

**YORK REGIONAL 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  
YORK REGIONAL POLICE  
AND**

**POLICE CONSTABLE ALYSSA AZOULAY #2503**

**NEGLECT OF DUTY & INSUBORDINATION**

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**DISPOSITION WITH REASONS**

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<b>Before:</b>	<b>Superintendent Russ Bellman York Regional Police</b>
<b>Counsel for the Prosecution:</b>	<b>Ms. Carley Valente York Regional Police</b>
<b>Public Complainant:</b>	<b>Mr. Anthony Bailey</b>
<b>Counsel for the Defence:</b>	<b>Ms. Pamela Machado York Regional Police Association</b>
<b>Hearing Date:</b>	<b>September 14, 2023</b>

*This decision is broken down into the following parts:*

*PART I: OVERVIEW;  
PART II: THE HEARING;  
PART III: SUBMISSIONS, ANALYSIS AND FINDINGS and,  
PART IV: DISPOSITION.*

## **PART I: OVERVIEW**

### **Parties to the Hearing**

Parties to this Hearing include:

- Police Constable Alyssa Azoulay, represented by Ms. Pamela Machado;
- Ms. Carly Valente, representing York Regional Police;
- The Public Complainant, Mr. Anthony Bailey.
  - Mr. Bailey did not have legal representation, however he indicated that he understood he had the right to do so. The hearing process and his role in it was explained to him. He actively participated throughout the hearing process.

### **Background**

Police Constable Alyssa Azoulay (Constable Azoulay) has been a member of York Regional Police since July 2017. She currently holds the rank of First Class Constable.

Constable Azoulay is currently assigned to the Guns, Gangs and Drug Enforcement Unit, where she has worked since February 2021. At the time of the incident, Constable Azoulay was assigned to #4 District Uniform Patrol.

At the start of the proceedings, Constable Azoulay entered a guilty plea to count #1 and count #3 as outlined in the *Notice of Hearing*. All three parties then made submissions on penalty. Following their submissions and on consent of all three parties, count #2 was withdrawn and the *Notice of Hearing* amended. The Prosecution submitted that the facts in issue underlying count #2 will be outlined (and remain) within the *Agreed Statement of Facts* for consideration on penalty. All three parties agreed to proceed in this manner and the *Agreed Statement of Facts* was entered as an exhibit.

## **Allegations of Misconduct (amended)**

### Neglect of Duty

It is alleged that Police Constable Alyssa Azoulay #2503, on or about the 9<sup>th</sup> of September 2022, did commit *Neglect of Duty* in that she, without lawful excuse, neglected or omitted promptly and diligently to perform her duties as a member of the police force by failing to properly investigate a wanted person which resulted in the arrest of Mr. Anthony Bailey, contrary to the Police Services Act, Ontario Regulation 268/10, Schedule, Code of Conduct Section 2(1)(c)(i).

### Insubordination

It is alleged that Police Constable Alyssa Azoulay #2503, on or about the 9<sup>th</sup> of September 2022, did commit *Insubordination* in that she, without lawful excuse, disobeyed, omitted or neglected to carry out any lawful order by failing to adhere to York Regional Police Procedure AI-352 — In-Car-Camera Systems, contrary to the Police Services Act, Ontario Regulation 268/10, Schedule, Code of Conduct Section 2(1)(b)(ii).

## **Plea / Penalty Position**

A *Notice of Hearing* was served on Constable Azoulay on March 15<sup>th</sup>, 2023, for a first appearance before this tribunal on April 4<sup>th</sup>, 2023. At the onset, it was clearly indicated by Defence that Constable Azoulay wished to enter a guilty plea and accept full responsibility for her actions.

On September 14<sup>th</sup>, 2023, Constable Azoulay plead guilty to one count of Neglect of Duty and one count of Insubordination.

The Prosecution and Defence submitted a joint position on penalty proposing a forfeiture of eight hours plus training in relation to Section 10 of the *Charter of Rights and Freedoms*.

Initially, and as part of the submission by the Defence, all three parties were in agreement as to their position on penalty. During the proceedings however, the Complainant, in his submission, no longer agreed with the joint position on penalty. The Complainant's position on penalty changed and was proposed as: "a *suspension for a couple of days*" and for Constable Azoulay to receive training in race relations and training on how to investigate warrants.

## **Decision**

As a result of the submissions made by the Prosecution, the Complainant and the Defence, I have weighed the guilty plea and find there is clear and convincing evidence to support a finding of guilt against Constable Azoulay, contrary to section 2(b)(ii) of the Code of Conduct contained in the Schedule to Ontario Regulation 268/10, as amended.

After a careful analysis of the submissions made on penalty by all three parties, I order Constable Azoulay to forfeit eight (8) hours and enrol in training which would consist of a review of Section 10 of the *Charter of Rights and Freedoms*.

