

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

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

IN THE MATTER OF

HAMILTON POLICE SERVICE

AND

CONSTABLE PAUL MANNING #835

DISCREDITABLE CONDUCT (Eight Counts)

DECISION WITH REASONS

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

Counsel for the Prosecution: Mr. David Migicovsky

Public Complainant: Mr. Salvatore Merulla
Represented by: Mr. Douglas Burns

Counsel for the Defence: Unrepresented
Hearing held in absentia

Hearing Date: October 4 & 5, 2021

Allegations of Misconduct (amended)

Constable Manning uses the name @mobinfiltrator for the Twitter social network platform. He openly posts with his own name and picture and readily acknowledges that he is a Hamilton police officer. At all material times in relation to the following allegations, Constable Manning was absent from duty for medical reasons.

The public complainant, Salvatore (Sam) Merulla, is a member of Hamilton City Council.

Hamilton Police Service Policy and Procedure 2.14 Internet, deals with the use of social media by members of the Police Service.

Count #1: Discreditable Conduct

Constable Paul Manning, #835 committed discreditable conduct in that on or about April 15, 2019, he did act in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the Hamilton Police Service, by use of his social media (Twitter), constituting an offence against discipline as prescribed in Section 2(1)(a)(xi) of the Code of Conduct, Ontario Regulation 268/10, therefore contrary to section 80(1) of the *Police Services Act*.

The edited particulars of allegations state:

On April 15, 2019, Constable Manning was conversing with another user on Twitter regarding Mr. Merulla. During the exchange, Constable Manning posted material presented as “third party” privileged information. The post contained a picture of Mr. Merulla along with two other parties who were known for their involvement in crime.

Constable Manning’s use of Twitter was contrary to Policy and constitutes discreditable conduct

Count #2: Discreditable Conduct

Constable Paul Manning, #835 committed discreditable conduct in that on or about April 25, 2019, he did act in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the Hamilton Police Service, by use of his social media (Twitter), constituting an offence against discipline as prescribed in Section 2(1)(a)(xi) of the Code of Conduct, Ontario Regulation 268/10, therefore contrary to section 80(1) of the *Police Services Act*.

The edited particulars of allegations state:

On April 15, 2019, Constable Manning again posted on Twitter material presented as “third party” privileged information. The post contained a picture of Mr. Merulla again, alongside two individuals known for their involvement in crime. The caption read:

So, who’s left on that list?

The other two individuals in the photographs were victims of violence.

Constable Manning’s use of Twitter was contrary to Policy and constitutes discreditable conduct

Count #3: Discreditable Conduct

Constable Paul Manning, #835 committed discreditable conduct in that on or about June 25, 2019, he did act in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the Hamilton Police Service, by use of his social media (Twitter), constituting an offence against discipline as prescribed in Section 2(1)(a)(xi) of the Code of Conduct, Ontario Regulation 268/10, therefore contrary to section 80(1) of the *Police Services Act*.

The edited particulars of allegations state:

On June 25, 2019, Constable Manning posted and re-posted to Twitter, material presented as “third party” privileged information with a picture of Mr. Merulla alongside pictures of two individuals known for the involvement in crime. Constable Manning also posted a picture that linked Mr. Merulla with other known individuals. There is a caption that encourages a journalist to ask Mr. Merulla about Halton and Hamilton Police reports that allege his involvement with organized crime.

The caption read:

Diana, ask.... About the rotten smell coming from leaked Halton/Hamilton Police intelligence reports about his alleged involvement with numerous organized criminals? Nobody has yet for some reason.

Constable Manning’s use of Twitter was contrary to Policy and constitutes discreditable conduct

Count #4: Discreditable Conduct

Constable Paul Manning, #835 committed discreditable conduct in that on or about July 4, 2019, he did act in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the Hamilton Police Service, by use of his social media (Twitter), constituting an offence against discipline as prescribed in Section 2(1)(a)(xi) of the Code of Conduct, Ontario Regulation 268/10, therefore contrary to section 80(1) of the *Police Services Act*.

The edited particulars of allegations state:

On July 14, 2019, Constable Manning posted a comment to Twitter about Mr. Merulla being openly and unfairly critical of the LGBTQ community, yet is the “biggest cocksucker in the City.

Constable Manning’s use of Twitter was contrary to Policy and constitutes discreditable conduct.

Count #5: Discreditable Conduct

Constable Paul Manning, #835 committed discreditable conduct in that on or about July 14, 2019, he did act in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the Hamilton Police Service, by use of his social media (Twitter), constituting an offence against discipline as prescribed in Section 2(1)(a)(xi) of the Code of Conduct, Ontario Regulation 268/10, therefore contrary to section 80(1) of the *Police Services Act*.

The edited particulars of allegations state:

On July 14, 2019, Constable Manning posted four pictures on Twitter of different residences in Hamilton with the respective street names. The residences are on Graham Avenue south, on Ottawa Street south, on Sanford Avenue south, and on Barnesdale Avenue north. The street numbers had been redacted but there are Google Map pictures of the actual homes. The caption states that Constable Manning has identified all of Mr. Merulla’s properties, now a background on Mr. Merulla’s wife is to be done to see what is in her name.

Mr. Merulla had confirmed that these are his properties. Mr. Merulla advised that the residences are easy to identify with the street names and a picture of the actual home and he was concerned as he had family members living in some of these homes.

Constable Manning's use of Twitter was contrary to Policy and constitutes discreditable conduct.

Count #6: Discreditable Conduct

Constable Paul Manning, #835 committed discreditable conduct in that on or about August 28, 2019, he did act in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the Hamilton Police Service, by use of his social media (Twitter), constituting an offence against discipline as prescribed in Section 2(1)(a)(xi) of the Code of Conduct, Ontario Regulation 268/10, therefore contrary to section 80(1) of the *Police Services Act*.

The edited particulars of allegations state:

On August 28, 2019, Constable Manning was served a copy of the Ontario Independent Police Review Directorate (OIPRD) complaint made by Mr. Merulla via registered mail. He posted a picture of the Hamilton Police Service cover letter to Twitter with the caption:

You can all go fuck yourselves!"

Another post displayed Mr. Merulla's statement, claiming it was untrue.

Constable Manning's use of Twitter was contrary to Policy, insubordinate, and constitutes discreditable conduct.

Count #7: Discreditable Conduct

Constable Paul Manning, #835 committed discreditable conduct in that on or about August 29, 2019, he did act in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the Hamilton Police Service, by use of his social media (Twitter), constituting an offence against discipline as prescribed in Section 2(1)(a)(xi) of the Code of Conduct, Ontario Regulation 268/10, therefore contrary to section 80(1) of the *Police Services Act*.

The edited particulars of allegations state:

On August 29, 2019, Constable Manning posted on Twitter referring to Mr. Merulla and the OIPRD investigation:

No obsession, I'd actually forgotten all about that simple twat until they were stupid enough to send an #OIPRD complaint to me at my home address.

Constable Manning's use of Twitter was contrary to Policy and constitutes discreditable conduct.

Count #8: Discreditable Conduct

Constable Paul Manning, #835 committed discreditable conduct in that on or about September 9, 2019, he did act in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the Hamilton Police Service, by use of his social media (Twitter), constituting an offence against discipline as prescribed in Section 2(1)(a)(xi) of the Code of Conduct, Ontario Regulation 268/10, therefore contrary to section 80(1) of the *Police Services Act*.

The edited particulars of allegations state:

On September 9, 2019, Constable Manning received an Order to Attend by registered mail. He posted the document on Twitter with the residential street name of an involved police officer.

Constable Manning's use of Twitter was contrary to Policy and constitutes discreditable conduct.

Plea and Representation

Mr. Salvatore Merulla is the Public Complainant. He participated in this proceeding, represented by Mr. Douglas Burns.

Mr. David Migicovsky represented the Hamilton Police Service as prosecutor. Constable Manning was unrepresented throughout this proceeding and chose not to attend or participate in the Hearing. The Hearing proceeded in absentia and a not guilty plea was considered on his behalf with respect to each count of alleged misconduct.

Decision

After reviewing and considering all the evidence and submissions presented, I find Constable Manning guilty on each of the eight counts of discreditable conduct.

Hearing in Absentia

Before delving into the evidence presented, I must first address the issue of the hearing proceeding in absentia.

Section 7 (1) of the *Statutory Powers and Procedures Act* states:

Where notice of an oral hearing has been given to a party to a proceeding in accordance with the *Act* and the party does not attend at the hearing, the tribunal may proceed in the absence of the party and the party is not entitled to any further notice in the proceedings.

Constable Manning's Notice of Hearing was signed by Deputy Chief Ryan Diodati, Chief of Police designate on April 23, 2021. It was served personally upon Constable Manning the same date by Inspector Robin Abbott #648, directing Constable Manning to appear before retired Superintendent Lennox on April 28, 2021. Constable Manning did not participate on that hearing date. Superintendent Lennox recused himself from the matter and it was put over to May 26, 2021, before me, as the hearing officer. Mr. Migicovsky submitted that Constable Manning was notified of the new hearing dates by Superintendent Goodes-Ritchie on April 28, 2021. Constable Manning did not participate in the May 26 hearing date.

Mr. Migicovsky submitted there is no evidence or reasons as to why the hearing could not proceed in absentia; Constable Manning has been given notice of these proceedings and several times, he indicated he would not be a participant.

Exhibit #5 is the affidavit of Debra Miller, a Clerk with the law firm of Perley-Robertson, Hill & McDougall, LLP. According to Ms. Miller, she sent the following documents electronically to the email address of Constable Manning on June 11, 2021:

- Notice of Hearing dated April 23, 2021, for a first appearance of April 28, 2021;
- Memorandum of the Hamilton Police Service to Constable Manning dated April 28, 2021, advising of the next hearing date of May 26, 2021;
- Transcript of the first appearance conference call held May 26, 2021
- Investigative brief of disclosure; and
- Conference call details for the next teleconference hearing set for June 25, 2021.

Ms. Miller stated that the memorandum dated April 28, 2021, advising of the May 26 hearing date, had been previously served personally to Constable Manning. In her affidavit, Ms. Miller indicated:

At 5:16 p.m. on June 11, 2021, I received a responding email from Constable Manning indicating, among other things, that he would not be participating in the

hearing, which he had been advised would be proceeding on October 4 and 5, 2021.

At tab c of Exhibit #5 is a copy of Constable Manning's email to Ms. Miller wherein he stated:

I won't be partaking in this sham of a hearing. We have Merulla on criminal offences including bribery and conspiracy to commit arson and HPS [Hamilton Police Service] and the City of Hamilton continue to protect him...

David [believed to be Mr. Migicovsky] can also stick his false and malicious NOI filings up his ass...

Hamilton Police now have two separate letters from two separate mental health professionals saying no contact or communication. It aggravates my condition...

In her affidavit, Ms. Miller explained that she hired a process server to serve the documents that were included in her email to Constable Manning on June 11, 2021, personally to Constable Manning on June 14, 2021. The process server attended the address provided and spoke to an occupant who informed him that Constable Manning no longer resided there. The process server received a telephone call from a male person identifying himself as Constable Manning a short time later. The caller indicated that he no longer resided at that address.

On June 14, 2021, at 2:30 p.m., Ms. Miller received an email from Constable Manning, found at tab F of Exhibit #5 which stated:

I don't live at 410 Paul. It was a bail address and Hamilton's bullshit charges were pulled first hearing by the Crown. How would you have that address, and why would you send a process server there....

During the May 26 appearance, a two-day hearing was set for October 4 and 5. I also scheduled a conference call for June 25, 2021, to allow Mr. Migicovsky an opportunity to notify Constable Manning of the hearing dates and to confirm his availability. Constable Manning did not participate in the June 25, 2021 conference call. Mr. Migicovsky submitted that Constable Manning informed his office he had no intention of participating in the hearing process.

Exhibit #6 is the affidavit of Monica Ptaszynski, a legal assistant with the law firm of Perley-Robertson, Hill & McDougall LLP. On September 17, 2021, Ms. Ptaszynski, sent the following documents electronically to the email address of Constable Manning:

- Letter from Mr. Migicovsky to Constable Manning as a reminder of the hearing dates of October 4 and 5, 2021.
- A copy of the transcript from the June 25, 2021, conference call.

At 1:37 the same date, Ms. Ptaszynski, received a reply email, which can be found at tab b of Exhibit #6, wherein Constable Manning stated:

Want to tell me why the fuck you think its ok to contact me when I have asked you previously not too [sic] as it causes alarm and distress? And intentionally on a Friday to fuck up my weekend, right?

