to his understanding of the seriousness of his misconduct and in particular, his role in it. I concur with the comments of Ms. Lucier that S/Sgt. Sakalo can move on and be a better supervisor but that is incumbent on him accepting responsibility and being honest with himself. There is a lack of insight and this tribunal has no evidence to support any mitigation is due in this respect.

Up to the point of the motion for abuse of process that was heard just weeks before this penalty hearing, S/Sgt. Sakalo still placed blame on Sgt. Blanchard and S/Sgt. Bertram. In my misconduct decision I made it clear that although those members had more direct involvement in the initial occurrence that did not imply ongoing supervisory responsibility of P/C Tamminga. In part, I relied on the objective and fair testimony of Sgt. Gruszka who confirmed the direct supervisor of P/C Tamminga (the officer in charge of the fatal MVC) was the North Operations Manager [S/Sgt. Sakalo]. Further, P/C Tamminga himself named S/Sgt. Sakalo as his supervisor.

I find this a neutral consideration.

Employment History

S/Sgt. Sakalo became an officer with the OPP in January 1997 and notably has risen to the rank of S/Sgt. There were several letters of appreciation in his file. The latest letter was dated July 2017 but I do not find this unusual. At higher ranks, one generally has less contact with the public which would likely result in fewer acknowledgements.

I find overall the five evaluations provided outlining S/Sgt. Sakalo's contributions to the OPP and community are positive. To add context, I will note the 2015-2016 evaluation was signed in May 2019, the two following evaluations were unsigned and the latter two

were signed. The unsigned evaluations are self-reported without supervisory comments and I find them less reliable for this reason.

There are several notations about positive contributions made by S/Sgt. Sakalo to the community including:

- In the 2016-2017 evaluation, Inspector Miller stated “...[S/Sgt. Sakalo’s] *conceptual thinking skills continue to benefit not only his Detachment but more broadly across the OPP network as demonstrated by Project Safe Trade.*”
- Project G.A.P. – S/Sgt Sakalo sought and received a grant to be used for the addressing issues of ‘at-risk’ youth. He was also a member of the Youth Diversion Board and noted he had done self-study on the topic of vulnerable youth.
- The 2018-2019 evaluation noted he had continued to maintain relationships with partners, was involved with OPP Human Resource (HR) advisors when managing situations with staff he supervised; he was involved in drafting accommodation plans and coaching members.

However there is also evidence of recent informal discipline. In November 2017, after the MVC in question but prior to the actual period of misconduct in this incident, S/Sgt. Sakalo made inappropriate remarks to a female officer in the presence of her peers. He was documented by a record of informal discipline as having received a sanction of 40 hours. I concur with the prosecution that this past misconduct shares some similarities in that S/Sgt. Sakalo demonstrated a failure as a supervisor and his actions were “inconsistent of orders and... OPP supervisor.”¹⁷ Although the latter comment rings true to this misconduct as well, I do not find the issue of progressive discipline particularly relative. I have considered S/Sgt. Sakalo’s prior discipline in weighing his employment history overall.

S/Sgt. Sakalo’s positive work record and contributions provide much mitigation, however the effect of that mitigation is lessened by his previous finding of misconduct. I find the previous misconduct matter, albeit resolved informally, was very serious. I find it is relevant to the matter at hand as both matters deal with a lack of leadership. While the positive examples outlined in the evaluations of S/Sgt. Sakalo speak well of his commitment to the community, I am concerned about someone, particularly a leader in the OPP, who would conduct himself in such a manner. To denigrate a junior, female officer in the presence of other officers is unacceptable in any circumstance but for someone holding the rank of S/Sgt. it is unspeakable. It goes against every principle of leadership, diversity and inclusion.

¹⁷ Record of Informal discipline

In contrast, the epitome of leadership was demonstrated by the person who came forward to speak up against S/Sgt Sakalo's treatment of the junior officer. Whether it was brought forth by the officer herself or by one of the other constables present at the time, I applaud the courage required to speak up against a senior officer and to advise what had transpired.

S/Sgt. Sakalo is documented in his evaluations as mentoring and supporting junior officers. Although the circumstances of this incident of informal discipline cause me grave concern about S/Sgt. Sakalo's leadership attributes, it is my hope that he has matured and learned and will aspire to be a better leader and person.

Leadership, one of the core values and a strategic priority of the OPP, can come from anyone, at any level, in any role. Leadership is proven by the ability to listen, motivate and empower others while providing support and direction. It requires authenticity and openness. Those who lead by example and follow through on goals to achieve positive outcomes are the kinds of leaders needed by the OPP in the coming years. Above all, leadership is about caring for people, both within the OPP and the communities we serve.