My reasons for the decision on penalty are as follows:

## **PART II: THE HEARING**

### **Exhibits**

The exhibits for this matter are listed in Appendix "A". Copies of all exhibit items have been provided to all three parties to this proceeding.

### **Agreed Statement of Facts**

1. Police Constable Alyssa Azoulay has been a member of York Regional Police ("YRP") since July 2017. She currently holds the rank of First Class Constable.
2. Constable Azoulay is currently assigned to the Guns, Gangs and Drug Enforcement Unit, where she has worked since February 2021. Prior to being transferred to the Guns, Gangs and Drug Enforcement Unit, Constable Azoulay was assigned to 4 District Uniform Patrol.
3. On Friday, September 9, 2022, at approximately 9:50 p.m., Constable Azoulay was on general uniform patrol in the area of 120 Interchange Way in the City of Vaughan. Constable Azoulay observed a Mercedes leaving the parking lot of Dave and Busters, a licensed establishment, and queried the licence plate. The Mercedes was registered to and operated by Anthony Bailey. Mr. Bailey's 4-year-old son was also in the vehicle.
4. Mr. Bailey is the victim of identity theft. His name has been used as an alias by an accused who is currently wanted on two outstanding arrest warrants in Peel Region. This accused, who is unknown to Mr. Bailey, is flagged on CPIC as both violent and an escapee

risk and has CPIC entries in relation to firearms. When police query Mr. Bailey's licence plate on CPIC, it generates a check not only on the vehicle itself, but also on Mr. Bailey as the registered owner. As a result, Mr. Bailey has been repeatedly and erroneously stopped and investigated by police.

5. In an effort to address this problem, Peel Regional Police placed a "Special Interest Police" entry on CPIC, noting that Mr. Bailey is the victim of personation. However, upon querying the name "Anthony Bailey" on CPIC, the entries associated to the alias as a wanted, violent, high-risk offender precede the CPIC entry for Mr. Bailey as a "victim of personation".

6. When Constable Azoulay queried Mr. Bailey's licence plate on September 9, 2022, CPIC returned multiple entries in relation to Mr. Bailey as the registered owner of the Mercedes. The "Special Interest Police" entry, and the corresponding notation "victim of personation", did not appear until the fifth and final page of the CPIC return. Constable Azoulay failed to review the entirety of the CPIC return and, unaware that Mr. Bailey was the victim of personation, erroneously believed that the registered owner of the vehicle was wanted on outstanding warrants and bound by Court ordered conditions to remain inside his residence at all times.

7. Constable Azoulay followed the Mercedes and requested assistance from additional units. With the assistance of other officers, Constable Azoulay stopped Mr. Bailey at the intersection of Highway 7 West and Commerce Street, conducting a stop from the rear. Additional units blocked Mr. Bailey's vehicle from the front to prevent him from fleeing from police. Mr. Bailey was instructed by another officer to place his hands outside of the vehicle. Constable Azoulay then exited her vehicle and approached the driver of the Mercedes.

8. Constable Azoulay did not activate her body-worn microphone prior to interacting with Mr. Bailey. Her interaction with Mr. Bailey was captured on her In-Car Camera System ("ICCS") and the microphone of other officers who attended on scene.

9. Constable Azoulay advised Mr. Bailey of the reason for the stop and that there was a warrant for his arrest. Mr. Bailey was agitated and repeatedly told her to check the second page of CPIC and to do her checks properly. Following a conversation with Mr. Bailey, Constable Azoulay advised Mr. Bailey that he was under arrest and asked him to step out of his vehicle. Mr. Bailey expressed concern over leaving his son unattended and again directed Constable Azoulay to check CPIC. Constable Azoulay stood by the vehicle and checked on his son.

10. Mr. Bailey was walked to the police cruiser located behind his vehicle where he was arrested and handcuffed by the other officer out of sight of his son, and subsequently searched incident to arrest. Mr. Bailey was cautioned by Constable Azoulay; however, he was not read his Right to Counsel pursuant to section 10(b) of the Canadian Charter of Rights and Freedoms by any officer on scene.

11. Upon confirming Mr. Bailey's identity and reviewing the entirety of the CPIC entries, Constable Azoulay concluded that Mr. Bailey was not the wanted party. Mr. Bailey was released from custody unconditionally after 10 minutes.

12. Prior to arresting Mr. Bailey, Constable Azoulay did not take steps to confirm his identity as the registered owner of the vehicle or the individual wanted on outstanding arrest warrants. She did not ask Mr. Bailey for his name or identification, nor did she confirm the outstanding warrants with Peel Regional Police. She also failed to review the description of the wanted party on CPIC, which clearly did not match Mr. Bailey. In her subsequent compelled statement to the Professional Standards Bureau, Constable Azoulay admitted to "scrolling past" the description of the wanted party on CPIC to see the "wanted" entries. Constable Azoulay stated this was for officer safety reasons, but conceded that if she had properly reviewed the entirety of the CPIC entries and requested Mr. Bailey's identification, the arrest would not have occurred.

