

IN THE MATTER OF
ONTARIO REGULATION 123/98
MADE UNDER *THE POLICE SERVICES ACT* R.S.O. 1990, C.P. 15
AND AMENDMENTS THERETO;
AND IN THE MATTER OF
POLICE CONSTABLE J. B. #1568
AND THE
OTTAWA POLICE SERVICE

SENTENCE

APPEARANCES:

Ms. Christiane Huneault

for the Ottawa Police Service

Ms. Pam Machado

for Police Constable J. B.

BEFORE:

Deputy Chief Terence Kelly

York Regional Police (Retired)

Hearing Officer

SENTENCE DATE:

December 8th, 2016

SENTENCE

Police Constable J. B. Badge #1568

December 8th, 2016

Deputy Chief Terence Kelly (Ret.). Before commencing with sentence in this matter, I wish to thank Ms. Christiane Huneault, the Service prosecutor, and Ms. Pam Machado, counsel for Police Constable J.B. for their comments and exhibits entered, all of which have assisted me.

Police Constable J. B. #1568 has pleaded guilty and been found guilty of 11 counts of discreditable conduct, three counts of neglect of duty, and two counts insubordination, laid under the ***Police Services Act.***

The guilty plea was advanced with an Agreed Statement of Facts (**Exhibit #8**).

Agreed Statement of Facts

Count 1 – Discreditable Conduct

Between July 12th and August 13th, 2014, Constable J.B. acted in a manner likely to bring discredit to the Police Service by conducting himself in an unprofessional manner by sending inappropriate messages and pictures to complainant (K.H.) during a criminal investigation and by using his position as a police

officer to pursue an investigation for personal motive of a victim (P.M.) in a criminal matter in which he was the assigned investigator.

Constable J.B. became involved with P.M. as a third party victim in July 2014 when he was assigned to investigate a threats complaint. P.M. had just started a relationship with his neighbour, K.H., who had just recently separated from her common law husband, K.W.. K.W. made a threat to K.H. indicating he was going to kill P.M.. P.M. made a complaint to the Ottawa Police Service regarding the threats and the file was assigned to Constable J.B. who was working West Division Investigations.

On July 19th, 2014, Constable J.B. advised K.W. that there would be no criminal charges against him in the threats file as K.H. refused to cooperate as a witness.

After July 19th, 2014, Constable J.B. began to focus his investigation on trying to discredit the third party victim, P.M., and went as far as contacting previous employers (July 20th, 2014), the Children's Aid Society (July 25th, 2014), College of Physicians (July 25th, 2014) and even spoke to the new home owners of his previous residence (July 19th, 2014) asking about P.M.'s background.

Constable J.B. made several statements to K.H. warning her about P.M. and that she should be concerned for both her personal safety and the safety of her children. Constable J.B. stated that P.M. was a liar and a manipulator. He also expressed a concern for P.M.'s mental health.

In July 2014, Constable J.B.'s first phone conversation with K.H., Constable J.B. told her that he noticed the difference in age between her husband and P.M. and enquired regarding her attraction to him. During this conversation, Constable B. met K.H. in a park to discuss concerns she had with P.M..

Following this meeting. K.H. advised Professional Standards Section that her interactions with Constable B. began to make her feel uncomfortable. She did not advise Constable B. of this opinion.

Constable B. sent K.H. sexually suggestive text messages and shirtless pictures of himself. Constable B. asked K.H. to send pictures of herself, which she did not.

Constable B. concluded the investigation on July 29th, 2014 as “Founded-Not Solved” citing a lack of cooperation from witnesses. He concluded that there was no reasonable prospect for conviction.

On September 3rd, 2014, after Constable B. had concluded his threats investigation and was transferred out of West District Investigations office and back to patrol, he submitted a Freedom of Information request to a Board regarding P.M.. Constable B. stated that his request was submitted because he had not concluded the mental health element of his investigation; however, although Constable B. believed there were grounds upon which to conduct a mental health investigation into P.M., he recognizes this was not his role at this point. Furthermore, this investigation was determined to be unfounded as the FOI request for information verified that P.M. was in fact employed by the Board.

As a result of the inappropriate communications discovered through the public complaint investigations, an e-mail restore was conducted for the time period of August 2013 until February 2015. Inappropriate communications with multiple women were discovered both directly from Constable B’s Ottawa Police Service e-mail account, and via his Facebook account that he had connected to his work e-mail.