The quote above is from the OPP Strategic Plan. It is included in the 2018-2019 Performance, Learning and Development Plan template that was acknowledged by S/Sgt Sakalo by his signature. The last sentence resonates in respect to this matter. S/Sgt. Sakalo has documented contributions to public safety in terms of implementing programs such as Project Safe Trade and Project G.A.P. dealing with vulnerable youth. He is to be commended for these efforts but individuals, whether as officers or as victims of tragic MVCs, require a leader's attention. S/Sgt. Sakalo missed the mark in the current matter.

Overall, despite the incident involving egregious treatment of a fellow police officer in the workplace, I find employment history is a slightly mitigating factor.

Potential to Reform or Rehabilitate

Recognition of seriousness of misconduct and employment history are important indicators in relation to an officer's ability to rehabilitate or reform. Despite being unable to give any mitigation to S/Sgt. Sakalo in respect to accepting responsibility for his misconduct, his statement to the tribunal makes it clear that regardless he has learned lessons from this misconduct process and he has shared with others the importance of supervision.

Other than the informal misconduct matter that I have previously assessed under another penalty factor, I find S/Sgt. Sakalo's employment history is positive and demonstrative of his commitment to the community and the OPP. It is up to S/Sgt. Sakalo to choose a positive path and demonstrate leadership moving forward. I note his desire to share what he has learned from this process with others. He can do that in a negative way – without taking personal accountability and blaming it on others or he can accept he missed some opportunities in the course of this investigation to ensure it was put properly before the courts by P/C Tamminga. Clearly the fault does not lie only at the feet of S/Sgt. Sakalo, but the leadership and supervisor components are his to assume.

S/Sgt. Sakalo clearly aspires to move forward in his career. He has some bridges to build following the tribunal testimony. Having noted in my misconduct decision that:

The human and compassionate aspects towards Ms. Lucier were lacking. She deserved better as did her partner. When her calls were not answered by P/C Tamminga, S/Sgt. Sakalo as the direct supervisor, should have inserted himself and ensured her concerns were answered.¹⁸

This tribunal remains hopeful that S/Sgt. Sakalo, will conduct himself differently in the future and will engage directly and empathically with officers and victims.

I find the potential to reform a slightly mitigating consideration.

Procedural Fairness

Defence counsel stressed that it was important to be mindful that as a result of this incident the OPP has revised its process, indicating there was a flaw in the system. Contrary to submissions of defence counsel, I find no evidence of a structural failure of the OPP. As I committed to doing in the penalty hearing, I have reviewed the evidence received during the misconduct hearing concerning the changes in relation to the investigation of fatal MVCs.

There are two items of interest as I conduct my analysis. The evidence of A/Insp. Quenneville noted a specific phone call with S/Sgt. Sakalo on April 19, 2017 wherein she made him aware of his responsibilities as a case manager for benchmark MVCs. Further, on January 19, 2018, she sent a list of outstanding investigations to the case managers including S/Sgt. Sakalo. This list noted the MVC involving Ms. Lucier, and P/C Tamminga as the investigating officer.

¹⁸ S/Sgt. Sakalo Misconduct Decision, page 66

In respect to changes in process that had taken place since this matter occurred in April 2017, A/Insp. Quenneville's evidence was clear that changes were made in April 2019 as part of a provincial roll-out to ensure consistency in these investigations across the province. Traffic sergeants would now oversee and case manage these investigations. The change was not made in relation to the matter at hand.

A/Insp. Quenneville did testify, that in her opinion there were no issues with how benchmark MVCs were investigated in 2017, although she assented the practice at the time would have been challenging for the operations managers (S/Sgt's). P/C Tamminga who testified in relation to the significant caseload he and others in the TMU carried at the time, noted his supervisor was S/Sgt. Sakalo. That was the set-up at the time and S/Sgt. Sakalo was aware he was the supervisor of the TMU.

I do not entirely agree with the submissions of defence counsel who noted it is also aggravating when a front line officer does not perform their duties and is less than forthcoming; it was submitted this could exacerbate what happened and this a weakness in any system. While I concur supervision is not easy but the fact P/C Tamminga did not come forward to indicate issues was not the only sign missed. Ms. Lucier's calls were also an opportunity. I find that part of being a leader and a supervisor is to check in with those you lead to assess any stressors or issues; this is equally as important with officers considered 'high fliers'.