You have no legal right to communicate with me. HPS have had two doctors' letters stating no communication.

Have your little PSA hearing, But do not contact me again.

Understood?

At 5:13 p.m. Ms. Ptaszynski, sent an email to me, to counsel, and copied to Constable Manning which included the affidavit of Ms. Miller, an affidavit from the process server and other correspondence. At 5:15 p.m. Constable Manning replied to the email stating:

Monica, are you slow? Please stop contacting me!

Mr. Migicovsky submitted that Constable Manning was notified that two dates were set for the hearing, October 4, and October 5, and that the hearing would proceed in his absence if he chose not to attend or be represented by counsel. Constable Manning indicated he would not attend.

Exhibit #10 is the Human Rights Tribunal of Ontario decision of *Saad and 1544982 Ontario Inc.*, dated November 1, 2016, which supports the assertion that hearings can proceed in absentia as noted in section 7(1) of the *Statutory Powers and Procedure Act*.

The matter of *Mauro and Thunder Bay Police Service*, OCPC, June 20, 2013, is marked as Exhibit #11. In that matter, following a series of adjournments, the hearing proceeded in absentia and the Commission noted that was the legally correct decision. In *Mauro*, the Commission stated:

It is not reasonable that a hearing would be delayed indefinitely, especially where there is no medical evidence to support that kind of delay. There is a duty on a person before a tribunal to cooperate with a request from the tribunal for appropriate medical documentation or medical explanation as to why the person seeks an adjournment...

The panel finds that the Hearing Officer's request for the medical information to substantiate continued accommodation requests was legally correct.

The panel finds that the Hearing Officer's decision to proceed with the hearing on February 15, 2012, to be reasonable based on the persistent lack of cooperation by the Appellant with the Hearing Officer, and the numerous previous adjournments.

In this instance, I note that Constable Manning has not requested an adjournment, he has simply indicated that he will not participate in the hearing. In his written correspondence, Constable Manning referenced letters from two mental health professionals that the Hamilton Police are in possession of. I note that no such medical information is before this tribunal despite my inquiry and invitation for Constable Manning to make submissions in this regard if he wished the tribunal to be notified of relevant medical circumstances.

In the matter of *Cameron v. Durham Regional Police Service, 2021 (ON CPC 11)*, marked as Exhibit #12, the Commission stated:

The appellant undoubtedly suffered from PTSD and an addiction to alcohol. There was no evidence before the Hearing Officer, however, that either condition rendered the appellant unfit to participate in the hearing...

We are not satisfied that the Hearing Officer committed an error of law or denied the appellant procedural fairness in these circumstances. We cannot speculate what the result may have been had the appellant produced a report from CAMH.

Constable Manning alluded to having medical issues that would prevent his participation in this hearing, but I agree with the submission of Mr. Migicovsky; evidence is necessary to substantiate the need for an adjournment based on medical reasonings. In this instance, there has been no request for a motion to have the matter adjourned, and no evidence adduced suggesting Constable Manning is unable to participate in these proceedings; Constable Manning has simply refused to attend or participate.

Mr. Migicovsky submitted that therefore, it is reasonable for the hearing to proceed in the absence of Constable Manning. Mr. Burns made no submissions other than to agree with those made by Mr. Migicovsky.

In his correspondence to the office of the prosecutor dated June 11, 2021, Constable Manning stated he would not "be partaking in this sham of a hearing." In the same e-mail, Constable Manning indicated that he was not to be contacted by Hamilton Police Service because it aggravates his mental health.

After Constable Manning was copied on a series of emails from the prosecutor's office, I was the lone recipient of an email from Constable Manning at 12:55 p.m. on Saturday September 18, 2021. Constable Manning expressed concern about a conflict of interest on the part of the prosecution and explained that Mr. Merulla was the defendant in a libel suit brought against him by Constable Manning with a second libel lawsuit pending. He indicated I would be called as a witness at that proceeding. Constable Manning further noted that he was considering "laying a private information for Criminal Libel." Furthermore, in part, Constable Manning stated:

I'm not prepared to attend or even acknowledge this hearing unless I can be assured impartiality and fairness and believe it or not that is not something you can do. HPS [Hamilton Police Service] are far too proficient and [sic] bullying, cover-ups and destroying evidence that doesn't [sic] fit their narrative...

I spoke with one of your old supervisors last night to ask about you. He told me, "I know Greg to be nothing but a bright, honest and fair guy, with high integrity." I think he's wrong. As soon as you took money to become involved in this farce you became one of the bad guys.

You have to wonder why Peter Lennox stepped down before you? I know, and if you already know why, then you're also in conflict...

On Monday September 20, 2021, at 9:37 a.m. I replied to Constable Manning's email as follows:

Good morning Constable Manning.

Thank you for your correspondence. As you may have noticed, I have copied Mr. Migicovsky and Mr. Burns in this reply. Counsel for a public complainant and the prosecutor must be included in any correspondence a hearing officer has with a subject officer.

As you know, your hearing has been scheduled to be heard over two days, specifically, October 4 and 5, 2021 in Hamilton. Please know that this hearing can proceed as scheduled despite the existence of any libel suits.

You have made it clear in your letter that you have concerns about the prosecutor's and my apparent bias. This *Police Services Act* hearing includes a process that provides you an opportunity to present a Motion to have your matters dismissed, withdrawn, or adjourned citing an abuse of process based on perceived or apparent bias. I suggest you contact your Police Association or legal advice for guidance on this matter or, if you would prefer, I can provide you greater details on

that process (Please see below for an example of how a Motion would likely proceed). Not participating in the hearing because of your perceived bias is not an option, it will proceed as scheduled unless you are prepared to bring forth a Motion as noted.

I would like to inform you that I am not aware of the circumstances that gave rise to the previous hearing officer's conflict and subsequent recusal for this matter. It has no relevance to me as a hearing officer and I would ask you to not discuss this matter further in my presence. If you have issues specific to my ability, or lack thereof, to conduct a fair and unbiased hearing, you must bring forth a motion as noted, wherein you would provide the rationale to support your request to have me recused and replaced by another hearing officer...

The email then included detailed instructions on how Constable Manning could proceed with a motion. At 9:44 a.m., Constable Manning replied as follows:

It's not Constable. Hasn't been for years. Hamilton [Police Service] made sure of that when the [sic] bullied me off the job and destroyed my career. I won't be filing any motion. Makes me sick and angry just to think of that fact that Hamilton [Police Service] can continue with their behaviour without recourse...

I responded to Constable Manning at 9:54 a.m.:

Thank you for your reply. Please note then, that I am prepared to commence your hearing as scheduled. Please indicate whether you plan to participate and whether you will be represented by Counsel.

I received the following response from Constable Manning at 10:01 a.m.:

Not well enough to attend. Hamilton Police know this, as they made me sick. They've also been served medical records clearly indicating the same. Stress will get to me and I'll end up threatening someone and then Hamilton will have something they can use against me.

I sent the following reply to Constable Manning at 10:08 a.m.:

Thank you. Please know that not participating in a *Police Services Act* hearing due to medical issues is different than not being able to attend work due to the same medical issues. As the hearing officer, I do not have and will not have access to any of your medical information unless you wish to make me aware of it. Similar to seeking an adjournment for bias, you must bring forth a Motion to indicate that you are unable to participate in a hearing for medical reasons. In lieu of such a request, the Hearing can accommodate you in any number of instances, such as sitting for short periods of time, taking breaks as needed, having the hearing off site with all

involved persons in civilian attire as opposed to police uniform or participating remotely as opposed to being in-person. These are just some examples of accommodation. Please let me know if there is some sort of accommodation that can help facilitate your participation.

Constable Manning replied in the following manner at 10:23 a.m.:

Can you accommodate my desire to get revenge on the people who sold me out to die whilst undercover...?

I would provide you my medical information, including letters from psychologist directly to Hamilton police asking them to back off, stating their behaviour is causing more pain and suffering, but you can't provide me assurances that it won't get back to Merulla or Burns...

You have at it on the 3rd and 4th [meant to be October 4 and 5]. I'm too sick and tired of this now. I'm packing to move back to the UK. I will make a public statement after your [sic] all done.

At 11:05 a.m., I replied to Constable Manning:

Thank you Cst. Manning. Please take note that I have blacked out a section of your last email to me because of its sensitive and personal nature. As I mentioned earlier, I am obligated to have open and transparent dialogue and as such, Counsel are cc'd on this email.

Please understand that based on this latest correspondence from you, I am prepared to conduct your hearing in absentia. I encourage you to re-consider. Please feel free to attend the hearing if you change your mind or to contact me if you have any further questions or wish to have any further input.

At 11:12 a.m., Constable Manning stated:

Stop referring to me as Constable! I stopped being a cop when they forced me off the job in 2013. You do what you need as will I.

I don't think there needs to be any further contact now. Please do not contact me again and assure the law firm doesn't either. I have a right to be free from harassment and distress. The PSA doesn't them [sic] a free pass for harassment. When you find me guilty you can release your public statement and I will do the same.

At 11:27 a.m., I sent the following correspondence in reply:

Mr. Manning I will make every effort to accommodate your request but I may have to notify you of something along the way to satisfy the principles of a fair hearing. Take care. Greg

Mr. Migicovsky and Mr. Burns, this will conclude this email thread. For future dialogue, please exclude Mr. Manning. I will notify Mr. Manning of any information that I determine essential.

Constable Manning replied at 11:41 a.m.

Please do not contact me again under any circumstances. I am now being caused severe harassment, alarm and distress. I'm spinning out. Do what you need to, listen to the selective evidence provided by the prosecution, and decide how you must.

I don't want any further part of this and can't provide exculpatory evidence of where documents I allegedly released came from as those notebooks were seized by Hamilton Police in a drug warrant in 2014. Hamilton's claims [sic] the documents allegedly release belong to them are false. I do have copies of those notes provided to me by OPP but am unable to use the same as the City of Hamilton (where Merulla is a councilor) ensured I signed an NDA upon receipt.

For the last time. You take care.

On September 26, 2021, I granted Mr. Migicovsky's request to have Constable Manning served notice that the Chief of Police was seeking the penalty of demotion or dismissal if the complaint was proved on clear and convincing evidence. Pursuant to section 85(4) of the *Police Services Act*, notice must be served on the officer.

On Monday September 27, 2021, at 4:46 p.m. Constable Manning sent the following email to Mr. Migicovsky, copied to me:

Didn't read your correspondence. No intention of reading anything you send. Just blocked all your staff on all email address, and I'll block your email address as soon as I send.

I asked your staff repeatedly to stop contacting me, as it is causing distress and directed you and Walton to proceed without me, which the PSA allows you to do. And you choose to ignore the same.

I don't know what legislation you're relying on to criminally harass me but the PSA does not allow you to continuously contact and communicate with me after continuous request to stop.

How do you think you're triggering me every time you send me an email cc'ing those corrupt fuckers from Hamilton Police?

Last time! HAVE YOUR POLICE SERVICE HEARING AND LEAVE ME THE FUCK ALONE!!! [emphasis added by Constable Manning]

I'll sue each and every one of you for every false statement.

I will be making a full public statement about events and evidencing Merulla's corruption and the fact Hamilton Police are not only aware of the same but actively tried to protect him from prosecution and obstruct OPP investigations into him.

I did not reply to this particular correspondence from Constable Manning. At 4:56 p.m. I received another email from Constable Manning which stated:

So I gave what you said some thought about presenting myself for this sham. A hearing where HPS will refuse to provide anything I ask for in disclosure like notebooks, would further show just how corrupt they are.

I reached out to the Hamilton Police Association for legal assistance and they refused without reason. Their refusal is political, nothing more and I will be launching a small claims for duty of fair representation.

I won't be playing this silly little game of Hamilton's without legal assistance. And I won't be using what little money I have for my family to pay for it myself.

Don't need a response and don't want any further communication. But you need to instruct the 'prosecution' to stop now as this is making me really unwell. I mean really angry! They have no legal justification for continued contact when I've already told you to proceed without me.

Any discrepancies in testimony I'll address in the civil courts.

I will release a public statement before the hearing, and it will contain admission that will make your job a hell of a lot easier.

On Tuesday September 28, 2021, at 2:56 I received a final email from Constable Manning. I presume he was notified or somehow learned that Mr. Migicovsky would be seeking approval to hold a portion of the hearing in-camera. I was unaware of Mr. Migicovsky's intention at the time. I did not reply to the following email received from Constable Manning.