13. Constable Azoulay's failure to properly investigate a wanted person resulted in the erroneous arrest of Mr. Bailey.

14. On September 27, 2022, Mr. Bailey submitted a complaint with the Office of the Independent Police Review Director ("OIPRD") regarding the conduct of Constable Azoulay. The OIPRD forwarded the complaint to York Regional Police on September 27, 2022, for investigation.

15. A subsequent investigation by the Professional Standard Bureau and review of Constable Azoulay's ICCS footage revealed that Constable Azoulay failed to comply with General Procedure AI 352, In-Car Camera System, having regard to the following provisions:

*E. RESPONSIBILITIES – POLICE OFFICER*

*4. When operating any police vehicle equipped with the ICCS, officers shall:*

*a. conduct a Function Check of the ICCS at the beginning of their tour of duty or as soon as practicable;*

*b. wear the ICCS microphone while on-duty at the beginning of their shift or as soon as practicable.*

16. On September 9, 2022, Constable Azoulay was operating a police vehicle that was equipped with an ICCS. A review of Constable Azoulay's ICCS footage revealed that a function check of the ICCS, including the microphone, was not completed and her interaction with Mr. Bailey was not recorded on her microphone. In her compelled statement to the Professional Standards Bureau, Constable Azoulay advised that she normally puts her microphone on the mount to charge and does not wear it the entire shift. She could not recall, and it remains unknown, whether she was wearing the body microphone during her interaction with Mr. Bailey.

17. Constable Azoulay has no prior discipline on file.

## **Plea**

A *Notice of Hearing* was served on Constable Azoulay on March 15<sup>th</sup>, 2023, for a first appearance before this tribunal on April 4<sup>th</sup>, 2023. At the onset, it was clearly indicated by the Defence that Constable Azoulay wished to enter a guilty plea and accept full responsibility for her actions.

On September 14<sup>th</sup>, 2023, Constable Azoulay plead guilty to one count of Neglect of Duty and one count of Insubordination.

## **PART III: SUBMISSIONS, ANALYSIS AND FINDINGS**

The issue in this matter is my decision on the appropriate disposition for Constable Azoulay's misconduct. In making this assessment, I will consider the submissions of the Prosecution, the Complainant and the Defence. I will balance and weigh all applicable mitigating and aggravating circumstances in arriving at my decision.

This tribunal has accepted the guilty plea of Constable Azoulay. The Agreed Statement of Facts clearly illustrates the details of the misconduct. My task is to ensure any disposition imposed fully accords with the governing principles of an appropriate sanction. In doing so, the goals of the discipline process must be met including: maintaining discipline in the workplace, treating the officer fairly and upholding the public trust.

### **Submissions by the Prosecution**

The Prosecution outlined the applicable factors to be considered in determining a disposition in discipline cases which have become well established in *Krug and Ottawa Police Service*, (January 21, 2003, OCCPS) at pp.12-13.

The Prosecution made submissions on penalty and highlighted both mitigating and aggravating factors. The Prosecution further made submissions on the concept of parity, or the balance of sentencing factors.

#### Employment history (mitigating factor)

The Prosecution submitted that Constable Azoulay started her career with York Regional Police in 2017 and that she is a First Class Constable, with no prior discipline on file. The Prosecution submitted that while she is a relatively junior officer, that it is clear she is a valued and promising member of York Regional Police. In her five years of employment, she has accumulated four recognitions, including in 2018 where she was recognized for her professionalism, leadership and teamwork. Constable Azoulay's 2019 and 2020 annual performance appraisals were both positive and reveal a dedicated and respected officer in the organization. In her 2019 performance appraisal, her sergeant was quoted as stating that Constable Azoulay was a *"team player and valued member of the platoon and that she was above average in every category in comparison to her shift-mates"*. Constable Azoulay's Staff Sergeant echoed these comments. Constable Azoulay's 2020 Performance appraisal was equally positive and she was described as *"one of the hardest working officers on this platoon"*.

#### Recognition of the seriousness of the misconduct (mitigating factor)

The Prosecution submitted that Constable Azoulay has taken responsibility by pleading guilty at the earliest opportunity. The Prosecution accepts the guilty plea as an expression of remorse and an understanding of the seriousness of the misconduct.

#### Prospect for Rehabilitation (mitigating factor)

The Prosecution submitted that Constable Azoulay's positive employment history, her willingness to plead guilty at the earliest opportunity as well as her willingness to engage in Charter training (as part of the proposed disposition), suggest that she will learn from her misconduct and that the prospect for rehabilitation is high.