Contrary to the assertions of defence counsel, I did not find there were structural failures with the OPP's process at the time. There are always opportunities for improvement but I do not find there was anything tantamount to a failure. S/Sgt. Sakalo, as part of his duties, failed to recognize P/C Tamminga, a highly contributing member of his team, was struggling. P/C Tamminga had failed to complete the required court processes to ensure this matter came properly before the courts and as a result the OPP failed Ms. Lucier. To be fair, given the responsibilities of operations managers, I recognize this was a very busy job. I find there is some mitigation to be given to S/Sgt. Sakalo in this regard.

I find there is no aggravating systemic impact or structural failure. S/Sgt. Sakalo was aware of his responsibilities as a supervisor and case manager. Although P/C Tamminga did not come forward to S/Sgt. Sakalo to indicate he was having issues, this is not uncommon. It is for this reason there are systems in place to make use of diary dates and reminders. As the Niche¹⁹ report approver for P/C Tamminga in relation to this occurrence, S/Sgt. Sakalo had an opportunity to use that system to assign tasks to assist him in this regard. This was a benchmark MVC that deserved a high priority.

¹⁹ Niche – refers to the records management system used by the OPP for occurrence reporting and tasking

Despite my comments above, I do acknowledge the large span of control and the significant responsibilities for the position held by S/Sgt. Sakalo. There were some personnel changes and the death by suicide of a detachment member just following Ms. Lucier's benchmark MVC. I give some mitigation to S/Sgt. Sakalo in this respect.

Effect on Police Officer and Police Officer's Family

I accept there has been a negative impact on S/Sgt. Sakalo and his family as a result of these misconduct proceedings. This was expressed in the affidavits of both S/Sgt. Sakalo and his spouse.

I can appreciate it is difficult, as it is for all respondent officers, to read about one's misconduct, regardless of how fairly it is considered and expressed by the hearing officer. To read a detailed analysis of the evidence from S/Sgt. Sakalo's misconduct hearing, including a careful weighing of contradictory testimony and assessments of credibility and reliability could also be negatively impactful. These misconduct decisions could not be described as positive documents but they are objective and constructive, based on the evidence before the tribunal.

As a result of this disposition, S/Sgt. Sakalo will have to work without pay for a number of days. The decision and related disposition will be posted internally in a redacted format and externally on the OIPRD website, available to members of the public. These are not factors unique to S/Sgt. Sakalo. He will have to continue to work hard to restore his professional reputation as a leader and supervisor but this responsibility falls on his shoulders as a natural consequence of his misconduct. I find S/Sgt. Sakalo is due some mitigation in respect to the impact on him and his family.

Employer Approach to Misconduct

The OPP has consistently addressed the expectations of its officers whether they are frontline officers or supervisors, as is the case in the current matter. A full and fair hearing was held. After a finding of misconduct, defence counsel submitted an abuse of process motion due to the delay before the delivery of the misconduct decision.

The motion was denied but defence counsel provided *Hartling*,²⁰ a 2020 Court of Appeal decision that dealt with 'post-verdict' delay. In *Hartling*, the convicted person was provided mitigation in respect to sentencing for the delay related to the court receiving a *Gladue*²¹

²⁰ Exhibit 47: Tab 8 – *R v Hartling*, [2020]

²¹ A *Gladue* report is provided at criminal court sentencing when an offender has an indigenous background

report. The current matter is not criminal in nature, does not involve 'post-verdict' delay nor a *Gladue* report and is not relevant. Regardless, I give S/Sgt. Sakalo some mitigation in respect to the delay in receiving the misconduct decision.

Specific and General Deterrence

It is a well-established principle in police disciplinary proceedings that a penalty must be properly balanced, sufficient to punish and deter while demonstrating reoccurrence would not be tolerated.

I find this process and the penalty imposed are sufficient to serve as specific deterrence for S/Sgt. Sakalo. Despite that I am not clear on whether he has accepted responsibility, I am buoyed by S/Sgt. Sakalo's words before the tribunal, and understand that regardless, he has learned from this matter. I am glad he has shared this knowledge with others, particular those in a supervisory capacity. Ms. Lucier, came to this tribunal, not only looking for answers as to what went wrong in the investigation but also with the noble aim of ensuring it does not happen again.

Given this matter involved a public complaint, this decision will be posted on the OIPRD website and in a redacted format internally within the OPP. Regardless of the penalty imposed, this disposition will serve as a reminder to OPP supervisors that they must be diligent in their duty to supervise, particularly in respect to death investigations. Members from other police agencies will also review this decision and will know the OPP has held a supervisor accountable for the failure of one of the officers under their command. The objective of general deterrence will be served by this decision.