In camera? Please ensure I'm provide a full transcript after the hearing with your findings.

I was concerned at the time of the ongoing correspondence and remain concerned at this time about Constable Manning's repeated request to have no further contact with counsel or myself. He indicated that the unwanted communication was making him "unwell." Naturally, I do not wish to adversely impact Constable Manning's mental health, but I must balance the need to hold a fair and transparent hearing with his request to have utterly no involvement in this hearing. For example, I would have preferred to engage in further dialogue about whether he had considered exploring methods of accommodation or if he needed additional time to consider counsel. However, I am satisfied that he fully understood the Tribunal process and his decision to not participate in the hearing was an educated one. To delve further into these areas would disrespect his request for no further contact.

Based on all of the correspondence that Constable Manning engaged in with either Mr. Migicovsky's office or with myself, I am satisfied that he was: fully informed of the allegations he was facing; fully informed of the hearing dates; fully informed that he could make application for an adjournment for medical reasons and the process of how to proceed in that fashion; fully informed that he could seek a motion to have me recused as the hearing officer and/or how to file an abuse of process motion based on the prosecutor's bias. Constable Manning was aware that he could be represented by Counsel if he desired, and he was aware that the hearing would proceed in absentia if he chose not to participate. Constable Manning was informed that he could be accommodated in a number of ways that might allow him to participate in the hearing.

At no time did Constable Manning seek an adjournment or ask to be accommodated in any manner. He provided no details in relation to or in support of, his insinuation that he had an inability to participate in this hearing due to existing medical issues.

I am satisfied that Constable Manning has been notified of the hearing, I am satisfied that he understands accommodations, if necessary, are available to him and that he could be represented by counsel. Understanding all of this and knowing that it was my intent to proceed in his absence, he directed the hearing to proceed in absentia on several occasions.

I am guided by the principles of fairness and natural justice which apply not only to a subject officer, but also to a public complainant and the general public. Mr. Merulla filed his written complaint May 17, 2019; he deserves to have a hearing held into that complaint in a relatively timely manner. Constable Manning offered no reasonable explanation as to why he could not participate in the hearing and presented no reasonable explanation why it ought not proceed in absentia. I see no reason to delay the proceedings, and no reason why the hearing ought not to proceed in the absence of Constable Manning who decided not to participate in the hearing, fully aware of the consequences. Therefore, as per Section 7(1) of the *Statutory Powers and Procedure Act*, I direct that the hearing proceeds in the absence of Constable Manning.

The Hearing

Mr. Migicovsky called four witnesses: Sergeant Ben Licop, the investigating officer; Staff Sergeant David McKenzie, an investigator in the Technical Crime Section; Sergeant Shane Coveyduck of the Intelligence Bureau; and the Public Complainant, Mr. Merulla. Mr. Migicovsky made submissions on the rules of evidence and made submissions on the evidence heard at this hearing. Mr. Burns did not call witnesses, did not pose questions to any of the witnesses and made no submissions other than to agree with those made by Mr. Migicovsky.

Testimony of Sergeant Ben Licop

Sergeant Licop has been a member of the Hamilton Police Service Professional Standards unit since April 2019. In July 2019 he was assigned to investigate Mr. Merulla's complaint that had been filed with the OIPRD.

Exhibit #13 is the prosecution's Book of Documents. At tab 1 is a letter on Hamilton Police Service letterhead dated August 27, 2019. The letter, addressed to Constable Manning, informed him that he was the subject officer, named in a complaint made by Mr. Merulla and filed with the OIPRD, which was being investigated by Sergeant Licop. Sergeant Licop stated that a redacted version of Mr. Merulla's original handwritten complaint was included in the notification sent to Constable Manning.

At tab 4 of Exhibit #13 is a copy of the correspondence sent to Constable Manning, titled, "Order to Attend Disciplinary Proceedings." In part, the letter stated:

It is alleged you have committed Discreditable Conduct...

In the course of this investigation, I am acting under the authority of the Office of the Chief of Police. As such I ORDER [emphasis was included in the original

correspondence] you to attend the Professional Standards... and provide a detailed accounting of your involvement in this incident... on September 18, 2019, at 10:00 a.m...

Sergeant Licop testified that Constable Manning did not attend for the scheduled interview; citing medical reasons as to why he was unable to comply with the order. Sergeant Licop stated the investigation was completed and a hearing date was ultimately set. Sergeant Licop was concerned about violating the medical request for non-contact, but eventually, Constable Manning was served the Notice of Hearing personally by Inspector Robin Abbott following his arrest on an unrelated matter on April 23, 2021. Sergeant Licop testified that he had not received information indicating that Constable Manning was unable to participate in this hearing for medical reasons.

Sergeant Licop testified that Constable Manning commenced his career with the Hamilton Police Service in 2005. He was previously employed as an officer with the Metropolitan Police Service in London England. Due to his experience and training in undercover work in the United Kingdom, Constable Manning was immediately assigned to the Hamilton Police Service vice and drugs unit in an undercover capacity. Constable Manning was deployed on a project named "Scopa" until 2007. He was then assigned to uniform patrol and has been off work since 2013. According to Sergeant Licop, Constable Manning was suspended from duty in March 2015 and remains under suspension.

Found at tab 2 of Exhibit #13 is the Hamilton Police Service Policy and Procedure 2.14 governing Internet Use dated April 19, 2011. Sergeant Licop stated officers are made aware of changes in existing policy, or new policy, during annual training, and/or it is sent to individual members electronically, appearing on their computers when they next log in. Notification would show as "must read policy" and officers are expected to keep up to date on their knowledge and familiarity of Policy.

Sergeant Licop stated that officers who are not on active duty are still expected to comply with Policy. He cited the *Police Services Act* addressing on-duty and off-duty misconduct. Sergeant Licop read the pertinent sections of this Policy into the record. In essence, Policy indicated that Members are prohibited from posting material on the internet and or social media networking sites that would discredit the reputation of the Hamilton Police Service.

Sergeant Licop testified that the term @mobinfiltrator is a Twitter handle. Twitter is a well-known social networking site and the username in Twitter is referred to as a handle, it is unique to the individual user, and it is attached to each of the items posted by that person. In a regular account, the individual is able to post things such as photographs, is able to engage in conversations with others, and is able to re-tweet what another person had

previously posted. He explained that “tweeting” could be considered another name for posting, but it is specific to Twitter accounts. Resulting from his investigation, Sergeant Licop concluded that Constable Paul Manning controlled the account identified as @mobinfiltrator.

Sergeant Licop testified @mobinfiltrator is an open Twitter account. Constable Manning then, and still, takes ownership of the site; he has posted pictures of himself and private documents that only he had control of. Sergeant Licop noted that the Twitter account of @mobinfiltrator identified Paul Manning as being a member of the Hamilton Police Service.

Sergeant Licop explained the Twitter account of @mobinfiltrator contained a hyperlink known as a “linktree.” A linktree allows a person visiting another person’s Twitter account to easily link to a variety of other social media sites held by the Twitter account user such as Instagram, Facebook or You Tube. In this instance, Sergeant Licop opened the Wikipedia page from the linktree option on Constable Manning’s Twitter feed which showed Constable Manning’s biography. It contained details such as his date of birth, the name of the high school he attended and his employment history. Sergeant Licop testified the LinkedIn account found in Constable Manning’s linktree, lists Hamilton Police Service as his current employer.

Sergeant Licop walked the tribunal through the tweets found in Exhibit #13 that relate to the specific counts of alleged misconduct. In each instance, the items were posted by @mobinfiltrator on the open internet.

The item found at tab a of Exhibit #13 relates to count #1. A person identified on Twitter as Emily Lachman, posted a series of tweets about her concerns as a constituent and addressed them toward Mr. Merulla. In response, on the same date of April 15, 2019, a tweet under the handle of @mobinfiltrator posted a photograph and stated:

Emily, you’re asking target 10 in #projectScopa to do better?

Sergeant Licop explained that when it was tweeted, the post included Emily Lachman’s Twitter handle and also Mr. Merulla’s. In doing so, this ensured they would be notified and would be aware of Constable Manning’s tweet.

Sergeant Licop stated that the photograph posted by @mobinfiltrator on this occasion, was marked as being a “Third-Party Rule” document. Sergeant Licop explained that Third-Party Rule means that the document cannot be released without the consent of the creator of the document. The heading on the document reads: “Organized Crime Section – Illegal Gambling Project Scopa.” Sergeant Licop testified that the document included

the names and pictures of Mr. Merulla, and two other persons well known to be associated to organized crime. Mr. Merulla's photograph is identified with the number 10 attached.

Sergeant Licop testified that the inference to be drawn from Constable Manning's tweet is that he was characterizing Mr. Merulla as a criminal. The tweet suggests Mr. Merulla has ties to known criminals and that he was a target in a project, specifically, target #10 in Project Scopa; stating in his post, "are you expecting a guy imbedded with criminals to do better?"

The tweet found at tab b of Exhibit #13 relates to Count #2. @mobinfiltrator posted this tweet on April 25, 2019, and it contained the same third-party rule document as noted in Count #1, showing the number 10 on Mr. Merulla's photograph. The next photograph, marked with the number 11, had a picture of Angelo Musitano alongside his name. His brother, Pasquale (Pat) Musitano's picture had the number 12 attached to it, identifying him by name also.

Sergeant Licop explained that the Musitano brothers were known to be associated with organized crime. On the date of this Twitter post, April 25, 2019, Pat Musitano had been shot in Mississauga. Angelo Musitano had been shot and killed approximately two years prior. The photograph was accompanied by the following post:

So, who's left in that list?

Sergeant Licop explained that the implication from this tweet is that violence was likely to follow Mr. Merulla because the people he was associated to, had been shot.

Count #3 relates to items found at tabs c, d, and e of Exhibit #13. At tab c is a copy of a tweet dated June 25, 2018, and re-tweeted in 2019 by @mobinfiltrator. Sergeant Licop testified that @mobinfiltrator sent the tweet to Diana Weeks, a journalist with Global News, stating:

Diana, ask #sammerulla about the "rotten smell" coming from leaked Halton/Hamilton Police intelligence reports about his alleged involvement with numerous organized criminals? Nobody has yet for some reason.

Attached to the tweet was a document known to police officers as an association chart. The document shows a photograph of Mr. Merulla and others. Each of the individuals are identified by name. The tweet states there are leaked police intelligence reports and Sergeant Licop suggested that the post insinuated Mr. Merulla was involved with members of organized crime.

Sergeant Licop testified about the tweet found at tab d, which was posted June 27, 2019, on the Twitter account of @mobinfiltrator. Attached to the tweet was the same document found at tab c, but from a different view so that additional persons' photographs can be seen including association links to Mr. Merulla. Sergeant Licop stated that the insinuation from the post is that Mr. Merulla is tied to criminal elements in the City of Hamilton. The post asked:

Is anyone interested in discussing this now...

At tab e, is a tweet in response to another individual with the given name of Myke, stating: Salvatore, Myke? Oh...you mean this guy?

Attached to the tweet is a photograph of three individuals, with their names, Mr. Merulla, Angelo Musitano and Pat Musitano. They appear once again under the heading: "Organized Crime Section – Illegal Gambling Project Scopa." Sergeant Licop stated the insinuation being that Mr. Merulla is associated to known organized crime figures.

The tweet found at tab f of Exhibit #13 relates to Count #4. During a conversation between individuals on Twitter on July 4, 2019, @mobinfiltrator stated:

I find it ironic how a #HamOnt City Councillor can be openly and unfairly critical of the #LGBTQ community, yet still be the biggest cocksucker in the City.
#resignsammerula

Sergeant Licop found the comments to be inappropriate and unprofessional.

The tweet found at tab g of Exhibit #13 is in relation to Count #5. Sergeant Licop testified that @mobinfiltrator posted four photographs on July 14, 2019, of residential homes. The houses were identified as being on Graham Ave. s, Ottawa St. s, Sanford Ave. s. and Barnesdale Ave. n, all in the City of Hamilton. The house numbers had been blackened out and they were unable to be viewed as a result. The tweet read:

Identified all #SamMerulla's properties. Now background on his wife to see whats [sic] in her name.