#### Public interest (aggravating factor)

The Prosecution submitted that public interest in this case is extremely high and that it is engaged as a disposition factor when the officer's misconduct undermines public confidence and trust in policing. The Prosecution submitted that the Supreme Court of Canada has recognized that the police have considerable power and discretion that can affect the fundamental rights of members of the public – and that the police are required



to exercise a significant amount of judgement and integrity and are in a position that requires the utmost of public trust. One of the most significant police powers is that of arrest and detention - in other words, the depriving a citizen of their liberty. That authority is also accompanied by a constitutional obligation to advise them of their right to retain and instruct counsel without delay. Section 10(b) of the *Charter of Rights and Freedoms* is designed to ensure that those people who are arrested, are treated fairly in the criminal process and that they can seek legal advice and ensure that their interactions with the police are lawful and in accordance with Charter principles.

In this case, the Prosecution submitted that Constable Azoulay's failure to diligently investigate Mr. Bailey resulted in his erroneous arrest and deprivation of his liberty for 10 minutes.

The Prosecution submitted that while Constable Azoulay's conduct during the initial phases of her investigation were within the lawful execution of her duties and formed part of her obligation to engage in proactive policing and maintain public and officer safety, the information she obtained from the licence plate query and the subsequent, automatic name query of the registered owner, required further investigation.

The Prosecution submitted that the automatic name query of "Anthony Bailey" returned results that included being wanted on outstanding warrants, being associated to firearms offences and being a flight risk from police. These all posed legitimate officer safety concerns at the time of the traffic stop.

The Prosecution submitted that once Constable Azoulay began to interact with Mr. Bailey, a number of failures on her part occurred and are summarized as follows:

- She failed to identify him as the registered owner of the vehicle, or the individual identified on the outstanding warrants,
- She did not ask for his name or request any identification,
- She made no attempt to confirm the outstanding warrants with Peel Regional Police,
- She failed to read all of the CPIC entries, in spite of Mr. Bailey repeatedly asking her to do so;
- This included the CPIC, "Special Interest Police" entry which indicated that Mr. Bailey was the victim of personation.

Constable Azoulay conceded that she scrolled past the CPIC entry which provided a description of the wanted person, whose description clearly did not match that of Mr.

Bailey. Constable Azoulay also conceded in her interview with the Professional Standards Bureau that had she taken any one of those steps, Mr. Bailey likely would not have been detained, arrested or handcuffed. Although Constable Azoulay read Mr. Bailey a caution upon his arrest, she failed to read Mr. Bailey his rights to counsel.

Constable Azoulay also failed to ensure that her in-car-camera body worn microphone was activated, contrary to York Regional Police procedures.

The Prosecution submitted that her misconduct significantly undermined public confidence and trust in the police in general and Mr. Bailey's trust and confidence in York Regional Police specifically.

#### Seriousness of misconduct (aggravating factor)

The Prosecution submitted that this factor presented a challenge. Constable Azoulay's actions had a severe impact on the Complainant's liberty interests and undermined his confidence and trust in York Regional Police and the police in general, notwithstanding that the Complainant was also arrested with his four-year-old son present in the vehicle with him. This highlights the seriousness of the misconduct and contributes to it being an aggravating factor. However, the Prosecution submitted that there are significant facts which mitigate the seriousness of the misconduct. Specifically, that the misconduct was not pre-meditated and that it arose from the good faith and lawful execution of police duties. The Prosecution submitted that the situation was dynamic and the CPIC information initially gave rise to legitimate officer and public safety concerns. This situation may not have allowed as thorough a review of the CPIC entries as necessary. Constable Azoulay also took steps to arrest the Complainant out of sight of his four-year-old son. The Prosecution submitted that these facts mitigate the seriousness of the misconduct.

The Prosecution also submitted that the Complainant's detention was 10 minutes and when comparing cases of a similar nature, was a relatively brief period of time. The Prosecution refers to *Wong v. Toronto Police Service (2015)*, where the detention (which was deemed an unlawful and unnecessary arrest) was more than 24 hours.

#### Damage to the reputation of the Police Service (aggravating factor)

The Prosecution submitted that the failure of Constable Azoulay to diligently perform her duties and the seriousness of the misconduct, when combined with the public interest impact, has harmed the reputation of York Regional Police. The Prosecution also noted that this incident was generated by a public complaint – that, in itself, has also contributed to the harm on the reputation to York Regional Police.

### Need for deterrence (aggravating factor)

The Prosecution submitted that general and specific deterrence are legitimate objectives of police discipline. In the circumstances of this case and particularly with Constable Azoulay's lack of prior discipline and positive employment history, the Prosecution suggested that specific deterrence has likely been accomplished by virtue of the formal hearing itself.