Effect of Publicity and Damage to the Reputation of the OPP

In *Martin and Windsor Police Service*²² the Commission addressed the analysis required in respect to damage to the reputation of the police service specifically:

The Hearing Officer noted the fact that the disciplinary proceedings were widely publicized and therefore known to the community. In our view, the Hearing Officer was entitled to consider that information as very relevant in weighing the appropriate penalty to impose and considering the context of the Reasons as a whole, the Hearing Officer was entitled to reach the conclusions he did relating to this factor.

²² Exhibit 46: Tab 6 – *Martin v Windsor Police Service*, [2009] ONCPC 10

This is a public complainant matter and as such, it is clearly in the public domain. I agree with the prosecution's submission that one does not have to hypothesize about the potential of negative publicity given the May 2020 article²³ wherein S/Sgt. Sakalo is quoted. The article noted:

The Crown Attorney's office began asking Tamminga's superior officer questions about why the document wasn't filed, further delaying the process.

"Issues like this quickly tarnish the reputation of the OPP and are preventable," said Staff Sgt. Sakalo in an email, outlined in hearing documents.

The media regularly seek and obtain records concerning police misconduct. This is evident by the article as noted above and S/Sgt. Sakalo's comments therein that are now in the public domain as a result of a media request. What is also evident, by the hyperlinks to other police misconduct from the OPP and other agencies within this article, is that police misconduct remains in the public realm even upon conclusion of the hearing process.

It is reasonable to infer that the media is also now aware of the companion matter involving S/Sgt. Sakalo and as a result there may be interest in reporting on the outcome in the current matter. Although there may be mitigating circumstances to consider, I find a reasonable member of the public aware of all of the circumstances of the matter, would find S/Sgt. Sakalo's failure to supervise and case manage falls below the public expectation. A reasonable person would also consider there would be negative impacts on the reputation of the OPP in the eyes of Ms. Lucier and the Crown Attorney's office. I find this would damage the public trust and it would serve to negatively impact the reputation of the OPP. Although this is not all attributable to S/Sgt. Sakalo, I find this is an aggravating factor.

Consistency of Penalty

In order for a penalty to be fair, it must be consistent with penalties in matters involving similar misconduct, while considering the specific circumstances of the matter at hand. The cases relied on by the prosecution and defence counsel had penalties ranging from a reprimand to demotion. I will discuss those that have some comparisons to this matter. While circumstances may vary, previous cases need to be considered to allow for a comparative analysis and the determination of an appropriate penalty.

²³ Exhibit 45: Tab 2 – CBC News article [08May2020]

I will first address those cases provided, to assist me in determining a range of appropriate penalties that could be imposed. Once I have determined the range, I will then consider and weigh all of the penalty factors specific to S/Sgt. Sakalo's misconduct to find the appropriate penalty in this matter. I am cognitive dispositions must not only be proportional and balance the interests of all involved but other principles apply including: a corrective disposition should take precedence over a punitive disposition and; the presumption that the officer is entitled to the most favourable disposition, given the circumstances of the case.

Defence counsel submitted several cases involving supervisors and the issue of neglect of duty wherein a reprimand was imposed. *Gottschalk* did not directly involve a member of the public but dealt with an internal matter wherein a Superintendent received information about the misconduct of two officers under his command. The misconduct had occurred on the night when a fellow officer was murdered, and due to the actions of the officers, they were not available to provide assistance. Superintendent *Gottschalk* failed to follow up on the misconduct of his officers. He was charged and after a hearing, was found guilty of neglect of duty; he received a reprimand. The finding of guilt was upheld by the Commission on appeal. The circumstances are distinct from the current matter and do not assist in assessing an appropriate disposition. However, the Commission in *Gottschalk* makes it clear senior officers have "a duty to properly supervise subordinate officers" and this includes "an obligation to follow up on allegations of potential serious misconduct or dereliction of duty."²⁴

Moore involved a constable who failed to conduct a proper investigation in relation to a theft of a vehicle. The owner of the vehicle lodged a complaint as, through the lack of investigation, P/C *Moore* had released the suspects with some of the victim's cash that had been in the stolen vehicle. Although *Moore* also involved a public complaint, it was in relation to a financial loss unlike the current matter that involved supervision of a benchmark MVC resulting in a death. The current matter involves different and more significant issues and I do not find *Moore* helpful in the current analysis.

Pigeau involved a constable with a tenure of 14 months service who had made an unlawful arrest. A sergeant arriving at the scene released the public complainant unconditionally but the arrestee later made a complaint about the arrest and the force used therein. Similar to the case above, *Pigeau* did not involve a benchmark MVC, death of a man nor significant injuries to the man's wife nor was it in relation to supervisory responsibilities. *Pigeau* was not relevant for consideration in the current analysis.