Sergeant Licop stated that all four properties belonged to Mr. Merulla and/or members of his family who resided in some of houses. Sergeant Licop stated the fact that Constable Manning indicated he was about to conduct background checks, suggested he was conducting an investigation while off-duty (being under suspension at the time). Sergeant Licop stated that although the house numbers were blocked, identifying the houses would be reasonably easy by walking or driving in the respective areas.

Sergeant Licop testified that Mr. Merulla has been involved in politics for a lengthy period of time and as a result, his name is well known in Hamilton.

The tweets found at tab h, and tab i of Exhibit #13 pertain to Count #6. Sergeant Licop testified that on August 28, 2019, the following was posted on the Twitter feed of @mobinfiltrator:

You can all go fuck yourselves! I'll publish the full document later on. This will be a very public investigation.

A photograph of a letter dated August 27, 2019, addressed to Constable Paul Manning accompanied the tweet. The document was titled: "OIPRD Complaint – Proceeding – PCC2019-045, Salvatore (Sam) Merulla and it included portions of the first two paragraphs of the letter. The same letter in full can be found at tab 1 of Exhibit #13. Written on Hamilton Police letterhead, the letter notified Constable Manning that he was named as the subject officer in a complaint filed by Mr. Merulla.

Sergeant Licop testified that on August 28, 2019, @mobinfiltrator also tweeted:

And this is #SamMerulla's complaint, which is simply untrue. I've never claimed Merulla was an organized crime member, but a target in my #undercover operation.

The letter above and Mr. Merulla's handwritten complaint had been delivered to Constable Manning. Attached to this particular tweet in addition to the OIPRD complaint cover letter, was a photograph of a partial page (5) of Mr. Merulla's written complaint.

The tweet found at tab j of Exhibit #13 relates to Count #7. Sergeant Licop testified that on August 29, 2019 @mobinfiltrator posted a tweet that read:

And this is the apartment I rented, that Merulla mentions. No obsession. I'd actually forgot all about that simple twat until they were stupid enough to send an #OIPRD complaint to me at my home address.

Sergeant Licop noted that the tweet included a link to Constable Manning's Instagram account which in turn included six pictures of the interior of a residence. Sergeant Licop testified that reference to Mr. Merulla being a twat, and his employer being stupid, is offensive and inappropriate behaviour.

The tweet found at tab k of Exhibit #13 relates to Count #8. Sergeant Licop testified that on September 9, 2019, @mobinfiltrator tweeted:

And here we go...#Merulla should've let this one lie I'd literally forgotten all about him #HamOnt. I will not be attending unless of course we do it at location of my choosing...maybe [REDACTED] In Burlington?

Attached to the tweet is a photograph of the Order to Attend letter delivered to Constable Manning and signed by Sergeant Licop. A copy of the original letter can be found at tab 4 of Exhibit #13. Sergeant Licop testified that at the time of the tweet, he resided on [REDACTED]. He was unsure if Constable Manning tweeting out the name of his residential street was meant to be an attempt at humour, or if it was meant to be an intimidating gesture.

Testimony of Staff Sergeant David McKenzie

At the time of this investigation, Staff Sergeant McKenzie was a sergeant in the Technical Crime Section, responsible for conducting investigations related to technical and digital forensics and/or obtaining evidence from digital devices. Staff Sergeant McKenzie became involved in investigations where cybercrime technology was being targeted or used in the commission of an offence. He reviewed his extensive training in this area.

Staff Sergeant McKenzie was asked by Sergeant Licop, to conduct an investigation and to prepare a report indicating who had ownership and control of the Twitter account identified as @mobinfiltrator.

Staff Sergeant McKenzie testified that Twitter is a social media site used for micro blogging. To set up an account, an email address and or a phone number is required to verify the account user is a real person. A security code is delivered via text message or email message to verify the authenticity of the person setting up the account. Once it is set up, a Twitter handle does not change, a profile name can change to whatever the user selects, but the handle cannot be altered. For example, @mobinfiltrator cannot be changed, the profile name attached, in this case, Paul Manning, can be amended at any time.

Twitter can be used to communicate to people who “follow” that account by posting an original tweet, or by re-tweeting another person’s post. An account holder has the option of using settings that allow any member of the public to view their posts, or to restrict them so only people who follow them have access. If the account is public, any person with access to the internet can view it. An account holder requires a password to access Twitter. If another person was attempting to log into an account as a user, the account holder would be notified by receiving an email or text via the device that was used to create the account.

Staff Sergeant McKenzie stated that Twitter followers are people who are interested in knowing what an account holder has to say on their Twitter feed. When an account is opened, the number of people following that account appears to be viewed by anyone who visits the page, and the latest tweets appear in chronological order. Public accounts hold 2,500 tweets, so tweets outside that number will no longer be accessible to the public unless they have been re-tweeted by the account holder or by another Twitter feed. A Twitter feed profile page is accessible to anyone, depending on the setting as decided by the account holder.

Staff Sergeant McKenzie testified that @mobinfiltrator is a public Twitter account, created in 2009. The date that the account was created, is shown on the profile page and it cannot be amended. At tab 5 of Exhibit #13 is a page extracted from the @mobinfiltrator Twitter feed. Staff Sergeant McKenzie testified that the account includes a profile picture of Paul Manning, and the same picture can be seen when viewing other accounts held by Constable Manning.

While testifying, Staff Sergeant McKenzie showed a live feed of @mobinfiltrator. The account name appeared, and Paul Manning of Hamilton Ontario was the username associated to the account and his photograph was included. At that moment, @mobinfiltrator had 17,700 followers, but Staff Sergeant McKenzie noted that at the time of the alleged offences in 2019, there were approximately 4,100 followers of the account.

Staff Sergeant McKenzie explained that when posts are re-tweeted, the date of the post may not immediately appear, it may take as long as two days for it to be properly timestamped. Staff Sergeant McKenzie stated that as of October 2019, 27,000 posts had been tweeted by @mobinfiltrator since 2009. At the time of his testimony, the number of tweets had increased to 42,000.

Staff Sergeant McKenzie testified that Constable Manning had another blogging site called mobinfiltrator, had Instagram and Facebook accounts, and he also posted videos on YouTube. All the accounts were linked to Constable Manning's Twitter feed.

Staff Sergeant McKenzie used a tweet found at tab a of Exhibit #13 as an example of Constable Manning re-tweeting one of his earlier tweets. Staff Sergeant McKenzie stated that he did this very frequently. In this instance, @mobinfiltrator tweeted:

It was 98 when I transferred to the Met. It was no better for probationers. I held down two part time bar jobs, one in the center and one in Colindale. I remember being sat on parade hungry. The cost of living was so expensive and the wage so low. EASY to corrupt a hungry cop.

Staff Sergeant McKenzie testified that he was aware that Constable Manning had been a police officer in England before commencing his policing career in Hamilton. Staff Sergeant McKenzie stated he was aware that “Met.” could be an abbreviation for Metropolitan Police and that Colindale is a city in England. Staff Sergeant McKenzie stated this type of information is specific and personal, only someone familiar with Constable Manning’s personal information would know this.

Staff Sergeant McKenzie discussed the Twitter post found at tab 6b where @mobinfiltrator posted:

What the fuck happened to my hometown. It was always bad, but never like this.

Attached to the post was a link to a news article at the Accrington Observer. Staff Sergeant McKenzie noted the link had a United Kingdom domain address and he confirmed the Accrington Observer was a newspaper from a town in England. Staff Sergeant McKenzie noted that the post was dated January 4, 2019, and it was written in first-person narrative.

At tab 6c are three tweets from @mobinfiltrator. In the posts, Constable Manning named his three children and included a link to each Instagram account. Staff Sergeant McKenzie stated that by clicking on the links, the user was taken to videos of Constable Manning’s children. Staff Sergeant McKenzie noted this is very personal and specific information. He also noted that at the bottom page of Constable Manning’s Instagram account, are the same hashtags that appear on his Twitter account.

At tab 6d is a photograph of Constable Manning. In the column next to the photograph is the following quote from @mobinfiltrator:

@metpolice_uk on #surveillance training course circa 96 ish in London. I was the target...

Staff Sergeant McKenzie testified that the significance of this post is related to the date; there were no cell phones at that time and therefore, the account user would have had to have scanned the picture into the account. This shows that the account user likely would have possessed it for years before posting it recently. This is very personal information, specific to Constable Manning.

Staff Sergeant McKenzie discussed the item that he extracted from Constable Manning’s Instagram account found at tab 6e. It is a “selfie” of Constable Manning standing in front of a sign that says 7abc WKBW. In the post, he stated “Just finished up being interviewed at @wkbw for...well I can’t tell you that.” Staff Sergeant McKenzie stated that Constable Manning had indicated in his social media accounts that he is writing a book, and in this

instance, he wanted people to know that he was interviewed by eyewitness news in Buffalo, New York.

Staff Sergeant McKenzie testified that at tab 6f is a picture of an article taken from his other website and posted to Twitter on March 11, 2019. Staff Sergeant McKenzie located the same article on the “infiltrator” website.

At tab 6g is a tweet stating:

2 docs from @hamiltonpolice. The 1st was sent to me. The 2nd entered into Niche. The cop who sent it obviously forgot to enter the original onto Niche therefore created a 2nd to cover her ass! HPS are trying to claim it's the same doc. They are clearly not the same.

Attached to the tweet are two documents which must have been sent to Constable Manning as he would not have had access to them while suspended from active duty. They are posted on the same Twitter feed @mobinfiltrator and he indicated they were sent to him. It is another example of information that is very specific to and personal to Paul Manning.

At tab 6h is a tweet that reads:

Have to dust this of [sic] and continue adding latest libel from OIPRD complaint.

Attached to the tweet is a copy of the cover page of a civil action; Paul Manning Plaintiff and Salvatore Merulla Defendant, titled Notice of Action. Staff Sergeant McKenzie stated that he captured this tweet from September 9, 2019, from the same Twitter feed as the others, @mobinfiltrator. He stated that no one other than Constable Manning would be expected to have access to this document, it is very personal and specific to Constable Manning.

At tab 6i is a tweet which states:

Over the past 26 years I have sworn three oaths to three separate law enforcement organizations. I am still beholden to one and intend to follow that oath to the letter.

Attached to the tweet is a certificate of qualification for the Royal Military Police, a Declaration of Service for the Metropolitan Police, and the Hamilton Police Service Oath of Office for Paul Manning.

At tab 6j is a Twitter post which stated:

My integrity is all I have left, so please understand my defensiveness. Sent this email to @FredEisenberger & @ JSmithHam1 for a simple apology in an attempt to avoid litigation.

Attached to the tweet is a letter wherein Constable Manning was seeking an apology from Mr. Merulla. Staff Sergeant McKenzie testified that this is another example of information very specific to Constable Manning which had been posted by @mobinfiltrator. Staff Sergeant McKenzie concluded, due to the sheer number of personal items posted to @mobinfiltrator alone, Paul Manning was person responsible for and in control of the Twitter feed.

The You Tube page linked to Constable Manning's Twitter account contains videos and reports from around the world in relation to policing. Included is a recorded telephone conversation between then acting Inspector Paul Staats of the Hamilton Police Service and Constable Manning.

Staff Sergeant McKenzie concluded that Paul Manning was the operator of the Twitter feed named @mobinfiltrator and all other social media accounts linked to it all share the same information. Staff Sergeant McKenzie testified there is no doubt whatsoever that Constable Manning was the author of the tweets associated to @mobinfiltrator.

Testimony of Sergeant Shane Coveyduck

Sergeant Coveyduck has been assigned to the Hamilton Police Service Intelligence Unit since January 2020. He is involved in source management and covert operations while overseeing confidential informant related activities.

Sergeant Coveyduck testified that within the Hamilton Police Service, a completed Intelligence report is forwarded to an email box that only five members have access to. Sergeant Coveyduck or the Intelligence Unit staff sergeant will review the report and reassign it accordingly. The information is stored in a database that the same five people can access. Sergeant Coveyduck noted that information of this nature is not available to any other member of the Hamilton Police Service nor every member of the Intelligence unit, only the five persons identified can access this material due. Sergeant Coveyduck stated that an Intelligence report receives a classification based on the nature of the information and degree of sensitivity. The classification assigned to the report dictates the level of restriction applied.

Some reports or the information contained in the report, could theoretically be open to the public, while other reports restricted from public view. Some Intelligence reports or the information therein, could be shared to all members of the police service or to any policing agency in Canada, while other reports could be deemed restricted from view. Some Intelligence reports can be made available to partner agencies, others not.