General deterrence remains an important disposition factor for this tribunal's consideration and the disposition imposed in this case must send a clear message to the community and other members of York Regional Police that this type of misconduct cannot be tolerated and that York Regional Police expects thorough, diligent investigations and the compliance with Charter principles and the internal procedures of the police service.

The Prosecution made submissions on the concept of parity. While the likelihood is low in finding an identical case in which to base a specific precedent of penalty, the Prosecution submitted a number of cases for consideration and are contained within Exhibit #4. These cases all dealt with situations involving unnecessary or unlawful arrests and detentions, with penalties ranging from reprimands, to the forfeiture of hours, as well as training.

The Prosecution submitted that these cases were varied, but that they provide similarities for analysis in order to draw a conclusion on arriving at the proposed submission on penalty. The Prosecution submitted that this proposal is at the higher end of penalty in comparison to the submitted cases and takes into consideration the circumstances in this case where Constable Azoulay failed to read the Complainant his rights to counsel as well as her failure to ensure that her in-car-camera microphone was turned on and operating properly.

The Prosecution submitted that these cases support their submission on a position of penalty consisting of a forfeiture of eight hours and for Constable Azoulay to enrol in training which focuses on Section 10 of the *Chart of Rights and Freedoms* and that it is within a consistent range and highlights the hallmark of fairness within this disciplinary process.

The Prosecution finally submitted that the fundamental principle of proportionality requires this tribunal to identify which disposition considerations are relevant - characterize those relevant considerations as either mitigating, aggravating or neutral and then weigh those

relevant considerations in accordance with the specific factual background in this case and the competing interests.

### **Submissions by the Complainant**

The Complainant submitted that he believed that the traffic stop was pre-meditated. He submitted that as a member of the black community that, *“they often target people of colour”*. The Complainant clarified, stating that he was referring to police officers who are assigned to a “guns and drugs” unit. The Complainant submitted that it was his belief that because he was standing outside of his car with four friends – who were also black, that this triggered Constable Azoulay’s interest in pulling the Complainant over.

The Complainant’s belief is supported by his submission that the officer initially told him that he was stopped for speeding. The Complainant believes that Constable Azoulay had already begun to move into position to pull him over prior to him leaving the parking lot. The Complainant further submitted that, had he been speeding, the officer would not have been able to stop him at the location she did – that is, she would not have been able to catch up to him at that particular location after she determined that he was speeding.

The Complainant also submitted that based on the investigative steps revealed to him in the investigative report, he was under the impression that Constable Azoulay had already queried his licence plate, suggesting that she had already formed the intention of pulling him over and that it was not at all related to his alleged speeding.

The Complainant, in his submission, wished to address officer safety issues regarding the information displayed on CPIC. The Complainant recognized the potential officer safety concerns based on the CPIC entries; however, his belief was, that once other officers arrived on scene, any officer safety issues would be reduced or eliminated, which then could have afforded Constable Azoulay the time to properly investigate the CPIC entries and avoid the arrest of the Complainant.

The Complainant submitted that when he told the officer to *“check CPIC”*, his belief was, that when he used the term “CPIC” it should have triggered a more measured response from Constable Azoulay, as the general public would not know about CPIC (nor use the term, “CPIC”) and that his familiarity with that terminology would add credibility to his assertion that they were about to arrest the wrong person.

The Complainant submitted that he has been pulled over multiple times for this same issue. In each of the previous cases, the officers checked his identification, explained the reason for the traffic stop and confirmed that the Complainant was not the subject of the

CPIC entries and let him go. By virtue of this traffic stop not occurring in the same manner, the Complainant submitted that it supported his belief that Constable Azoulay's conduct was negligent and pre-meditated.

The Complainant submitted that his biggest fear was being arrested in front of his son and that this incident has affected him significantly, having to take time off work and creating an elevated fear of driving his car. The Complainant also submitted that he has been questioned by the Canadian Border Services Agency upon returning to Canada from business over the same mistaken identity issue. He believed that the officer had many resources available to her which would have allowed her to resolve this event in a way that was much different than what actually occurred. The Complainant believes that it should have never happened in the first place.

The Complainant submitted at the hearing, that he no longer agreed with the original, proposed joint submission on penalty put forward by the Prosecution and the Defence. The original joint submission of penalty, proposed a forfeiture of eight hours and training.

The Complainant submitted that the proposed forfeiture of eight hours was, "*a slap on the wrist*". When he was asked by this Tribunal what he felt an appropriate penalty should consist of, he submitted that the officer should be suspended, "*for a couple of days*". In addition, the Complainant wished to clarify his position on what training he would like to see as part of his submission on penalty. The Complainant's overall submission on penalty consisted of the following:

- Suspension for "*a couple of days*";
- Training on dealing with people of colour;
- Training on properly investigating a warrant.