²⁴ Exhibit 47: Tab 1 – *Gottschalk*, [2003] CanLII 75465, Para 56

Chouryguine involved a constable who as a result of an incident wherein he feared for his life, discharged his service firearm at a vehicle; he was subsequently found guilty of insubordination for failing to follow a service order. The officer appealed the finding of guilt but not the penalty imposed that included a reprimand and additional training. The finding of guilt was upheld by the Commission. I find this matter too disparate from the matter before me to assist in my analysis.

Rose and Ferry refers to a Toronto Police Service case related to G20 demonstrations, dealing with an unlawful arrest complaint against two sergeants. Defence counsel provided this case noting that it was important as the supervisors had a direct and immediate response and connection to the incident in question. In the matter at hand, it was submitted that the chain of command flowed from P/C Tamminga to Sgt. Blanchard and then to S/Sgt. Bertram. Sgt. Rose had received a reprimand and Sgt. Ferry had received a two month demotion to constable that was varied on appeal to a one month demotion.

I note that unlike in the current matter, the misconduct in *Rose and Ferry* dealt with decisions made in the heat of the moment in the violence associated to G20. S/Sgt. Sakalo's misconduct could not be categorized as such as it involved a prolonged period of a lack of supervision and case management over several months. Although the circumstances in *Rose and Ferry* are dissimilar to the matter at hand and I do not find it assistive for the purposes of a disposition analysis, the divergent nature in *Rose and Ferry* allows me to highlight an important distinction.

Had the current matter dealt with a complaint against P/C Tamminga in relation to misconduct at the scene of the MVC then Sgt. Blanchard may have been subject to allegations of misconduct, as his supervisor at the time. As a hypothetical example, had P/C Tamminga made an unlawful arrest at the scene of the accident when there were no grounds to do so and had Sgt. Blanchard been fully aware that the arrest made was unlawful but no action was taken by her then Sgt. Blanchard could also have been subject to discipline. This example could apply to any senior officer or supervisor who was present at the scene and who stood by and allowed misconduct to occur. It does not make that senior member responsible for the benchmark MVC investigation at the root of the unlawful arrest.

It is not incumbent on a supervisor to be in attendance at an investigation scene for supervisory responsibilities to be engaged. As another hypothetical example, had P/C Tamminga received a public complaint in relation to failing to follow through with court processes in respect to a suspended driver he had stopped and charged, and had S/Sgt. Sakalo, as his supervisor and report approver, failed to ensure the required

documentation was completed, S/Sgt. Sakalo could also be subject to misconduct. This example does not meet the same level of seriousness as the investigation involving Ms. Lucier. It is possible that a supervisor of a suspended driver investigation may not be held accountable which is understandable given the level of seriousness and other priorities of the supervisor. The circumstances of S/Sgt. Sakalo's misconduct was in relation to a fatal MVC wherein Ms. Lucier lost her leg and her spouse. As I stated in my decision, it does not get more serious than that. S/Sgt. Sakalo's misconduct took place over a prolonged period of time and was in relation to a constable who reported directly to him. S/Sgt. Sakalo, as a supervisor, approved P/C Tamminga's reports and as a case manager, S/Sgt. Sakalo was responsible for the oversight of the fatal MVC investigation in question.

Neild, provided by both counsel, involved a neglect of duty finding of guilt against a sergeant who was in charge of a death scene investigation. After Sgt. Neild had arrived at the scene, given the lack of apparent injuries on the body and other factors, he had made the decision to cancel the services of the Technical Collision Investigator (TCI). The following day, a post mortem revealed the deceased had internal injuries consistent with being struck by a motor vehicle. The hearing officer found Sgt. Neild's decision to cancel the TCI was not arbitrary and it was defensible. Regardless, following that decision, Sgt. Neild failed to properly protect the scene. It was this failure that was at the root of the finding of neglect.

Sgt. Neild was found guilty after a hearing and ultimately received a 24 hour sanction. An appeal of the finding not the penalty was made to the Commission and it was upheld. The neglect in *Neild* dealt with the decisions made at a sudden death scene in the middle of the night. This does not compare to S/Sgt. Sakalo's protracted period of neglect. The hearing officer did not find Sgt. Neild guilty of neglect for his poor judgment or mistake in canceling the TCI noting this alone would not equate to neglect. It was the failure to preserve and protect the evidence at the scene contrary to OPP Sudden Death Checklist that moved into the realm of neglect.

I have reviewed the original hearing decision, disposition and the Commission decision for *Neild*. Although the circumstances in *Neild* are not in line with the current matter, I find there are factors that provide me guidance.