Sergeant Coveyduck testified that the highest level of Intelligence restriction is known as "Third-Party Rule." A document that is considered highly sensitive and is intended to be disseminated to the recipient only, is given this rating. If a request is made to obtain a Third-Party Rule document, the author of the report would be contacted to determine whether it can be shared. The sharing of Third-Party Rule documents could affect the integrity of ongoing or future investigations and/or put the safety of individuals of the public or policing community at risk.

Sergeant Coveyduck explained that it is not just the document itself that receives Third Party Rule privilege, but also the information contained therein. An ongoing sensitive investigation or a report that contains information known by a select few people or confidential source information are some examples which might result in a Third-Party Rule restriction.

Sergeant Coveyduck testified that Third-Party Rule designations may expire at the conclusion of an investigation but often, the information remains just as sensitive years later as it was the day it was received. Sergeant Coveyduck stated that Third-Party Rule Intelligence reports can only be shared by members of the Intelligence Unit and are not to be disseminated unless appropriate authorization is received. He stated that an undercover officer may or may not have access to Third-Party Rule records, depending on the nature of the investigation they are engaged in, but only the Intelligence Unit can authorize dissemination of Third-Party Rule information.

In the event Third-Party Rule information had been obtained by members of the public, the dissemination restrictions still apply. He stated that if an officer was aware that the information was restricted, to disseminate it further would be a breach of the officer's sworn Oath of Office. Sergeant Coveyduck stated that an officer in possession of Third-Party Rule information is not permitted to maintain possession of it once the investigation and/or court proceeding has concluded. Restricted information in the possession of investigating officers must be returned to the Intelligence Unit at the conclusion of the investigation.

In-Camera Application

“In-Camera” means to be in private, with the media and public excluded from this aspect of the hearing. The public is prohibited from accessing exhibits tendered while in-camera.

Mr. Migicovsky submitted that the next portion of Sergeant Coveyduck’s testimony ought to be held in camera because the questions posed would focus on an intelligence project named Project Scopa. I questioned the need to go in-camera when each of the counts of misconduct simply allege a breach of Policy. Mr. Migicovsky noted that counts one, two and three are different than the remaining five counts of discreditable conduct because those specific tweets included Third-Party Rule documents. Mr. Migicovsky submitted that to make a determination of guilt, I required a better understanding as to the authenticity of the exhibits marked Third-Party Rule. He added, that to converse openly on public record about the nature of the highly confidential information contained therein, has the potential undermine the integrity of the information and to put public safety at risk.

Mr. Migicovsky submitted that Constable Manning has not only breached internet Policy, but also breached the confidentiality requirements of Intelligence reports.

Section 9 (1) *Statutory Powers and Procedures Act* states:

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

- (a) matters involving public security may be disclosed; or
- (b) intimate financial or personal matters or other matters may be disclosed at the hearing of such a nature, having regard to the circumstances, that the desirability of avoiding disclosure thereof in the interests of any person affected or in the public interest outweighs the desirability of adhering to the principle that hearings be open to the public,

in which case the tribunal may hold the hearing in the absence of the public.

Mr. Migicovsky submitted previous cases that illustrate the open court principle and the circumstances which must exist in order to deviate from that rule. Mr. Migicovsky submitted that in this instance, he cannot present the requisite evidence as it pertains to counts one, two and three while in a public forum; the evidence contains material which is covered by the Third-Party Rule privilege. The important public interest in this case is superseded by the need to protect the public; there is no other means available to present the evidence in question.

Mr. Migicovsky submitted the 1994 Supreme Court of Canada case of *Dagenais v. Canadian Broadcasting Corp.* and cited *R. v. Mentuck*, [2001] 3.S.C.R. 442 as matters which illustrate the principles to be applied and the test which must be met for matters such as this to be held in-camera.

He stated the most current case which reiterates the same test is the matter of *Donovan and Sherman Estate*, 2019 ONCA 376. In *Sherman*, the Court stated:

The motion judge correctly identified the test to be applied when deciding whether to grant a sealing order. That test has two parts. First, the party seeking the order must show that the order is necessary to prevent a serious risk to an important public interest which cannot be protected by other reasonable methods. Second, the party seeking the order must establish that the salutary effects in the right of freedom of expression and other public interest served by open and accessible court proceedings.

Mr. Migicovsky acknowledged the importance of the open court principle. He submitted that the circumstances in this case align with the principles which must be applied. Constable Manning has been charged with misconduct offences related to the alleged breach of confidentiality information. He submitted that he would be prevented from successfully prosecuting the officer if he is not granted the opportunity to present this portion of the evidence in-camera.

The integrity of the information would be compromised, and public safety would be at risk if the evidence were to be presented otherwise. He submitted that the public interest to hold Constable Manning accountable for his actions, outweighs the public interest in adhering to the open court principle when all circumstances are considered.

Mr. Migicovsky submitted cases illustrating examples where evidence has been sealed, or prohibited from public view, to protect intelligence information, or to protect police investigative techniques, or when privacy interests outweigh the desirability of adhering to the open court principle.

Mr. Migicovsky noted that Constable Manning has not been charged with breach of confidence offences, but the underlying facts suggest that there has been a breach of confidence. He proposed to explain to the Tribunal while in-camera, what confidential information was violated.

Mr. Burns submitted that he was not opposed to Mr. Migicovsky's request to go in-camera for this portion of the evidence. The Hamilton Police Service notified the media days in advance of the hearing date that they would be seeking permission to hold a portion of this hearing in-camera and invited them to make submissions on the issue before the Tribunal.

Ms. Susan Clairmont is a columnist with the Hamilton Spectator Newspaper who was reporting on this proceeding. Ms. Clairmont was welcomed to make submissions on this issue. Ms. Clairmont stated that although the Hamilton Spectator had been notified that an in-camera request would be forthcoming, they were not informed what the rationale for the request was based on; she was making submissions having just learned of the nature of the request. I offered Ms. Clairmont additional time if it was required, but she declined. Ms. Clairmont indicated counsel would not be available; she was prepared to make submissions forthwith.

Ms. Clairmont submitted the open court principle is Constitutionally protected; section 2 of the *Canadian Charter of Rights and Freedoms* speaks to the open court principle. The public has great interest in how *Police Services Act* matters are adjudicated. Ms. Clairmont submitted that in this specific instance, the public interest here is significant; Constable Manning is a Hamilton Police officer who has gained a high profile in this community with his public and ongoing dispute with a city councillor.

Ms. Clairmont referenced the *Donovan* matter marked as Exhibit #20. Ms. Clairmont submitted that to circumvent the open court principle, the onus is on the prosecutor to demonstrate serious risk to the public; the risk must be factual and not speculative that an order would be necessary to prevent serious risk. Ms. Clairmont submitted the benefit of such an in-camera order must outweigh its negative effects.

Ms. Clairmont submitted that the Tribunal ought to take the least restrictive path to secure the necessary evidence; taking the Tribunal in-camera is as restrictive as it gets. Ms. Clairmont suggested that perhaps redacted documents could be relied upon, or in lieu, the use of a very narrow publication ban would satisfy the prosecutor's concern for privacy. Ms. Clairmont submitted that section 9 (1) of the *Statutory Powers and Procedures Act* provides the authority for a publication ban. Ms. Clairmont submitted the hearing should remain in the public realm, if that is not possible, then the hearing should proceed, but by utilizing a remedy such as redacted documents or a limited publication ban.

I note that in his email to me dated September 28, 2021, Constable Manning questioned the need to be in-camera for any portion of the hearing. Consequently, I took the position that he opposed Mr. Migicovsky's in-camera request.

Mr. Migicovsky submitted section 9 (1) of the *Statutory Powers and Procedures Act* may or may not provide authority for a publication ban; case law citing the authority for a *Police Services Act* tribunal to issue a publication ban does not exist. I might be willing to test this area of law if the information in question was merely sensitive in nature, i.e., intimate financial or personal information. However, I am unwilling to jeopardize the release of Third-Party Rule records to the public domain, Intelligence information that only five members of the Hamilton Police Service can access. I consider documents and records that have received Third-Party Rule restriction designation, to be at the highest end of the protection spectrum.

I agree that a publication ban would be considered slightly less restrictive than proceeding in-camera, but I do not consider it appropriate. How could I risk exposing Third-Party Rule information to members of the media, information that the majority of Hamilton Police officers cannot access? It is not because they are media per se that is concerning, rather that no person other than those determined by the Hamilton Police Service Intelligence Unit, should have access to Third-Party Rule information. Furthermore, if a publication ban was issued, having the media present would not serve the purpose of educating the public; the public would not be privy to the information contained within the Third-Party Rule privileged documents.

The Notice of Hearing contains eight counts of misconduct. The first three counts allege Constable Manning posted material presented as Third-Party Rule privileged information on Twitter. Mr. Migicovsky submitted that to prove this allegation, it is necessary for me to have an understanding of the information contained within these documents so that the authenticity of the documents posted can be determined.

If I am to hear evidence in-camera, in time, the public will have an understanding of that evidence when I write my decision. When I determine that information contained within the documents posted on Twitter was or was not authentic, it will be reflected in the decision. Therefore, the public will know whether Constable Manning posted Third-Party Rule information, but the public will not know the specific details of that information. I do not find it necessary for the public to be aware of the specific details, but the public ought to be informed of whether Constable Manning committed misconduct.

To err on the side of caution in terms of protecting Third-Party Rule information, I must assume for the purpose of this exercise, that the posts may have included authentic Third-Party Rule information. Therefore, I find it inappropriate to ask Sergeant Coveyduck to present that information to the Tribunal in an open court setting. Potentially, the information he will discuss is restricted, and it must be protected in some manner. This is despite the fact that some Third-Party Rule information may have already been disseminated publicly. That fact cannot be corrected, but the further dissemination of information must be contained.

The documents that have been posted are marked Third-Party Rule and the public might presume that all information contained therein is either authentic or not. The in-camera evidence is expected to illustrate to me what specific information is authentic, it may be that not all the information posted in fact was. In my opinion, the public does not need to know what information is authentic and what information may not be authentic, they only need to know whether Constable Manning posted Third-Party Rule information without authorization to do so. I considered requesting redacted Third-Party Rule documents, but I am not convinced that redacted documents would satisfactorily address the requisite evidence that the Tribunal ought to consider.

I find that the evidence that Mr. Migicovsky is seeking to present is relevant; the Notice of Hearing alleges Constable Manning posted Third-Party Rule information. To prove his case, Mr. Migicovsky submitted that restricted, confidential information must be presented to the Tribunal. An evidentiary discussion of that information publicly would be a matter involving public security, the integrity of the information would be compromised, and public safety would be at risk. The public interest to hold Constable Manning accountable for his actions, outweighs the public interest in adhering to the open court principle.

It is important for the public to understand what transpired at this hearing, and the media is present to ensure that is done. To go in-camera, is to exclude the media and the public. In this instance, by going in-camera, the public will ultimately know what transpired in camera when I rule whether aspects of the posted Third-Party Rule information were authentic or not, they just will not know the which specific components were deemed as such. This is the best manner in which to address the competing interests of holding Constable Manning accountable, protecting confidential information, and holding a transparent and procedurally fair *Police Services Act* hearing.

This portion of the hearing, specific to Sergeant Coveyduck's testimony is to be held in-camera. I trust, as the holder of the Third-Party records, that Sergeant Coveyduck will not release Third-Party Rule information that he and his employer are not comfortable with. I informed Mr. Migicovsky that once I heard the in-camera evidence, if I deemed that it was

unnecessary, I would put the evidence into the open record. I agreed that if I were to proceed in that direction, I would first provide Mr. Migicovsky an opportunity to consider withdrawing the charges which would prevent disclosure of sensitive material.

Exhibit #15 is the mater of *Barlow and Ottawa Police Service*, OCPC, August 15, 2011, wherein the Commission noted:

At the commencement of the disciplinary hearing, Counsel for the Respondent and Counsel for the Appellant submitted motions to close the hearing to the public to protect the identity of a confidential police informant. Following review of the submissions, the Hearing Officer consented to the preliminary motions. All pertinent aspects of the disciplinary hearing were held in camera.

For the same reasons, the Hearing Officer's Reasons for Decision and Reasons for Disposition were appropriately altered and redacted to protect the identity of the Informant.

Based on requests from Counsel that the same rationale of protecting the identity of the Information existed with respect to the disciplinary appeal, on June 17, 2011, the Commission ordered that the appeal should also be heard without members of the public present. That order was confirmed at the commencement of the appeal hearing.