## **Submissions by the Defence**

The Defence submitted that at no point in the Public Complainant's four and a half paragraph complaint to the Office of the Independent Police Review Director (OIPRD) - which forms the basis for this proceeding - did he allege racial discrimination on behalf of Constable Azoulay or any other officer present at this incident. The Defence pointed out that this was the first time during these proceedings that this allegation was brought up.

The Defence submitted that no objective evidence of any kind has been presented or suggested which would indicate a racialized motivation or foundation for this incident. The

Defence submitted that this was a fluid and dynamic situation.

The Defence submitted that Constable Azoulay was not alone in her oversight and that it was an easy mistake to make, as the Complainant had submitted that, in the Complainant's words, had happened "*countless times*" previously. The Defence pointed out that while the Complainant submitted that all the other similar traffic stops were handled better ("better", in the sense that he was never arrested), the Defence submitted that he has made similar public complaints in regard to each of the previous traffic stops.

The Defence submitted a brief of cases contained within Exhibit #6. These cases highlight two distinct areas: 1) submissions relevant to the obligations on tribunals to accept joint submissions on penalty and the additional requirements of a tribunal, should they decide to deviate from those joint submissions; and 2) submissions related to cases of Insubordination or Neglect of Duty relating to dynamic and fluid situations. The Defence also submitted appeal cases from the Ontario Civilian Police Commission (OCPC), with similar penalties, where, in one case, the OCPC determined that the assessment of an officer's beliefs and actions should be subject to scrutiny via *another*, "*reasonable officer on the scene, rather than with the vision of 20/20 hindsight*".

The Defence submitted that Constable Azoulay's actions were an unintentional oversight during a fluid situation and submitted that this was not a calm conversation between officers and the Complainant. The Defence submitted that the Complainant's language and demeanour, as well as his level of upset was likely elevated by his previous traffic stops surrounding the same issue of mistaken identity, but that his previous unfortunate encounters were not the fault of Constable Azoulay. The Defence submitted that Constable Azoulay remained calm during the interaction in spite of the Complainant calling her "*dumb*" on no less than 15 occasions.

The Defence submitted that Constable Azoulay's personal and professional background, employment history and work performance all point to an officer who is extremely dedicated and committed to her profession. The Defence also submitted that this process has halted Constable Azoulay's ability to progress her career into different areas of policing.

The Defence submitted that the joint submission on penalty was originally agreed to by all three parties to the hearing and that it was a balanced proposal, weighing all factors including similar dispositions previously meted out against officers from this police service. While the Defence submitted that no two cases were alike, the joint submission on penalty was thoroughly researched and took into account all mitigating and aggravating factors.

## **Analysis and Findings**

I would like to start my discussions on penalty by first outlining the objectives of discipline. The objectives of discipline are to:

- Correct unacceptable behaviour
- Deter others from similar behaviour
- Reassure the public

The following analysis is based on submissions of the Prosecution, the Complainant and the Defence. While the Complainant is entitled to be represented by counsel, he did not exercise this option during the hearing. As a result, I must take into consideration his submissions which may not precisely align with the language or familiarity afforded to the Prosecution and the Defence commonly used in these tribunals. I found the Public Complainant's submissions to be relevant and impactful. I will take this into consideration and I will rely upon commonly held proportionality considerations relevant to this matter. In my analysis, mitigating and aggravating factors will be balanced and weighed.

The tribunal has accepted the guilty plea of Constable Azoulay and the Agreed Statement of Facts clearly illustrated the details of the misconduct. It is my responsibility to ensure that the disposition imposed is in accordance with the governing principles of an appropriate sanction. In doing so, the goals of the discipline process must be met including: maintaining discipline in the workplace, treating the officer fairly and upholding public trust.

## **Public Interest**

The public holds police officers in a position of elevated trust and accountability and would expect Constable Azoulay to follow the appropriate laws and rules, especially as it relates to thoroughness, attention to detail and the respect for individuals' rights and freedoms.

The errors and omissions made during this incident must be considered as well as the impact on the individual whose liberties have been taken. I consider this to be an aggravating factor, although it is clear that the misconduct is a result of inattention to detail, lack of thoroughness and perhaps even tunnel vision, based on the possibility of a genuine officer safety or public safety concern. While I do not diminish the public interest component in this, I am also aware that this misconduct does not appear to be the result of an intentional disregard of the rules and procedures nor due to a poor work ethic,

apathy or complacency – in fact, it is the contrary – I find Constable Azoulay’s actions were likely the result of overzealousness in reading the CPIC entries too quickly, seeing the potential for intervening in a wanted person who has clearly demonstrated a threat to the public and police, based on those CPIC entries, while failing to acknowledge the broader perspective of clarifying the information that she believed to be connected to the Complainant.