I find S/Sgt. Sakalo's misconduct more serious than in *Neild* for several reasons. S/Sgt. Sakalo has a higher rank and greater responsibilities overall as a case manager; his neglect was not in relation to decisions made at a death scene in the middle of the night. S/Sgt. Sakalo had many lost opportunities over a period of time to address the inadequacies of P/C Tamminga's investigation. At the time of the Niche report approval

he could have placed diary dates via tasks to ensure legislated timelines were not missed. Further, in January 2018 when he received the list of outstanding investigations from A/Insp. Quenneville or when he received the call from Ms. Lucier, S/Sgt Sakalo could have addressed issues directly with P/C Tamminga. Even at that point in time, a conversation with P/C Tamminga, a review of his work and a task with required follow up on Niche may have resulted in different consequences in criminal court given the *Provincial Offences Act timelines for Highway Traffic Act* charges had been surpassed.

One of the cases provided as a comparator authority in *Neild* was *Bettcher*. In analyzing *Bettcher*, the hearing officer in *Neild* wrote:

In Bettcher, the officer, who had a very positive employment record, failed to adequately supervise an investigation into an inappropriate relationship between two youths and make the necessary notifications. To paraphrase the incident in my terms, the officer showed up, directed the parties (through the parents) to stop the behaviour and another to mind their own business and left. He classed the RMS incident as a neighbor dispute. In a subsequent complaint investigated by other officers, the 14 year-old was arrested for sex related crimes and the 10 year-old was apprehended by social services as a child in need of protection. The hearing officer accepted and imposed the joint penalty submission of 80 hours.

Sgt. Bettcher's neglect was the product of oversight and appears to have stemmed from his failure to appreciate the gravity of the initial complaint. Exhaustion, not laziness, was a contributing factor.

I was not provided *Bettcher* by counsel and although the circumstances are not on point for the current matter, I note there may be parallels in that S/Sgt. Sakalo's failure to supervise was not due to laziness but may have been the result of him being heavily tasked and other impacting factors such as a member suicide around the time of the case conference. Although, notably the current matter relates to a fatal MVC and there could be no failure to appreciate the gravity of the investigation, I find this matter involved a lack of focus and prioritization by S/Sgt. Sakalo, not idleness. The 80 hour penalty in *Bettcher* was a joint submission accepted by the hearing officer.

Part of the assessment of the seriousness of this matter deals not only with the neglect itself but the consequences and impacts as a result of the neglect. I find the consequences of S/Sgt. Sakalo's misconduct at least on par in terms of seriousness as those noted in *Bettcher*. Due to the court file not being properly processed, the responsible driver was not held appropriately accountable and Ms. Lucier did not have access to victim support services that could have greatly assisted her.

Covey²⁵ is a 2001 decision provided by the prosecution and noted to have many parallels to the current matter. Like the matter at hand, it dealt with a horrific MVC wherein five people from the same family lost their lives and two sustained serious injuries. The distinctions in Covey from the matter at hand included that it involved: a plea and joint penalty submission and a constable in an acting sergeant role. The hearing officer in Covey noted:

Senior Constable Covey responded to the Scene as the Supervisor. She continued to monitor the investigation for the next several months. In early November 2001, Covey requested the Investigator to conclude the investigation. A charge of Careless Driving was laid on November 30, 2001. Between the time the charge was laid and the end of her tenure as Acting Sergeant, Constable Covey did not review or evaluate the progress or status of the accident investigation or the Court Brief with the Investigator. This charge is still before the Courts.

S/Sgt. Sakalo is confirmed in rank, two levels above that of P/C Covey who was an acting supervisor at the time. P/C Covey did make efforts to monitor the investigation and directed the investigator to conclude the investigation; a charge was laid but after the charge was laid she took no further supervisory actions.

Beyond the elevated rank and the lack of mitigation in respect to a plea, the current matter involves previous misconduct. Fourteen letters of reference were provided in Covey and the hearing officer noted:

It is clear that Constable Covey is respected by her peers and is a valued member of this organization.

TheEvaluation Reports...attest to her professionalism and thoroughness as an Investigator. She is innovative and it is clear that this accident that brings us here today, has had a lasting effect on her.

...and little or no victim assistance was given for the families or the Community, mirrors to me the insensitivity this officer portrayed in this investigation.

The lack of proper guidance, supervision, and direction over an extended period of time raises the bar that a Tribunal, in my mind, must assess.

²⁵ Exhibit 46: Tab 2 – Ontario Provincial Police v Covey, OPPHD, [31Mar2004]

The hearing officer in *Covey* noted concerns about the lack of victim assistance to the family and community; the insensitivity of the officer and that the “*lack of proper guidance, supervision, and direction over an extended period of time raises the bar...*” After two attempts at joint submissions, the hearing officer exceeded the proposed joint penalty and ordered a forfeiture of 32 hours.