Count 3 – Insubordination

On September 23, 2014, Constable B. conducted one unauthorized query of J.D. on CPIC from his Mobile Digital Terminal (MDT) for personal purposes.

On October 2nd, 2014, Constable B. conducted one unauthorized query of L.N. on CPIC for personal purposes. Constable B. indicated that he was running L.N. to see if he could try and locate her to contact her for personal purposes.

On October 16th, 2014, Constable B. conducted one unauthorized query of C.B. on CPIC from his MDT for personal purposes.

On January 1st, 2014, Constable B. conducted one unauthorized query of G.A. on CPIC for personal purposes.

Count 4 – Insubordination.

On February 2nd, 2013, Constable B. conducted six unauthorized queries on J.M. for personal purposes.

On March 19th, 2013, Constable B. conducted one unauthorized RMS query of S.S. for personal purposes.

On May 11th, 2013, Constable B. conducted five unauthorized RMS queries of A.L., for personal purposes.

On November 10th, 2013, Constable B. conducted 11 unauthorized RMS queries of S.S. and one unauthorized RMS query of J.G.. Constable B. conducted the RMS queries for personal purposes

On December 17th, 2013, Constable B. conducted 11 unauthorized queries of L.N. on RMS for personal purposes.

On December 17th, 2013 Constable B. conducted one unauthorized query of K.T. on RMS for personal purposes.

On March 19th, 2014, Constable B. conducted nine unauthorized RMS queries of S.S. and two unauthorized RMS queries of J.G. for or personal purposes.

On June 8th, 2014, Constable B. conducted 13 unauthorized RMS queries of S.S., two unauthorized RMS queries of J.G., and two unauthorized queries of S.S.'s sister, also S.S., for personal purposes.

On June 29th, 2014, Constable B. conducted 29 unauthorized queries on J.M. on RMS, 13 unauthorized queries on RMS involving her father R.A., three unauthorized queries on RMS of her husband S.M., six unauthorized queries of RMS of S.A., and one unauthorized query on RMS of M.G.. Constable B. conducted the RMS queries for personal reasons.

On December 20th, 2014, Constable B. conducted 36 unauthorized queries of L.C. on RMS, On the same date, Constable B. also conducted four unauthorized queries of M.M. on RMS. Constable B. conducted the RMS queries for personal reasons

On December 20th, 2014, Constable B. again conducted three unauthorized RMS queries of S.S. and one unauthorized RMS query of J.G. for personal purposes.

Count 5 – Discreditable Conduct

On August 26th, 2013, Constable B. was working in West Division Investigations and was assigned harassment file in which J.D. was the complainant in a domestic situation involving harassment by her former partner. J.D. claimed she feared for her safety.

Constable B. contacted her by e-mail on August 28th, 2013 and they had a phone conversation that evening. J.D. followed up via e-mail with questions and they engaged in a conversation of a personal nature. Constable B. made reference to a picture of J.D. in a bikini that the suspect of the harassment file had spread to their co-workers. Constable B. advised her that he did not wish to offend her, but felt it was unfair that he had these pictures of her and she had none of him. J.D. replied that she was not offended, and offered to take him for a glass of wine when all was completed.

On September 13th, 2013, J.D. pointed out to Constable B. that the personal nature of their communication was a conflict of interest considering he was investigating her harassment file. Constable B. was undeterred and responded by saying it was only inappropriate if they discussed the file. Constable B. then provided her with his personal cell phone number to text.

On September 23rd, 2013, J.D. reached out to Constable B. to ask if he was working and if there were any updates on the harassment complaint. He responded that he had no updates and asked her when he could get together to have that glass of wine with her.

On September 27th, 2013, and continuing into the early hours of September 28th, 2013, Constable B. sent a number of e-mails of a sexual nature from his Ottawa Police Service account to J.D..

On November 21st, 2014, J.D. reached out to Constable B. when she discovered that the subject of her harassment complaint went on a long term leave from work. This caused her concern because he did the same thing when he harassed her. Constable B. responded on November 22nd, 2014 and updated her that he was back on patrol and the subject had no police contact since her file. Constable B. proceeded to send e-mails of a sexual nature to J.D..

Count 6 and 7- Neglect of Duty and Discreditable Conduct

On September 20th, 2013, Constable B. was assigned a complaint of harassing phone calls where M.P. was the complainant.

On September 28th, 2013, Constable B. attended the residence of M.P. to investigate her harassment complaint. M.P. expressed a desire to work with the police in relation to various criminal activities where she resides.