While public interest in this case focuses on the trust in police to be thorough, balanced and professional, it is also weighed with the expectation by the public that the police have the ability to be diligent and committed to protecting citizens, particularly when firearm offences or threats to the public exist. I agree with the Complainant’s submission that, had Constable Azoulay taken the time to ask for identification and ensure clarity in the CPIC entries, that the threat to safety would have been lessened and she could have re-assessed the potential for arrest. However, I must also balance this with the dynamics involved when Constable Azoulay became aware of CPIC information which clearly indicated the potential of a threat to the public, and more concurrently, officer safety at the time of the traffic stop.

### **Seriousness of the Misconduct**

Based on the submissions from all three parties, I am of the opinion that the misconduct is serious, but that the results of the misconduct (i.e. the impact to the Complainant) is of greater consequence than the misconduct itself. The submissions by the Complainant suggest that these erroneous traffic stops (and in this particular case, an erroneous arrest), as well as frequent questioning by police and other enforcement agencies, has become an unfortunate familiarity to him. The attempt by Peel Regional Police to mitigate these encounters by adding a “Special Interest Police” entry on CPIC had some success, but was not a complete solution. Unfortunately, in cases where similar (or identical) names are used by different people, the chance of confusion increases. In addition, when one of the people using the same name has a demonstrated threat and history to public and officer safety, the potential for a critical response by police also increases (and should be expected). The Complainant accurately pointed out that this critical response should have diminished once other officers arrived, and his identity was confirmed. Due to the omissions initially made by Constable Azoulay, this did not occur and the result was the Complainant’s arrest and detention for 10 minutes while the information was subsequently assessed.

This misconduct was the result of a lack of attention to detail and the challenge in balancing officer safety with the ability to accurately absorb and interpret incoming data presented to the officer. Constable Azoulay’s failure to ensure that her body-worn



microphone was properly functioning also lends to the position of her lack of attention to detail.

### **Need for Deterrence**

General deterrence is the ability to send the message to all police officers that when they are in the public domain and in the performance of their duties, they must adhere to the specific policies and procedures of the service and conduct themselves in a professional, compassionate and diligent manner and that to fall outside of that realm will result in disciplinary consequences. I am satisfied that the nature of this public tribunal satisfies and reinforces that message. Specific deterrence has been satisfied in this case, given the impact of the formal hearing process on Constable Azoulay, as well as detailed submissions on how this misconduct impacted the well being of the Complainant. Specific deterrence is also satisfied by the impact on Constable Azoulay's previously unblemished record.

### **Damage to the reputation of the police service**

The credibility of York Regional Police as a police agency is of paramount importance. The credibility of officers that engage in misconduct can result in the embarrassment to this Police Service. In this incident, it involved the erroneous arrest and detention of a member of the public. This is very much part of the trust perspective by the public that could lead to a poor image of our officers and the way they conduct themselves. I am also aware that, given the potential threat picture initially presented to Constable Azoulay, the reputation of York Regional Police is somewhat protected, by demonstrating the diligence and seriousness of her actions, albeit without fully exploring all of the information.

### **Reform and rehabilitation**

I am confident that by pleading guilty at the first opportunity, Constable Azoulay has learned from this process. I am also confident that she recognizes how a lack of thoroughness or attention to detail can have a cascading effect on the Complainant and the reputation of York Regional Police. From a reform perspective, I am confident that this experience will allow her to learn to more appropriately balance her intense commitment to policing with the necessity of ensuring the accuracy and thoroughness of her actions.

### **Employment history**

I accept that Constable Azoulay is a valued member of York Regional Police, has been

employed since 2017 and has no discipline history. She has demonstrated a consistently positive work ethic with a committed, hard-working contribution to York Regional Police. I consider this to be a mitigating factor.

### **Recognition of the seriousness of the offence**

Constable Azoulay plead guilty at the first opportunity. She was willing to accept the consequences of her actions and recognizes the impact those actions have had on the Complainant, York Regional Police and the community.

### **Disposition on penalty**

At the onset of these proceedings, the Prosecution, the Complainant and the Defence jointly submitted an Agreed Statement of Facts which was accepted by this tribunal. The Prosecution, the Complainant and the Defence also jointly agreed to the withdrawal of count #2 from the Notice of Hearing. As well, it was submitted by the Prosecution and the Defence that they were under the belief that a joint position on penalty would also be submitted at the onset of the proceedings, which at the time, was agreeable to all three parties. During submissions however, the Complainant disagreed with the joint position on penalty.

In his submission, the Complainant believed that the forfeiture of eight hours was a, "*slap on the wrist*". When asked for his submissions on what he believed should be a more appropriate penalty, the Complainant stated that Constable Azoulay should be suspended for, "*a couple of days*". While the language is different, I consider a standard work day to be eight hours. As a result, I interpret the Complainant's proposal for suspension of "*a couple of days*" to be the equivalent of a forfeiture of 16 hours.