Covey does provide me guidance given the parallels of the lack of victim assistance and, the lack of supervision and direction over a period of time. The matter before me involves the same negative impacts on Ms. Lucier in terms of the lack of victim assistance and the extended period of time related to the lack of supervision.

The seriousness of the current matter is heightened due to S/Sgt. Sakalo’s previous misconduct, rank and role as a supervisor and case manager. Further the current matter does not involve a plea or other mitigating circumstances present in *Covey*. The charges in *Covey* were before the courts at the time of the hearing while in this matter, given pre-charge delay, the charges were not proceeded with. Further, since 2001, public and organizational expectations of police officers, particularly those in a leadership role have only heightened. Given these comments, I find the starting point for a sanction is above 32 hours.

Kobayashi was provided by the prosecution to assist the tribunal that misconduct over a period of time is aggravating. While I accept this proposition, I did not find *Kobayashi* helpful in terms of consistency of disposition as it involved distinct incidents of misconduct over a period of time versus a prolonged period of a lack of supervision.

Mauro was provided to demonstrate that misconduct by those of a higher rank is also particularly aggravating. I find it is well established in terms of misconduct that senior officers are held to a higher standard. I concur this is relevant in the current matter and that S/Sgt. Sakalo’s failure to supervise an investigation related to a catastrophic MVC is a consideration that renders further aggravation.

Moggy involved a supervisor (officer in charge) of a dignitary protection unit responsible for providing security, in support of a government trade mission to China. Sgt. Moggy was charged with neglect of duty and discreditable conduct and he was less than forthcoming in the course of the Professional Standards Bureau investigation. Sgt. Moggy pleaded guilty and accepted a penalty of a permanent demotion to constable. He was described as having a stellar career with no prior misconduct and he provided a sincere apology to the tribunal taking full accountability for his actions. These factors set *Moggy* apart from the current matter. Further, the matter before me lacks the deliberate nature of

misconduct and does not compare to the circumstances in *Moggy*. I do not find it assists my analysis.

Mulville and Azaryev was provided to the tribunal by defence counsel who noted that the OPP changed its process so that circumstances that occurred in the benchmark MVC investigation involving Ms. Lucier do not occur again. It was submitted that S/Sgt. Sakalo cannot be faulted for an insufficient process. It was submitted that the prosecution neglected to attribute any responsibility to the OPP and it is unfair to put the sole responsibility on S/Sgt. Sakalo.

Respectfully *Mulville and Azaryev*, does not consist of the same circumstances as in this matter. There is no supervisory aspect, the matter dealt with an unnecessary arrest by two constables after being called to a noisy house party. I note the Commission, on appeal, dealt with the disposition for P/C Mulville and instituted a reprimand and training in lieu of a 12 hour forfeiture.

Although *Mulville and Azaryev* did not assist with my analysis in terms of disposition, I have carefully considered the potential of training and whether it may be appropriate. But unlike in *Mulville and Azaryev*, I do not find the matter at hand deals with an issue of training or a lack of knowledge. I find the issue was a lack of diligence and a false assumption that P/C Tamminga had this investigation in hand. The knowledge S/Sgt. Sakalo was privy to should have indicated otherwise.

I have provided some mitigation to S/Sgt. Sakalo in relation to his scope of responsibility. Regardless, of his scope of responsibility, S/Sgt. Sakalo was aware of his role both as supervisor and case manager of P/C Tamminga. He was the one with the full range of information in relation to the investigation. He approved the Niche reports; he was aware of the MVC in question being included on the list of outstanding investigations in January 2018 and several days after receiving the list from A/Insp. Quenneville, he received a phone call from Ms. Lucier outlining her concerns about P/C Tamminga and this investigation.

Despite S/Sgt. Sakalo's other responsibilities, this was a benchmark MVC involving significant impacts to Ms. Lucier who lost her husband as a result. This was a death investigation and it required a professional and fulsome investigation. The reason there is a supervisor and a case manager of such investigations is to ensure nothing falls through the cracks. Things can be missed or issues can interfere even when there are competent and normally diligent police investigators involved such as P/C Tamminga.

There were actions S/Sgt. Sakalo could have taken to ensure this investigation was properly supervised. He could have directed someone such as Sgt. Blanchard who was the supervisor at the scene to assist and oversee P/C Tamminga's work but he did not do so. I have made clear findings about Sgt. Blanchard's role and she was not responsible as the supervisor of P/C Tamminga other than at the scene but had she been directed to oversee the investigation by S/Sgt. Sakalo, it would have been incumbent on her to do so.