M.P. stated in her interview with Police Standards Section (PSS) that she sent Constable B. a Christmas card at Christmas of 2013 and that on December 20th, 2013, Constable B. attended her residence alone to thank her for the card. M.P. stated that she hugged Constable B. on that occasion; but, she did not let him into her apartment because it was 10 o'clock at night and she was in her pyjamas. M.P. indicated Constable B. was in his "work attire."

Between October 5th, 2013 and March 16th, 2014, 22 voicemails were left by M.P. for Constable B.

On March 19th, 2014, M.P. contacted Constable B. over his Ottawa Police e-mail to complain about various criminal issues in her building. Constable B. asked her if a quick meeting on the Friday during the day could be in order. Constable B. provided her with his personal cell phone number and asked M.P. if she texts. He told her he would like to receive a picture from her and that he could send some pictures in return.

On March 21st, 2014, M.P. made reference to her e-mail that she sent Constable B. a picture and asked if he liked it. Constable B. confirmed that he did. MP confirmed in her interview with PSS that the pictures she sent Constable B. were sexual in nature.

On March 23rd, 2014, Constable Darren Saunders attended M.P.'s residence due to a complaint about an incident at her building. Constable Saunders submitted RMS report #14-72161 and his Investigative Actions (IA) indicated that M.P. stated she had dreams of Constable B. and that she wanted him to know about the incident at her building. Constable Saunders concluded the report and sent a "notify" to Constable B. via RMS.

On March 25th, 2014, Constable B. sent an e-mail from his Ottawa Police Service account to thank M.P. for the pictures. The e-mail communications recovered from the OPS e-mail account between the two became solely sexual in nature and M.P. asked for pictures of Constable B.

At 2104 hrs Constable B. sent an e-mail to Constable Saunders indicating M.P. was known to have mental health issues. At 2105 hrs. Constable B. submitted an IA on Constable Saunders' aforementioned report indicating that he had dealt with M.P. in a professional capacity, and stated that she asked him personal questions to which he did not disclose information. Constable B. stated in his IA that her interest in him appeared to be more police-related. After the IA was submitted, Constable B. then continued sending inappropriate e-mails of a sexual nature to M.P..

At 2328 hrs Constable B. sent an e-mail to M.P. regarding the fact that she mentioned his name to Constable Saunders and suggested avoiding doing so in the future. Constable B. added that he wouldn't mention her name to anyone because their friendship had developed into something inappropriate that could get him in trouble. The inappropriate e-mail exchange continued.

On March 26th, 2014 at 0032 hrs, Constable B. engaged in further inappropriate e-mails of a sexual nature with M.P..

On March 26th, 2014, at 1824 hrs, Constable B. sent an e-mail to M.P. indicating that he had to stop communicating with her as he had stepped out of line professionally.

Count 8 – Discreditable Conduct

H.K. had 28 contacts with the Ottawa Police Service between February 2001 and November 2014. Constable V.B. confirmed in his interview with PSS that he was well aware of H.K.'s history with police.

On March 4th, 2014. H.K. filed a report regarding threats (report#14-55859) and Constable B. was assigned as the lead investigator. On April 27th, 2014, he closed the report as he could not reach H.K.. Although she contacted him later the same day, Constable B. failed to re-open the file.

On May 20th, 2014, H.K. made a second harassment complaint and the file was again assigned to Constable B. (GO14-126298).

On May 21st, 2014, H.K. sent an e-mail to Constable B. in an attempt to set up a meeting to discuss her file. In one of these conversations, Constable B. asked M.K. for a descriptive account of her sexual contact with the subject of her harassment complaint O.N.. Constable B. mentioned to H.K. that he *has a thing for Middle Eastern girls*.

On May 21, 2014, at 23:46 hrs, Constable B. sent an e-mail of a sexual nature from his OPS account to H.K., which resulted in H.K. sending him a picture of her exposed breast.

On May 22nd, 2014, Constable B. attended West Gate Mall at approximately 1700 hrs and met H.K. for coffee. In their PSS interview, both admitted that the conversation was about the OPS harassment file and also personal in nature. H.K. showed Constable B. personal photos of herself that she had saved on her phone. Constable B. entered into a conversation of a sexual nature with her; but, he told her that they had to maintain a boundary until the case was over.

On May 22nd, 2014, Constable B. sent H.K. an e-mail depicting material that was sexually explicit in nature. At the same time that Constable B. was e-mailing H.K., he was having professional e-mail conversations with the aforementioned suspect on the file, who was also complaining about being harassed by H.K., as well as a witness.