Similarly, I will redact information that breaches the Third-Party Rule privilege contained within this decision. The transcript of Sergeant Coveyduck's in-camera testimony cannot be released, it is not a public document. In this decision, I will provide an overview of Sergeant Coveyduck's testimony in order to be as transparent as possible and to satisfy the open court principle wherever possible.

I note that Mr. Merulla exited the hearing room for the in-camera portion of Sergeant Coveyduck's testimony, his counsel however, remained.

Testimony of Sergeant Coveyduck continued IN-CAMERA

As I noted earlier, it is not only the documents marked Third-Party Rule privileged that are restricted, but the rule also applies to all the information contained therein. Consequently, I am prevented from presenting specific details in an unredacted form. Sergeant Coveyduck discussed specifics of a Third-Party Rule privileged Intelligence probe titled Project Scopa. He was not involved in the probe, but he conversed with the officers who supervised the file prior to testifying.

Project Scopa was an Intelligence Probe into traditional organized crime in the City of Hamilton. It was designed to gather intelligence into the changing structure of organized crime, to identify associations and to identify what crimes, if any, were being committed. Hamilton Police Service, the Ontario Provincial Police, and other police agencies (excluding Halton Police Service) participated in Project Scopa in 2005 and 2006.

From my experience, I am aware that an “intelligence probe” is not a criminal investigation, it is merely the gathering of information, which is filed and analysed, resulting in a determination as to whether criminality has been detected which may or may not warrant a criminal investigation. An “association chart” is nothing more than the displaying of individuals who are known to have had contact with one another. The contact could be for reasons that range from personal, professional, and legitimate reasons, to being part of, or to further the objectives of a criminal organization. Sergeant Coveyduck testified that intelligence probes are often used to identify the constant changing structure and dynamics of traditional organized crime groups.

Sergeant Coveyduck testified that he has personally reviewed Third-Party Rule reports associated to the Project Scopa Intelligence Probe related to this proceeding. He considered the information confidential and determined that the Third-Party Rule privilege still applies. The file contains information that if it were to become public, might put certain people, and/or their families, in danger.

Sergeant Coveyduck testified that none of the Project Scopa records were disseminated because of the Third-Party Rule designation applied. Sergeant Coveyduck testified that Constable Manning was not an active police officer at the time of the alleged misconduct, and therefore, had no authority to possess Third-Party Rule documents.

Sergeant Coveyduck confirmed that Constable Manning was an undercover officer assigned to the Project Scopa Intelligence Probe in 2005 and his role concluded in 2006. As such, he would have had access to certain Intelligence information.

Sergeant Coveyduck examined the exhibits specific to this proceeding which are marked Third-Party Rule, in particular, the documents Constable Manning posted on Twitter as noted in counts one, two, and three. He confirmed that Constable Manning was not permitted to be in possession of the restricted documents following 2006 when the investigation concluded, and he did not receive permission to disseminate any Third-Party Rule documents. Sergeant Coveyduck noted that it would not matter how or when Constable Manning came into possession of the Third-Party documents, he was never permitted to share them with anyone.

[Redacted text block]

Testimony of Salvatore Merulla

Mr. Merulla has been an elected city counsellor in East Hamilton since 2000. He has been married since 1989 and has two daughters. They all reside in Hamilton. Mr. Merulla identified his handwriting in the copy of his complaint found at tab 1 of Exhibit #13.

Mr. Merulla testified that he first met Constable Manning in July 2005 when Constable Manning rented an apartment from him. Mr. Merulla was his landlord for a short time as he only owned the building for a few months later.

Mr. Merulla explained that he and his father met Constable Manning one day at a café. Constable Manning indicated that he had immigrated from England. Mr. Merulla was approached by Constable Manning on another occasion seeking employment, so he sent him to Hess Village to apply for work at one of the bars in that area.

A while afterwards, Mr. Merulla stated that an acquaintance of his who is involved in organized crime, informed him that Constable Manning was asking questions about Mr. Merulla's business. Mr. Merulla testified that he became aware that Constable Manning was posting tweets about him referring to him as "monster mobster Merulla." He stated that the number of Constable Manning's followers was increasing, and it was affecting his quality of life and that of his family members.

Mr. Merulla testified that he has never been a member of organized crime despite the insinuations contained in Constable Manning's repeated tweets. He stated that his family was "massively effected" when Constable Manning posted pictures of homes that he lived in, and that his daughter lived in that belonged to him.

Statement of Constable Manning

This hearing commenced on October 4, 2021, at 10 a.m. I received an email from Constable Manning at 9:48 a.m. that date but I did not become aware of it until the Tribunal was notified of its existence by Ms. Clairmont at approximately 11:15 a.m.; Ms. Clairmont had received the same email. By that time, I had already ruled that the hearing would proceed in absentia, had read the allegations into the record and was about to commence with the evidence. I adjourned the hearing to review the email and forwarded it to Counsel for their consideration.

Counsel agreed with my position that Constable Manning's letter did not impact my decision to proceed with the matter in absentia. In emails dated September 20, 2021, Constable Manning indicated that he would be making a statement in the future; I

presume this correspondence is what he was referring to. I have included Constable Manning's correspondence, verbatim, as follows:

Today, a two day police service hearing will take place into my alleged misconduct.

The 'Judge' is employed by the police service at a taxpayer cost of \$5,000 daily. The 'prosecution team' also employed by the police service are a legal firm from Ottawa, and I can't imagine what they are costing the Hamilton taxpayer. And the complaint itself is from a sitting Hamilton councillor [sic] who recently appointed his friend to the board that supervises the Chief of that same Police Service.

A heavily conflicted group and a stacked deck to say the least. In fact, enough reason for me to refuse to become involved in this charade. If I did partake, I would never be allowed notes I've made of events as Hamilton Police have already claimed the same lost or purged and can all but guarantee the 'prosecution' would not disclose exculpatory evidence.

A finding of guilt paid for and assured.

I've also been advised by medical professionals not to entertain any further involvement with Hamilton Police, and they have twice wrote [sic] to Hamilton Police stating their continued contact makes a mental health condition, which they created through negligence, criminality and bullying, that much worse.

On Thursday, Hamilton Police released a media statement stating certain portions of this 'public hearing' would not be heard publicly. I think we can agree the lack of transparency worrying. If I have done wrong not only should you all be told about it, but you should also be shown the evidence leading to that decision.

In 2005 I was directed to infiltrate Traditional Organized Crime syndicates in the Hamilton region of Ontario, named Project Scopa. I did exactly as I was asked.

Project Scopa would quickly garnered [sic] the attention of the senior management team (SMT) as it became clear city council officials and police officers were closely tied to the same organization. I expected encouragement, but more importantly funding and a professional cover team.

SMT's involvement came not in the form of support, but of trying to shut down a successful infiltration. It has become clear over the past sixteen years that SMT were fully aware of the criminality of City employees/ elected officials/ police officers and actively choose to hide malfeasance and misfeasance rather than tackle them head on.

Indeed, it is now widely believed that I was sold out by serving police officer to be murdered whilst undercover. A serious allegation that was never investigated by Hamilton Police, nor to my knowledge any other law enforcement agency.

One target of Project Scopa, the complainant in this hearing, was firmly entrenched in business with individuals who were members of organized crime groups who predominantly prey on hard working members of society. In fact, some of the complainants [sic] own constituents had fallen victim to this organized crime groups [sic] protection rackets amongst other things.

I believe it is not only in the public interest to release information of corruption, but to actively pursue offenders in the courts no matter their standing in society. Hamilton Police SMT think differently, and time and time again have hidden crimes committed by public officials and police officers.

I fully admit I released two target photographs on Twitter via my handle @mobinfiltrator. One was handed to me by the Ontario Provincial Police, the second by an officer from the Royal Canadian Mounted Police when I worked at the Combined Force Special Enforcement Unit.

Neither documents [sic] belonged to Hamilton Police Service at anytime therefore contrary to Hamilton Police assertions I have breached no trust by releasing them.

I have never “harassed” the complainant. From recollection I emailed once in 2015 to ask him about his involvement with two corrupt Hamilton cops and his alleged ownership of illegal massage parlors in the City of Hamilton. I received a cease and desist from his lawyer and never contacted him again.

Almost 17 years ago when I stood in front of a Canadian Federal Court Judge, already with 13 years policing experience, I swore an Oath to uphold the Constitution of Canada and keep the peace. I did not swear an oath to Hamilton Police SMT’s self serving rules to protect themselves, their friends and their political allies.

If whistleblowing on the continuous cover-up of corruption and criminality of our elected official and police officers is misconduct then I am certainly guilty of the same, but will continue to make those disclosure until I am no longer mentally or physically able.

No one has said I am lying about my disclosures. The alleged 'misconduct' is that I disclosed documents belonging to Hamilton Police, which is untrue. Therefore, deduction would suggest those disclosure are true and those making accusations against me are guilty of criminal obstruction of justice in the fact they hid the very wrongdoing I'm accused of disclosing.

The complaint itself is libel along with other comments made by the complainant about me on Twitter. I have filed a defamation lawsuit for the lies contained in this complaint and last week a small claims Judge endorsed the same to trial.

I asked Frank Serpico, an NYPD whistleblower what he thought and he wrote me, "It is a great disservice to society, our system of justice and the police image when our police system does not honor the officers who expose corruption, but make them the target instead. Unless this attitude changes, police corruption is here to stay."

I guess police corruption is here to stay.

Peace.

Paul Manning.

Prosecution Submissions

Mr. Migicovsky submitted Constable Manning disregarded his duty of confidentiality, it was his obligation to protect police information. Furthermore, Constable Manning disregarded his duty to maintain public and officer safety. He breached Hamilton Police Service Policy and used Twitter to harass a member of the public and to disparage his employer. The evidence stands uncontested; Constable Manning chose not to challenge the evidence or to adduce any of his own evidence.

Mr. Migicovsky provided an overview of the law: the standard of proof in the context of this *Police Services Act* hearing; credibility assessment pertaining to *viva voce* evidence; and the test for discreditable conduct.

Mr. Migicovsky submitted the standard of proof is that of clear of convincing evidence. He stated that in this matter, the evidence is undisputed, it is direct documentary evidence of conduct, which is weighty, cogent, and reliable. The evidence meets the threshold of clear and convincing.

The matter of *Faryna v. Chorney* (1952), 2 D.L.R. 354 (B.C.C.A.) can be found at tab 4 of Exhibit #21, wherein the Court set out the procedure to be followed when conducting credibility assessments of witnesses. Mr. Migicovsky submitted the cases of *Buckle and Ontario Provincial Police*, May 11, 2005 (OCCPS), *Krug and Ottawa Police Service*, January 21, 2003 (OCCPS), and *O'Reilly and Ottawa Police Service*, December 4, 2014 (OCPC) as examples that support the O'Halloran credibility assessment test found in *Faryna v. Chorney*.

Mr. Migicovsky submitted that each of the witness' testimony was consistent, sensible, and reasonable; the evidence was credible and should be accepted by the tribunal. The witnesses were called to verify and provide context to unchallenged documentary evidence. Mr. Migicovsky submitted it is clear that the Twitter account of @mobinfiltrator responsible for the posts that relate to each count of misconduct was operated by Constable Manning.

Mr. Migicovsky submitted that the Hamilton Police Service Internet Policy is relevant to each count of misconduct but more so for counts four through eight. Counts one, two and three would be considered discreditable conduct even if the Internet Policy was not in place. Counts one through three are in a different category and ought to be considered more serious in nature because of the Third-Party Rule component. Mr. Migicovsky submitted that in respect to each count of misconduct, the behaviour tarnished the reputation of the Hamilton Police Service.

Mr. Migicovsky submitted that the test for discreditable conduct is well settled; behaviour which would diminish the reputation of the Hamilton Police Service in the eyes of the community if all the facts were known. It is not necessary to establish that the reputation has been damaged, just that the behaviour had potential to damage the reputation of the police service if the conduct in question were to become known to the dispassionate member of the public, fully aware of all of the circumstances.

At tab 13 of Exhibit #21 is the matter of *Mulligan (No.2) v. Ontario Provincial Police*, 2018 ONCPC 5. In that case, the officer wrote a letter to a newspaper, which was published. A hearing was subsequently held regarding discreditable conduct allegations. The Commission confirmed that the discreditable conduct test is an objective one, it is not the perspective of an experienced police officer that is relevant, I must consider the perspective of a member of the public who is reasonably informed about all the facts and circumstances. Mr. Migicovsky submitted, as noted in *Kobayashi and Waterloo Regional Police Service*, 2015 ONCPC 12, I must consider whether that member of the public would find the acts in question were likely to discredit the reputation of the police service.