Conclusion

Having considered all of the cases provided in the context of the current matter, I find an appropriate penalty is in the range of greater than 32 hours up to approximately 80 hours.

I find the seriousness of S/Sgt. Sakalo's misconduct requires a disposition amounting to a forfeiture of 48 hours or six (6) days. This takes into account the aggravating factors of his previous misconduct, his rank and role as a supervisor and case manager, the prolonged period of neglect and the seriousness of misconduct. The negative impacts on the reputation of the OPP is also aggravating. S/Sgt. Sakalo has received no mitigation in terms of his recognition of accountability for the seriousness of the misconduct. His employment history is only mildly mitigating.

Given these factors, a penalty at the higher end may have been appropriate but I have given mitigation in terms of 'decision delay' and the effect on the officer and his family, and his scope of responsibilities and circumstances at the time. The officer is entitled to the least onerous disposition considering all of the circumstances. I also concur with defence counsel who noted the practical reality is that the longer this goes on, it continues to impact all those involved. Taking all of the circumstances into account, the penalty imposed is fair and meets all the goals of discipline. Further, it is hoped this will allow all those involved to move forward positively in their lives. S/Sgt. Sakalo will be able to work additional hours without pay each week until he completes the penalty.

I have also considered the remedial principle with the possibility of leadership training. However, I found it not particularly relevant given this matter required empathy and listening skills that are not best acquired through a course but through practice. I encourage S/Sgt. Sakalo to model these traits and to seek out learning opportunities about emotional intelligence and servant leadership that will serve him well as he moves forward in his career.

To Ms. Lucier,

I am sincerely sorry for your loss and for all that has occurred. I would like to thank you for your active participation in this tribunal. Your strength and intelligence were demonstrated as you engaged meaningfully throughout these protracted proceedings. You remained respectful and even charitable to those who have let you down. Regardless of whether S/Sgt. Sakalo accepts his part in this, he has learned from this experience. As the words in his apology indicate, “[I] will share these experiences with colleagues and those I supervise so that a situation like this does not occur in the future.” Ms. Lucier, as I understand it, this was one of the admirable goals you wished to achieve from your public complaint.

I hope you regain your trust in the OPP and in policing. I am sorry for the tragedy that has occurred but my sincere wish is that the future brings you happiness and peace.

PART IV: DISPOSITION

I order S/Sgt. Sakalo forfeit 48 hours or six (6) days pursuant to the *Police Services Act*, section 85(1)(f) .

2021-04-28

X 

Lisa Taylor
Superintendent
Signed by: Lisa Taylor LS (M)

Lisa Taylor
Superintendent
OPP Adjudicator

Date: April 28, 2021

Appendix

- Exhibit 45: Prosecution Book of Documents
 - Tab 1 – Record of Informal Discipline [04Apr2019]
 - Tab 2 – CBC News article [08May2020]
 - Tab 3 – S/Sgt Sakalo Career Profile
 - Tab 4 – PLDP 2015-2016
 - Tab 5 – PLDP 2016-2017
 - Tab 6 – PLDP 2017-2018
 - Tab 7 – PLDP 2018-2019
 - Tab 8 – PLDP 2019-2020
- Exhibit 46: Prosecution Book of Authorities
 - Tab 1 – *Andrews v Midland Police Service*, [2003] ONCPC 12
 - Tab 2 – *Ontario Provincial Police v Covey*, OPPHD, [31Mar2004]
 - Tab 3 – *Ontario Provincial Police v Moggy*, OPPHD, [12Apr2017]
 - Tab 4 – *Ontario Provincial Police v Neild*, OPPHD, [03Nov2016]
 - Tab 5 – *Kobayashi and Waterloo Regional Police Service*, [2015], ONCPC 12
 - Tab 6 – *Martin v Windsor Police Service*, [2009] ONCPC 10
 - Tab 7 – *Mauro v Thunder Bay Police Service*, [2013] ONCPC 9
- Exhibit 47: Defence Book of Authorities
 - Tab 1 – *Gottschalk*, [2003] CanLII 75465
 - Tab 2 – *Moore*, [2008] CanLII 90935
 - Tab 3 – *Pigeau*, [2009] CanLII 93058
 - Tab 4 – *Chouryguine*, [2016] CanLII 63925
 - Tab 5 – *Rose & Ferry*, [2016] CanLII 84144
 - Tab 6 – *Mulville and Azaryev*, [2017] CanLII 19496
 - Tab 7 – *Neild* penalty decision, [Dec2016]
 - Tab 8 – *R v Hartling*, [2020]