On June 23rd, 2014 O.N., the subject on H.K.'s harassment file reached out to Constable B. advising him that he was being harassed by H.K..

On June 26th, 2014, ON, contacted Constable B. again stating that he had not heard from him.

Constable B. never filed a subsequent report regarding O.N.'s complaint of harassment by H.K..

Count 9 – Discreditable Conduct

L.C. was a security guard and on September 9th, 2014; while on patrol, she came across a man on Sparks Street covered in blood and called police. It was later discovered that the male had committed a break and enter at a local business. Constable B., who was assigned to patrol at the time, was the first officer on scene and arrested the male. Later that night L.C. e-mailed her witness statement to Constable B..

On September 19th, 2014, Constable B. responded to L.C. thanking her for the statement. Constable B. engaged her in personal conversation via his work e-mail account that continued through the night.

On November 4th, 2014, Constable B. sent L.C. an e-mail from his OPS e-mail saying he had to stop texting and sexting and using Gmail account because his personal phone and e-mails were synced together, as he was concerned for his marriage.

Constable B. met in person with L.C. for personal reasons. At the time, the criminal matter to which L.C. was a witness and Constable B. was the arresting officer, was still before the courts.

Count 10 – Discreditable Conduct

On January 7th, 2014, Constable B. exchanged e-mails with G.A. on his work e-mail that was sexual in nature. The e-mails were exchanged both directly to his OPS e-mail and through Facebook (which he had linked to his OPS e-mail). The e-mails continued into March 2014.

G.A. and Constable B. met in person on August 31, 2014 while Constable B. was on duty for personal reasons. Constable B. was in uniform and working dayshift as 2306D on A Platoon on that date.

Count 12 – Discreditable Conduct

L.S. is a former OPS employee who had left and went to work at the courthouse for six years. When Constable B. interacted with her, she had just left the courts and had started a new position.

On April 16th, 2014, Constable B. sent an inappropriate e-mail, on his OPS e-mail account, to the OPS e-mail of T.G. from the courts about L.S..

On April 23rd, 2014, T.G. responded that he was not familiar with a “C” who worked at OPS, but if he still required the information he could find out.

On April 25th, 2014, Constable B. responded that he figured it out and made further inappropriate comments about L.S..

On May 6th, 2014, T.G. responded that he was surprised that she was being referred to in that manner, as he knows her.

Count 14 and 15 – Discreditable Conduct and Neglect of Duty

Constable B. met C.B., at a gas station near his residence, where she worked, in mid-July of 2013. He was off duty and engaged C.B. in conversation as she appeared to him to be upset. He provided her with his personal cell phone number on his OPS business card and indicated to her that he lived nearby, and if she needed help, to call him.

In July 2013, C.B. followed up with Constable B. to report sexual harassment by her former employer. Constable B. originally offered to pick her up and bring her to a Tim Horton’s in order to discuss the matter she was reporting. C.B. instead asked him to come to her residence where her family was

present. In July 2013, Constable B. attended her residence, in plain clothes and on duty, wearing his gun and police badge.

After speaking briefly to her father, Constable B. interviewed C.B. alone in the dining room to discuss her harassment complaint. While speaking with her, Constable B. made an inappropriate comment regarding an image on her computer, which she had as a screen saver. This was a picture of her and her boyfriend dressed for Halloween in "adult novelty" military costumes.

Constable B. failed to generate an occurrence report in RMS and did not take any notes in relation to C.B.'s complaint or his attendance at her residence.

On August 23rd, 2013, C.B. e-mailed Constable B., who she believed was actively investigating her complaint of harassment which she reported to him at her residence, for assistance as she was having more trouble with the subject of her complaint.

On August 28th, 2013, the subject, identified by C.B. to Constable B., contacted the OPS and filed a report claiming that the grandfather of C.B. threatened him in relation to not attending the gas station and that he was sexually harassing his granddaughter (GO13-233421). After this report was filed, C.B. reached out to Constable B. and asked if police were looking for her.

Constable B. entered his first Investigative Action (IA) on August 29th, 2013 indicating how C.B. reached out to him on his personal cell phone asking if police were looking for her. Constable B. provided a brief description of how he met C.B. at the gas station; but failed to provide any information about ever interviewing her, attending her residence or the previous harassment complaint she had reported to him.

On August 29th, 2013, Constable B. contacted the case manager for West District Investigations by e-mail and volunteered to take threats complaints against C.B.'s grandfather. Constable B. was assigned to West District Investigations at the time. Constable B. concluded the investigation on September 24th, 2013, as "Non-criminal."