I also interpret the Complainant's characterization of the proposed eight-hour forfeiture as "*a slap on the wrist*", to imply that the penalty is weak, or at the very least, below his expectations on the seriousness of penalty. While I am sympathetic to the Complainant's submissions on his experience during this incident, I do not believe that his proposal for a 16 hour forfeiture is markedly different in terms of the seriousness of penalty nor does it deviate very much from the initial proposal, which the Prosecution and Defence remain committed to. The Complainant also does not provide any evidence which supports his position of a slightly elevated forfeiture of hours. I am also aware that the Complainant may not be familiar with the language and intricacies of employment tribunals, however I am also live to the fact that the Complainant had been given the opportunity to be represented by counsel. On earlier appearances before this tribunal, the Complainant submitted that he had consulted with counsel.

In regard to the training component of the proposal on penalty, the Prosecution and Defence have recognized that Constable Azoulay's failure to read the Complainant his rights to counsel amounted to a concerning oversight, which I am satisfied warrants additional training on the subject of Section 10 of the Charter. In the Agreed Statement of Facts, Constable Azoulay read the Complainant a caution subsequent to his arrest. Due to the limited time the Complainant was detained, it is unclear to me whether the Complainant would have been read his rights to counsel, had his detention continued beyond 10 minutes, given that Constable Azoulay had begun to engage in advising the Complainant of his statutory rights in the form of a caution. I am satisfied that the training proposed by the Prosecution and Defence is an appropriate remedy.

As submitted by the Defence, there is no indication or evidence which suggests that racial discrimination played a part in this incident. In addition, there is no evidence submitted by the Complainant which supports his belief that this incident was precipitated by racial discrimination, beyond his generalized statements regarding police officers who are assigned to a "guns and drugs" unit. As a result, I do not support the need for race-based training for Constable Azoulay as a result of the information presented at this proceeding.

The Complainant proposed that training be imposed on Constable Azoulay on how to properly investigate warrants. While the confirmation of the warrant entered on CPIC ultimately was discovered not to be for the Complainant (within a 10 minute period), I am not satisfied for the need for any training on how to execute warrants as proposed by the Complainant.

While the Defence submitted considerations on the tribunals requirement to adhere to joint submissions on penalty, I agree with the Prosecution that once the Complainant disagreed with the initial proposal on penalty, that it no longer became a "joint" submission. However, given the last-minute change and lack of supporting evidence, I am inclined to agree with the position on penalty as submitted by the Prosecution and Defence. While I am sensitive to the Complainant's concerns, they were not supported by his last-minute decision change and lack of justification for his disagreement.

I have reviewed the mitigating and aggravating factors, considered the submissions of The Prosecutor, the Defence and the Complainant as well as previous related Tribunal decisions. I am aware that I am not bound by the submission on penalty as jointly proposed by the Prosecution and Defence, but on the totality of the evidence before me, I have found no compelling reason to depart from their submission. While I am impacted by the Complainant's submissions and the impact this event had on him, there has been nothing submitted to this tribunal which would support his position of a forfeiture of 16

hours, nor has there been any evidence that would compel me to order Constable Azoulay to enrol in training on dealing with people of colour or the process of investigating warrants.

The Prosecution and Defence proposal that Constable Azoulay forfeit eight hours combined with *Charter of Rights* training specifically in relation to Section 10, is a proportionate and just disposition that gives appropriate weight to the gravity of Constable Azoulay's misconduct as balanced against the aggravating and mitigating circumstances.

## **PART IV: DISPOSITION**

### **Acknowledgment**

I would like to thank Ms. Carley Valente, prosecutor for York Regional Police, Ms. Pamela Machado counsel for Constable Azoulay and Mr. Anthony Bailey, the Public Complainant, for their submissions and assistance in this matter.

Constable Azoulay, you have plead guilty and I find on clear and convincing evidence that you are guilty of the offence of Insubordination and Neglect of Duty, as outlined in the Agreed Statement of Facts. I order that you forfeit eight (8) hours from your allotted time banks, other than your sick bank. I also order that you enrol in training, which addresses the specifics of section 10 of *the Charter of Rights and Freedoms* and that this training take place within the next 12 months.

This order is made pursuant to section 85(1)(c) of the *Police Services Act*, R.S.O. 1990.



Supt 715

Russ Bellman, Superintendent #715

Date electronically delivered: January 8<sup>th</sup>, 2024

## **Appendix A**

The following exhibits were tendered in relation to this proceeding:

**Exhibit 1:** Delegation of Superintendent Russ Bellman, Hearing Officer

**Exhibit 2:** Designation of Carley Valente, Prosecutor

**Exhibit 3:** Notice of Hearing

**Exhibit 4:** Prosecution Disposition Record (includes the Agreed Statement of Facts)

**Exhibit 5:** USB drive containing In-Car-Camera video recording of incident

**Exhibit 6:** Defence Brief of Authorities (USB drive)