Mr. Migicovsky submitted that an officer cannot be found guilty of misconduct while off-duty if the off-duty misconduct is not connected to the officer's occupational requirements or to the reputation of the police service. He submitted that police officers are respected members of community holding powers not available to others. Mr. Migicovsky submitted the reputation of a police service can be negatively affected by behaviour which occurs while on-duty and while off-duty. An employer's interest in an employee's off-duty conduct must be rationally connected to the employee relationship.

Migicovsky submitted the matter of *Tapp v. Ontario Provincial Police*, 2018 ONCPC 16 found at tab 15 of Exhibit # 21 wherein the Commission confirmed that conduct amounting to insubordination is not restricted to conduct occurring only during working hours. Mr. Migicovsky submitted the same logic applies to Constable Manning breaching Policy and committing discreditable conduct while off duty.

Mr. Migicovsky submitted that in the matters of *Tapp*, and *Clark v. Ontario Provincial Police*, 1995 CanLII 15419 (ON CPC), the respective officers made inappropriate and offensive comments in person, in public settings. In this instance, Constable Manning did not make comments in person, but they amount to discreditable conduct because of their content and due to the public nature of his Twitter postings.

Mr. Migicovsky submitted that when I consider the test for discreditable conduct, I must consider the rules that were in place, specifically, Internet Policy that all members were to abide by. At tab 6 of Exhibit #21 is the matter of *Harwood and the Ontario Provincial Police*, 1996 CanLII 17300 (ON CPC) where the Commission considered existing Policy. They noted:

Constable Harwood has had a significant amount of effort and expense invested in him by the provision of firearms training and handling. There are very clear procedures and policies established by the service in the subject of firearms security. His action constitutes a careless disregard for his training and a very serious breach of these policies and procedures.

In this case, Hamilton Police Service Policy was in place to provide guidance to the membership regarding their personal use of the internet. Mr. Migicovsky submitted Constable Manning breached that Policy.

Mr. Migicovsky submitted that similar to the *Mulligan* matter, Constable Manning released confidential information to the public. Constable Manning was not charged with breach of confidence, but it is an underlying fact in counts one, two and three. He likened this matter to the that of *Clough and Peel Regional Police Service*, 2014 ONCPC 12 found at tab 3 of Exhibit #21. In *Clough*, the Commission confirmed a guilty finding as it related to the

officer disclosing the location of traffic collisions to a tow truck operator. The disclosures were in contravention of the officer's Oath of Secrecy as a police officer and contrary to internal directives.

Mr. Migicovsky stated that police officers are permitted to become engaged in certain political activities as outlined in Regulation 268/10, section 12 (1) of the *Police Services Act*. The public tweets by Constable Manning in this case are outside of what is permitted; his behaviour is not protected from discreditable conduct. Mr. Migicovsky submitted that Constable Manning's comments are not political expressions which could be considered being in compliance with that section. Mr. Migicovsky submitted Constable Manning repeatedly identified himself as a police officer, specifically a former undercover officer with the Hamilton Police Service, in fact, his public Twitter profiles indicates he is a police officer. Constable Manning purported that the information he posted, was obtained as a result of his position as a police officer. Furthermore, his posts are an attack of Mr. Merulla's character, they are not political views.

Mr. Migicovsky submitted that freedom of expression exists in Canada, but case law is clear; it is not unrestricted, in particular for employees of public institutions who have a duty of loyalty to their employer. There is a requirement for those employees to not publicly criticize their employer, members of the public service must be perceived as being impartial and effective.

Mr. Migicovsky submitted that Constable Manning has not advanced a whistleblower defence, nonetheless, the whistleblower defence does not apply to these circumstances because an employee must first strive to address the issue internally and must ensure the accuracy of the information. There is no evidence to suggest that Constable Manning made any effort to address his concerns internally.

Mr. Migicovsky submitted that there is no doubt that the tweets in question were tweeted by Constable Manning; he had control of the @mobinfiltrator handle. In so doing, Constable Manning breached internal Policy. Constable Manning is aware of his Oath of Office because he posted it. Mr. Migicovsky submitted that the tweets in question damaged the reputation of the Hamilton Police Service.

Mr. Migicovsky submitted Constable Manning presented Mr. Merulla to the public, as being a target in an intelligence operation; he did not have the requisite permission to disseminate the documents he did.

Public Complainant Submissions

Mr. Burns made no submissions other than to note that he supported the submissions made by Mr. Migicovsky.

Analysis

Exhibit #21 is the prosecution's Book of Authorities. At tab 8 is the matter of *Jacobs v. Ottawa Police Service*, 2016 ONCA 345 wherein the Court held that:

...the standard of proof in *Police Services Act* hearings is a higher standard of clear and convincing evidence and not a balance of probabilities.

The Commission more recently addressed the standard of proof to be applied in *Police Services Act* hearings in the matter of *Johnson v. Durham Regional Police*, 2020 ONCPC 3, found at tab 9 of Exhibit #21. The Commission stated:

We do not accept the appellant's submission that the Hearing Officer applied the wrong standard of proof. At page 24 of his decision the Hearing Officer wrote: "The standard of proof for this Tribunal is clear and convincing evidence meaning there is weighty, cogent, reliable evidence upon which the trier of fact, acting with care and caution can come to a reasonable conclusion that the officer is guilty of misconduct."

I am bound by the standard of proof as outlined in those cases; it is less than the threshold in criminal proceedings of convinced beyond a reasonable doubt, and greater than a balance of probabilities. To make a finding of guilty, the evidence must be clear and convincing, it must be weighty, cogent, and reliable, which causes me to conclude that Constable Manning is guilty of discreditable conduct.

Constable Manning faces eight counts of discreditable conduct. In each instance, the Notice of Hearing relies on section 2(1)(a)(xi) of the Code of Conduct. It alleges that Constable Manning did act in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the Hamilton Police Service. Not only must the evidence be clear and convincing, but to make a finding of guilty, I must consider whether the reputation of the Hamilton Police Service could reasonably be discredited if that evidence was known to the public.

The test is an objective one. I must measure Constable Manning's conduct by the reasonable expectations of the community. In doing so, I must use my own judgement to determine what the reasonable expectations of the community are. I must place myself in the position of the reasonable person in the community, dispassionate and fully

apprised of the circumstances of this case. It is not necessary to establish actual discredit to the reputation of the Hamilton Police Service has occurred, it is sufficient to consider the potential damage to the reputation and image of the Service should the alleged misconduct become public knowledge.

Each of the eight counts of misconduct are alleged to have occurred while Constable Manning was off duty. Sergeant Licop testified that Constable Manning was suspended from duty in March 2015 and was still under suspension at the time of the alleged misconduct. I accept that evidence, it is uncontested, and in his correspondence to me in advance of the hearing, Constable Manning alluded to the fact he was not currently working for medical reasons. Therefore, I must consider whether Constable Manning can be held accountable for behaviour which occurred while off-duty.

At tab 19 of Exhibit #21 is the matter of *Vanovermeire v. Edmonton (City) Police Commission*, 1993 CanLII 7059 (Alta. Q.B.), the Court stated:

Whether we like it or not, many public servants and officials, because of their offices and positions are, in effect, “on duty” 24 hours a day, 7 days a week. I believe police officers are in this category. So are judges. It would be inconceivable to me that the Canadian Judicial Council, which has a statutory duty to review complaints made against Federal judges, would not have the jurisdiction to investigate a complaint that a judge was behaving in unacceptable fashion just because the incident happened after court sitting hours and in another province than that in which the judge normally sits. Surely the question of whether that judge’s conduct has brought disrepute to the justice system had nothing to do with where it took place and whether it was within normal working hours. There is no merit to this argument...

The Notice of Hearing alleges Constable Manning committed eight counts of misconduct, contrary to 80(1) of the *Police Services Act*. Section 80(2) of the *Police Services Act* states:

A police officer shall not be found guilty of misconduct under subsection (1) if there is no connection between the conduct and either the occupational requirements for a police officer or the reputation of the police force.

In *Tapp*, the Commission stated:

In our view, the appellant cannot be insulated from a charge of insubordination because his [sic] the incident occurred off-duty.

Despite the disparity in charges between *Tapp* and this matter, I accept that Constable Manning can be found guilty of discreditable conduct for his off-duty behaviour if a nexus

exists between that off-duty conduct and either his occupational requirements, or to the reputation of the Hamilton Police Service.

At tab 12 of Exhibit #21 is the matter of *Lingl and Calgary Police* (1993), 1 P.L.R. 345 (Alberta Law Enforcement Review Board) which addressed this issue by stating:

In regard to this issue the Board is persuaded that some guidelines should be provided concerning where a nexus or rational connection is likely to occur in the context of off-duty conduct. The following list, though not exhaustive, is intended to identify key areas of connection and concern:

- (1) Where the conduct of the officer harms the reputation of the Police Service.
- (2) Where the officer's behaviour renders him or her unable to perform his or her duties in a satisfactory manner.
- (3) Where the officer's behaviour leads to refusal, reluctance, or inability of other officers or employees to work with the officer.
- (4) Where the officer has contravened the law in a manner that renders his or her conduct injurious to the reputation of the service and its members.
- (5) Where the officer's conduct places difficulty in the way of the service to properly carry out its functions and effectively manage its work or effectively direct its work force.

Mr. Migicovsky's submissions focused on the damage to the reputation of the Hamilton Police Service as opposed to Constable Manning's occupational requirements. Consequently, I will focus on whether Constable Manning's off-duty behaviour affected the reputation of his employer.

Four witnesses testified at this hearing, all on behalf of the prosecution. Their evidence was unchallenged, but that does not require me to accept uncontested evidence as being credible and reliable; their testimony must still be scrutinized for its truthfulness.

In the *O'Reilly* matter, the Commission stated:

The Hearing Officer's decision turned on his credibility findings...As set out in *Pitts*, supra, the Hearing Officer should have considered the following factors and given appropriate reasons:

- a) The appearance and demeanor of the witness;
- b) The extent of the witness' opportunity to observe the matter or matters about which he testified;
- c) Has the witness any interest in the outcome of the case?
- d) Does the witness exhibit any partisanship or any leanings toward the side that called him?
- e) Did his evidence make sense?

- f) Was the evidence of the witness contradicted by the evidence of another witness whom the adjudicator considers more worthy?
- g) Was a previous statement given that is inconsistent with his evidence at the hearing?

Mr. Merulla is the public complainant and is engaged in other civil proceedings involving Constable Manning. As a result, he has a vested interest in the outcome of this case. He was clearly engaged as a witness and relished the opportunity to be heard. However, his testimony was concise and where it related to the tweets in question, it was corroborated by documentary evidence. I find that his testimony in this area was credible and reliable.

I accept that Mr. Merulla was at the time, and at the time of his testimony, upset about the number of, and the context of the tweets in question. He stated that his reputation was adversely affected, and he and his family were very stressed as a result. He explained that the tweets affected their quality of life, especially when photographs of their residences were publicly posted. He stated that as a long serving politician, he expected negative attention occasionally, but these particular tweets went beyond what he deemed to be acceptable.

Sergeant Ben Licop, Staff Sergeant David McKenzie, and Sergeant Shane Coveyduck, all members of the Hamilton Police Service, testified about the internal investigation including the sensitivity of the information contained within the posted documents. Each of the witnesses exhibited professional demeanor, they reflected on the questions posed before answering and kept their answers restricted to the information that they were personally aware of, without conjecture.

None of the three police witnesses had a personal or even a professional relationship with Constable Manning. There was no evidence that hostility existed between them, and I see no reason that they would have interest in the outcome of this case. None of the testimony provided by these witnesses was contradicted by other evidence. Their evidence was sensible, logical, and proficient. Much of their testimony was supported by documentary evidence. I accept the testimony of Sergeant Licop, Staff Sergeant McKenzie, and Sergeant Coveyduck as credible and reliable.

The eight counts of misconduct as documented in the Notice of Hearing allege that Constable Manning used the name @mobinfiltrator for the Twitter social network platform. I accept that Constable Manning is the account holder of this Twitter account. Staff Sergeant McKenzie explained to the tribunal the reasons that convinced him Paul Manning was the person responsible for the Twitter handle @mobinfiltrator.