During the course of his interactions with C.B., Constable B. sent text messages of a sexual nature and requested pictures.

Count 17 – Discreditable Conduct

S.P. was a security guard and on October 25th, 2014, while on patrol, she flagged down Ottawa Police to seek assistance with removing an unwanted male (call #14-282476). Constable B. was the responding officer who sent the unwanted male on his way. S.P. told Constable B. that she was interested in policing and had gone on ride-alongs before. Constable B. provided her with his business card and offered that if she wanted to go on another ride-along, to contact him.

On October 28th 2014, SP contacted Constable B. advising that she was interested in a ride-along. He provides his schedule for the upcoming month, and they started an e-mail correspondence.

On November 4th, 2014, Constable B. met with S.P. at the Elgin police station to fill out ride-along forms. Constable B. sent her an e-mail stating, *"You're going to be like one of the most adorable ride-alongs right? Lmao."*

On November 7th, 2014, S.P. went on her ride-along with Constable B. During the ride-along, Constable B. made inappropriate comments about S.P.'s clothing.

The e-mail exchange between Constable B. and S.P. became personal in nature. Constable B. asked her if she was on Facebook and the two became Facebook friends. The Facebook messages were routed

through his OPS e-mail account. The messages were of a sexual nature and involved Constable B. sending S.P. a picture that was sexual in nature.

Sometime between December 11th, 2014 and February 2015, S.P. went on a second ride-along with Constable B..

The exchange of personal e-mails continued on Constable B.'s OPS e-mail account until Constable B. was suspended on February 19th, 2015.

Count 18 - Discreditable Conduct

On July 22nd, 2013, Constable B. was assigned as the lead investigator for a mischief to property call in which K.T. was the complainant (GO 13-189525). K.T. was reporting that her home and vehicle were being egged and felt that her daughter was being targeted by students at her school.

The e-mail exchanges between them were initially professional and in one correspondence, Constable B. provides his personal cell number.

On November 9th, 2013, Constable B. sent K.T. an e-mail from his work e-mail, asking if she "*is behaving*". There is a suggestion in the e-mails that there had been phone conversations between them.

The e-mail exchange between Constable B. and K.T. was sexual in nature. On November 19th, 2013, Constable B. sent K.T. an e-mail from his work e-mail asking K.T. to send him a picture. The e-mail exchange of a sexual nature continued until May 1st, 2014.

Count 19 and 20 – Discreditable Conduct and Neglect of Duty

M.I. was a loss prevention officer at the Rideau Centre. M.I. requested police assistance for a theft in progress and Constable B. was dispatched to the call. Constable B. arrested the theft suspect and cleared the call (#14-291221) as reportable. Constable B. failed to generate an occurrence report with respect to the arrest. There were no charges laid in relation to this incident.

On November 11th, 2014, M.I. e-mailed Constable B. the loss prevention report and Constable B. responded by thanking her. Constable B. made a flirtatious comment about her pink handcuffs, and offered to take her on a ride-along and meet her for coffee. M.I. provided her personal cell phone number so they could meet for coffee and arrange the ride-along.

M.I. stated in her interview with PSS that she met with Constable B. on November 18th, 2014, at the Chapters on Rideau Street to discuss the ride-along. Constable B. was in uniform as this was his patrol area on that date.

A day or two after she met with Constable B. at Chapters, M.I. advised Constable B. sent her a picture of a male in boxer shorts, only visible from the neck to above the knee.

A few days after sending her the picture, Constable B. reached out to her about the ride-along. M.I. replied that she was not available and did not know her schedule in December.

In his interview with PSS, Constable B. admitted to sending M.I. the inappropriate picture.

Submissions by the Prosecution

The Service prosecutor submissions focussed on public interest, seriousness of the misconduct, recognition of the seriousness of the misconduct, handicap and other relevant circumstances,

employment history, the potential to reform or rehabilitate, effect on the police officer, specific and general deterrence, and damage to the reputation of the Ottawa Police Service.

Seriousness of the Misconduct

Speaking to the seriousness of the misconduct the prosecutor submits that the actions of Constable J.B. in these findings of misconduct under the *Police Services Act*, show deliberation, his unlawful access to the data banks of RMS and CPIC over an extensive period of time, his personal involvement with the complainants and his failure to properly investigate complaints, clearly had a serious affect on the confidence of the community in the Ottawa Police Service.

Public Interest

The Service prosecutor submitted that public interest must be considered in each case and the disposition for the misconduct of a police officer must give the public the impression the officer has received an appropriate penalty. Public faith in the running of a police service would not be well served and undermined if this type of behaviour by a serving officer was not treated seriously.

Professionalism and integrity cannot be compromised. The public are entitled to high expectations of the Police Service and its members and to retain the trust and confidence they must be professional and ethical in everything they do.

The Service prosecutor in stressing this point spoke to the case of *Bright v. Konkle*, (Board of Inquiry, *Ontario Police Services Act*, March 1997)

Page 491, paragraph (44):

"Good Character in a police officer is essential to both the public's trust in the officer, and to a police service's ability to utilize that

officer. The public has the right to trust that its police officers are honest and truthful, and that, absent extenuating circumstances, they will not be officers any longer if they breach this trust."

Specific and General Deterrence

Speaking to specific and general deterrence the prosecution states that it is a well-recognized principle in sentencing law, which is meant to discourage others from participating in similar misconduct. It is particularly important where it is desirable to send a message to other police officers that certain conduct will not be tolerated. Members of the Service must know that the penalty for this type of misconduct will be significant personally, professionally, and financially.

Handicap and other Relevant Personal Circumstances

The Service prosecutor advised the Tribunal that Constable B. has been diagnosed as suffering from Post-Traumatic Stress Disorder. Further, the officer has been assessed by Dr. Brad Booth, a forensic psychiatrist, who reports that on March 24th, 2016 and on May 12th, 2016, he conducted clinical interviews with Constable B. after obtaining a number of reports from Psychologist, Dr. Cindy Maddeaux, notes from Dr. Rae and the Homewood Health Centre discharge summary dated December 18th, 2015.

Dr. Booth stated that Constable B. appeared to cope with his PTSD symptoms by turning to self-soothing experiences of a sexual nature. Dr. Booth indicated, "While his PTSD does appear to have significantly contributed to his behaviour, and but for the PTSD he may not have behaved in this manner." Dr. Booth concluded that Constable B. appears to be improving from his PTSD and on a whole has a fair prognosis for recovery in this condition. As well, any risk of relapse of PTSD can be mitigated by appropriate medications and ongoing therapy. It was concluded by Dr. Booth that given the lack of inappropriate behaviour in the past, the consequences for him with the current hearing, the losses incurred and his insight, he would be at low risk of future inappropriate behaviours in the workplace.

Submissions by the Defence

Defence counsel began her submissions by advising the Tribunal that the joint submission on penalty is being put forward for consideration as both the employer and Police Constable J.B. believe it to be a reasonable penalty that takes into consideration the relevant mitigating and aggravating factors, along with the appropriate sentencing principles. That the penalty being proposed is reasonable and takes into account the appropriate sentencing factors, with an eye to fairness and proportionality.

Defence counsel spoke to key elements to be taken into consideration when assessing penalty. These include: the seriousness of the misconduct; the ability to reform or rehabilitate the officer; the damage to the reputation of the Service. She noted the factors that can be relevant, either aggravating or mitigating the penalty depending on the misconduct in question. These include the officer's employment history, experience and recognition of the seriousness of the transgressions. Other considerations could include, procedural fairness, handicap or other relevant family situations.

As with the cases provided by the Service prosecutor, I will not recite these cases in their totality. I have read and considered the cases provided and alluded to by both counsel. These cases are for guidance with respect to disposition of penalty which counsel have recommended to be appropriate pertaining to the circumstances before this Tribunal.

In her submissions defence counsel spoke to **(Exhibit #9) Tab C**, which referenced a number of medical reports dealing with risk assessments and therapeutic results relating to Constable J.B. for treatment of PTSD since January 2012 and as far back as 2004 from Dr. Blouin.

Exhibit 12, Tab C speaks to an assessment of Constable J.B. by Dr. Brad Booth, a forensic psychiatrist, and reports that he conducted clinical interviews with Police Constable J.B.. Dr. Booth under the heading, *"If there is a psychiatric illness or condition, what is the prognosis for recovery' ?,...'* In part stated and I quote:

“Constable J.B. appears to be improving in his PTSD and is in remission from depression. On the whole he has a fair prognosis for recovery of this condition. He remains at risk of relapse of PTSD and depression, although this could be mitigated by appropriate medications and ongoing therapy. His personality issues and psychological awareness would continue to be potential deficits for him, although these can also improve, in some individuals. Given the lack of these behaviours in the past, the consequences for him with the current hearing, the losses incurred and his insight, he would be at low risk of future inappropriate behaviours like this in the workplace.”

Unquote.

In her submissions, defence counsel referenced several cases (Exhibit Number 12) Constable J.B.’s Sentencing Brief of Authorities and spoke to examples of police misconduct, specifically *Moraru vs Ottawa Police Service* 2008. OCCPS (as it was then known) #08-01.

Defence counsel stated there are many similarities between *Moraru* and Constable J.B. with regard to an officer being diagnosed with regard to uncontested medical evidence.

In *Moraru vs Ottawa Police Service* (2008) the Commission stated:

“However during the penalty phase of a Disciplinary hearing, not unlike the sentencing phase of a criminal trial, it is incumbent upon the trier-of-fact to consider whether PTSD, a medically recognized illness, influenced the actions of the officer and, if so, to what extent. Having concluded that Constable Moraru was suffering from PTSD, the real issue before the Hearing Officer was what weight the effect of PTSD should be given as a mitigating factor.”

Defence counsel then spoke to past performance evaluations and letters of commendation that speak to the Constable J.B.’s positive career as a police officer with no misdemeanors prior to this incident.

In attempting to reach a fair and proper disposition in this matter, the Tribunal has paid very close attention to the submissions of both counsel; has read and scrutinized each exhibit for relevance, and has referred to detailed notes of all evidence presented.

The Tribunal has given careful consideration to the seriousness of the offence, the public's trust in the police, and the damage to the reputation of the Ottawa Police Service. I have also considered the officer's recognition of the serious nature of the offence.

The serious nature of the charges is apparent to everyone and the Tribunal has a duty to treat it as such. Anything less would, quite rightfully, be subject to ridicule.

Work-related stress in policing was the subject of much comment at this hearing. It is accepted that stress in the workplace that frontline police officers are subject to, is not an uncommon condition in policing and public service.

There was credible un-contradicted evidence from Drs. Booth, Maddeaux and Boyles that Police Constable B. experienced a series of troubling events with parenting issues and his career in policing, the cumulative impact which contributed to severe PTSD. Clinical testing by the doctors confirmed the diagnosis of PTSD.

Dr. Booth in his diagnostic considerations of Constable B., stated in his clinical opinion:

“Constable B., appears to have had significant psychological suffering as a result of PTSD. Part of the misconduct appears to be motivated by trying to “escape” from his psychological suffering. As he noted, similar to alcoholics, individuals may turn to those

mechanisms that provide relief and escape. I tend to agree that his PTSD symptoms thus contributed significantly to his inappropriate behaviour..."

As a result of ongoing therapy, it was found that Constable B. has positive psychological resources for processing stress, and a much better emotional insight into his PTSD. Dr. Boyles in his assessment stated: *"I do believe this gentleman does have posttraumatic stress disorder. Clearly, his symptoms, however, were increasing over time which led him to manage them in an inappropriate manner. I think he has appropriate support in place for therapy for his PTSD."*

Dr. Maddeaux in her diagnostic considerations of Constable B., stated in her clinical opinion:

"[Constable B.] engaged in sexually compulsive behaviour as a direct result of having PTSD, representing avoidance of the distressing recollections and emotional distress he experienced on the bus/ train crash scene and previous workplace trauma. This behaviour is not part of his normal personality structure and would not have occurred outside of the presence of PTSD..."

I am mindful that it is essential for the Tribunal to assess the prospect of rehabilitation of an officer whenever a suitable disposition is being devised. In Ceyssens Legal Aspects of Policing the Commission offered the following analysis: "Rehabilitation is a very important and significant factor when considering the appropriate penalty... the Commission believes that unless the offence is so egregious and unmitigated the opportunity to reform should be a significant consideration."

When reviewing Constable B.'s potential to reform or rehabilitate, I have also to consider the recognition of the misconduct, employment history and the letters of support. I believe that these factors can be closely associated to his potential to reform/rehabilitate.

As mentioned previously, there is no evidence before the Tribunal of any prior disciplinary sanctions against Constable B..

A letter of support dated Wednesday, March 25th of 2015, from Constable B.'s wife, particularly resonated with me. She wrote in part:

"I respect that this is a complex and very difficult situation to understand. As you carefully consider this case, I ask that you look at the situation for what it truly is. A man suffering from PTSD. He has paid the price over and over and will continue to as he heals. Hours of therapy and inpatient treatment have been spent helping him process his shame and guilt of his actions. I have never seen a person filled with as much shame and guilt and it breaks my heart. This is in addition to processing of the traumas of his career that he is now finally able to accept. My family has paid the price. Our hurt is deep. A series of traumatic events has changed our lives forever...The situation is complex and not like every PSA matter. What [my husband] needs is continued intensive therapy to deal with his PTSD so he can come back a fully recovered officer. I have no hesitation in saying that [my husband] will come back stronger and a changed person. [My husband] has done nothing other than stay humble, own up to his actions by learning what they are and accept the impact it has left. Our family has changed and we are finding the silver linings in this as we continue to heal. We have a strong desire to help build an awareness and acceptance of PTSD and give back to those who are in similar situations. It is my hope that the Ottawa Police Service will also take this opportunity to reflect and look at preventing and hopefully dealing with operational stress injuries and PTSD in the workplace. I don't want to see other officers and families go through the immense pain that we have gone through."

As I have previously stated, rehabilitation is a key factor to be taken into consideration when a penalty is imposed, especially when the officer has a prior unblemished employment record, as is the case with Constable B.. This officer is not beyond rehabilitation and the opportunity should be given to him to

continue his career in policing. The penalty should be tailored to provide him with the opportunity to do so.

Returning to work in these circumstances will almost certainly be challenging and it would be prudent for Constable B. to ensure that he continues to have professional help in dealing with the stress.

The medical evidence entered on behalf of Constable B. suggested that he: (a) demonstrated insight and commitment on the therapeutic process; (b) could use the tools gained from the therapeutic intervention to prevent behaviour escalating out of control if he did suffer from a relapse after being exposed to a similar situation.

This officer has demonstrated he is determined to overcome his PTSD and is working very hard along with his family members to accomplish this goal. Unfortunately, people who suffer from this illness often have to cope with the stigma which, regrettably, is often still attached to this illness. The negativity towards those living with PTSD is unacceptable in this day and age and it behooves those of us who are involved in such circumstances to offer encouragement and not label anyone who suffers from this condition as unproductive. Nothing could be further from the truth. With support and acceptance Constable B.'s journey to complete recovery is very attainable.

It is the decision of this Tribunal that, to reflect the seriousness of this offence, Police Constable B., Badge #1568, effective upon the officer's return to work will be gradated in rank from 1st Class Constable to 3rd Class Constable for a period of one (1) year. With the successful completion of his job competencies, Constable B. will progress to 2nd Class Constable for a further period of one (1) year. Constable B. will then progress to 1st Class Constable with the successful completion of his job competencies.

The above penalty is submitted pursuant to the following terms/conditions:

a) Constable B. will be expected to participate and successfully complete.

The following training prior to resuming his duties as a front line officer:

- i. Use of Force Training
- ii. Advance Patrol Training
- iii. Ethics Training
- iv. CPIC/RMC Training.

b) Assignment:

- i. For a period of twelve (12) months (which begins upon re-qualification of his Use of Force re-certification and Advanced Patrol Training) Constable B. will be assigned to *Division ***rotation.
- ii. Constable B. will be assigned to a “double-unit” for the first 12 months of his demotion. During this period, Constable B. is not to be on independent patrol. His progress will be monitored by the supervisory team on the platoon.
- iii. After a period of 12 months, the necessity of a “double-unit” assignment will be reviewed by his chain of command
- iv. Constable B. will not participate in paid duties, job shadows or other special duties during the period of time he is assigned to a “double-unit.”

- c) During the period of demotion, Constable B. shall continue to attend cognitive behavioural therapy sessions with a qualified psychologist as Constable B. shall select to address symptoms as outlined in the medical report dated May 20th, 2016.
- d) Within three months initially, and six months thereafter, Constable B. shall ensure that the Ottawa Police Service receives a **written report** relating to the officer's ability to perform or continue to perform his professional duties safely as a police officer from Constable B.'s treating psychiatrist/psychologist or another clinical psychologist.
- e) Constable B. is prohibited from doing "ride-alongs" with members of the public.
- f) Constable B. is prohibited from using Ottawa Police Service electronic communication devices for personal purposes. Also, Constable B. is prohibited from routing his personal e-mail/Facebook accounts to his Ottawa Police Service e-mail account. The Service will actively monitor electronic communication devices assigned to Constable B. to ensure he is adhering to this condition.

This penalty is submitted in accordance with sections 85(1)(c) and 85(7)(b) of the **Police Services Act**.

D/C Terence Kelly.

Terence Kelly

Deputy Chief (Retired)

York Regional Police

Hearing Officer