The @mobinfiltrator Twitter account has been in use since 2009 and had posted items more than 42,000 times as of October 4, 2021. Constable Manning's name and photograph are attached to the account.

As noted by Staff Sergeant McKenzie, on many of Constable Manning's social media platforms, he included personal information such as videos and pictures of himself and his family. He posted information that was unique to his personal experiences such as his education and work backgrounds. This included an historical photograph of Constable Manning, photographs of the apartment he once rented from Mr. Merulla and an audio recorded conversation between Constable Manning and officer Staats. This is not an exhaustive list of personal information attached and/or linked to @mobinfiltrator, but these examples underscore the rationale for concluding Constable Manning was the user of @mobinfiltrator; no one else would have access to the type of data found on this and his other social media platforms.

Had the account been set up and used by someone other than Constable Manning the person responsible would have had access to all his pertinent personal information including the OIPRD report which was photographed and posted under the @mobinfiltrator Twitter account. That report was delivered to Constable Manning directly. Lastly, I would expect any person whose personal and private information was being publicly posted by someone purporting to be them, would report it to Twitter to eradicate posts accountable to them that they were not responsible for.

In addition to Staff Sergeant McKenzie's testimony, in his correspondence to me dated October 4, 2021, Constable Manning stated:

I fully admit I released two target photographs on Twitter via my handle @mobinfiltrator. One was handed to me by the Ontario Provincial Police, the second by an officer from the Royal Canadian Mounted Police when I worked at the Combined Force Special Enforcement Unit.

Based on the totality of the evidence, including Constable Manning's admission, I accept the evidence of Staff Sergeant McKenzie; I am convinced that Constable Manning is the account holder of the Twitter handle @mobinfiltrator. I am also satisfied that each of the tweets in question, were posted by the Twitter handle @mobinfiltrator. The very nature of Twitter indicates that the information posted by Constable Manning using the Twitter handle @mobinfiltrator are disseminated to the public. At the time of the tweets, mobinfiltrator had approximately 4,100 followers. At minimum then, his posts reached 4,100 people, but those individuals could have easily retweeted the posts to their respective followers which would amplify the dissemination directory.

The issue then becomes whether the tweets posted by Constable Manning meet the definition of discreditable conduct.

Hamilton Police Service Policy and Procedure 2.14 can be found at tab 2 of Exhibit #13. Part D of the Internet Use Policy, in part, states:

Reference to the 'Internet' in the following section includes a Member's use of non-HPS Internet resources (i.e. personal home network connection).

Members shall not post any materials, information or photographs to the Internet/Social Networking Site that discredits the reputation of the Hamilton Police Service, or is contrary to the Service's Values and Ethics, Code of Conduct, or Policies and Procedures.

Members shall be aware of the potential risk of jeopardizing their own or other Members' personally confidentiality and safety by posting photographs and personal details about themselves or their friends on the Internet.

The Hamilton Police Service crest and shoulder flash are registered under the *Trade Marks Act* and shall not be displayed, copied or reproduced in any manner, or posted on the Internet without prior written permission of the Chief of Police...

Although "Hamilton Police Service" is not registered as a trademark, there are legal provisions for the protection of materials used exclusively by one entity. The name "Hamilton Police Service" shall not be used without prior written permission of the Chief of Police...

Members posting any information to the Internet/Social Networking Site, including identifying other Members, shall consider the assignment(s) of other Members before doing so. No Member shall jeopardize the safety and security of another Member through postings on the Internet/Social Networking Site.

The terms "Internet: and "Social Networking Site" are defined accordingly in Policy as follows:

The Internet is a world-wide collection of networks which is linked through a common communications protocol. Use of the Internet specifically included access to the World Wide Web.

For the Purpose of this Policy, [Social Networking Site] means a website focused on the building and verifying of social networks (e.g. Face Book, My Space, etc.) with the ability to create groups that share common interests or affiliations, upload

files including pictures, music, or videos, hold discussions in forums and/or host Weblogs (blogs) (def.) for members of the site and includes Internet dating services.

I accept the evidence of Sergeant Licop relating to the Hamilton Police Service's expectation that all members are expected to be aware of Policy. This particular Policy is not extraordinary or complex, it is reasonable and straightforward. I fully expect that all members of the Hamilton Police Service would be aware of Internet Policy, and if for some reason they were, not, the Policy merely reflects common sense. All members of a police service know they cannot behave in a manner that tarnishes the reputation of their employer.

It is insufficient for me to conclude that the tweets in issue, contravene this Internet Policy, also, I must find that they violate the reasonable expectations of the community; that a reasonable member of the public, dispassionate and fully apprised of the circumstances would find that they, are likely to cause damage to the reputation and image of the Hamilton Police Service if they were known to the public.

I was the hearing officer in the matter of *Tapp* where the Commission upheld the finding of guilty. In my decision, I stated:

A reasonable person expects police officers to conduct themselves in a professional manner at all times... I do not find however that the reasonable person would be comfortable with the behaviour PC Tapp demonstrated in the waiting area. The words he uttered along with the tone he used and the physical action of holding out his palm to Sgt. Martin to "shush" him is not consistent with the professional comportment the public expects from members of any police service. Beyond simply a lack of professional conduct, I am convinced a reasonable person would find the accusation PC Tapp levelled at the OPP would discredit its reputation.

Similarly, I find that each of the tweets posted by Constable Manning in this matter, violate the reasonable expectations of the community. I expect that a reasonable member of the public, dispassionate and fully apprised of the circumstances of this case would find that the comments, and the documents posted by Constable Manning would cause damage to the reputation and image of the Hamilton Police Service. I will examine the evidence as it relates to each of the counts of misconduct.

The tweet found at tab a of Exhibit #13 relates to count #1. In response to a tweet from a concerned constituent, Constable Manning posted a photograph of Mr. Merulla alongside photographs of Angelo and Pasquale Musitano. All three individuals were identified by

name. To the untrained eye of the public, the document appears official, it looks like it could be an authentic police file. I would expect the public to assume it is a genuine police record based on its appearance, and because Constable Manning, a former undercover police officer presented it as such.

I am well versed in this area having worked in various capacities in the Ontario Provincial Police's Organized Crime Enforcement Bureau and as such, I am familiar with Intelligence Probes and analytical records. The document is noted as page 3 of 10, marked "Third-Party Rule," and titled, "Organized Crime Section – Illegal Gambling Project Scopa." Each of the three photographs which are listed alphabetically, have a number attached to them: Mr. Merulla, #10; Angelo Musitano, #11; and, Pasquale Musitano, #12. The page set up is consistent with what an authentic police report might look like.

Constable Manning posted the following comment attached to the document:

Emily, you're asking target 10 in #projectScopa to do better?

I accept the testimony of Sergeant Licop as it relates to identifying Angelo and Pasquale Musitano as being well known members of traditional organized crime. I am not a resident of Hamilton, and yet I have seen countless newspaper and television reports over the years linking them, or, identifying them, as members of organized crime. I have little doubt that many, if not most members of the Hamilton community are familiar with the surname Musitano being linked to organized crime.

Whether there is truth to the accusation that Mr. Merulla is associated to traditional organized crime is not relevant to my analysis. The issue is whether posting this information breached internal policy and whether it tarnished the reputation of his employer.

I agree with the testimony of Sergeant Licop; the inference to be drawn from Constable Manning's tweet is that he was characterizing Mr. Merulla as a criminal. The tweet suggests Mr. Merulla has ties to known criminals and that he was a target in a project, specifically, target #10 in Project Scopa.

Internet Policy prohibits the posting of information that discredits the reputation of the Hamilton Police Service. I find that a reasonable member of the public, dispassionate and fully apprised of the circumstances would find that this tweet would likely cause damage to the reputation and image of the Hamilton Police Service if the public was aware of it. A member of the Hamilton Police Service, who is identified as such on social media including Twitter, broadcast the existence of a police intelligence project, and identified three people, suggesting they were targeted in that probe.

The evidence is that Project Scopa was an Intelligence Probe, not a criminal investigation, but the public would not have been aware of that. Based on this, and the totality of Constable Manning's tweets, the inference is that Project Scopa was a criminal investigation with certain people targeted. I fully expect that the public would find it surprising that a member of the Hamilton Police Service, who indicated on social media that he was an undercover officer, would publicly post information that is clearly confidential. I find this tweet breached internal Policy 2.14 and tarnished the reputation of the Hamilton Police Service.

The tweet found at tab b of Exhibit #13 relates to count #2. The document attached to the post is the same as in Count #1 as noted above. Consequently, my analysis in Count #1 applies equally to Count #2. Earlier, on the same date of the post, Pasquale Musitano was shot. His brother Angelo had been shot and killed approximately two years prior. Attached to the document, Constable Manning posted:

So, who's left in that list?

I agree with Sergeant Licop's perspective; this tweet insinuates Mr. Merulla was likely to be the victim of violence because people he was associated to had been shot.

Clearly, a tweet of this nature by a police officer would damage the reputation of his employer. The tweet implies Mr. Merulla is associated to members of organized crime who were targeted and shot. It also implies Mr. Merulla is the next likely domino to fall, that he will be the victim of violence in the future. That behaviour is unacceptable and unprofessional at best. I find that a member of the public, fully appraised of the circumstances of this case would agree that this behaviour would damage the reputation of the Hamilton Police Service. I find that the tweet breached internal policy.

Count #3 relates to items found at tabs c, d, and e of Exhibit #13. Constable Manning sent a tweet to a journalist with Global News, which included an association chart. This particular association chart included a picture of Sam Merulla, with his name typed below. Connectivity lines are drawn from Mr. Merulla to the pictures of other named individuals. Much like the previous document discussed, to the untrained eye of the public, the document appears official, it looks like it could be an authentic police file. I would expect the public to assume it is genuine based on its appearance and because a former undercover police officer presented it as such.

I am familiar with association charts used in Intelligence probes. This document is consistent with what an analytical record report might look like. An association chart is used by police to illustrate how people might be associated to one another. These associations could be legitimate and lawful, or they could be to facilitate organized crime.

In this instance, Constable Manning's tweet insinuated the latter when, attached to the association chart, he posted:

Diana, ask #sammerulla about the "rotten smell" coming from leaked Halton/Hamilton Police intelligence reports about his alleged involvement with numerous organized criminals? Nobody has yet for some reason.

The tweet states there are leaked police intelligence reports which allege Mr. Merulla is involved with members of organized crime. As noted, associated charts may show links between people for legitimate and lawful reasons. Constable Manning's tweet took advantage of the public's ignorance with association charts to blatantly assert Mr. Merulla was involved with organized criminals. In so doing, it meets the definition of discreditable conduct. A police officer alleging to the media and to the public that a city councillor is involved in organized crime is unprofessional behaviour which can easily be expected to damage the reputation of the Hamilton Police Service. The public expects police officers to demonstrate professionalism at all times; this behaviour is inconsistent with that standard of behaviour.

At tab d, is another tweet posted by Constable Manning. It contains the same document found at tab c and discussed above but photographed from a different angle so that the pictures of additional individuals can be seen. The insinuation from the post is that Mr. Merulla is tied to criminal elements in the City of Hamilton when his post asked:

Is anyone interested in discussing this now...

Because it is the same document, the same analysis conducted above applies equally to this count of misconduct.

At tab e, is a tweet in response to another individual with the given name of Myke, stating:
Salvatore, Myke? Oh...you mean this guy?

Attached to the tweet is a photograph of three individuals, with their names, Mr. Merulla, Angelo Musitano and Pat Musitano. They appear once again under the heading: "Organized Crime Section – Illegal Gambling Project Scopa." Sergeant Licop stated the insinuation being that Mr. Merulla is associated to known organized crime figures. Again, the same analysis applies; a former undercover officer, presenting himself as such to the public, tweeting information of this nature is in contravention of the Internet Policy. These tweets are likely to cause damage to the reputation of the Hamilton Police Service as viewed by the dispassionate member of the public fully apprised of all pertinent information. The public expects to hear from a media relations officer or a high-ranking police officer to educate them on newsworthy and important issues. The public does not

expect a serving police officer, who was once working undercover on a project, to publicly discuss his personal opinion about people he encountered during that assignment. It is more than unprofessional; it is behaviour which could potentially put the safety of Mr. Merulla at risk. The tweets are very personal, accusatory, and harassing in nature. I find it to be unacceptable conduct.

Counts one, two and three all involve the release of Third-Party Rule documents. I agree with the position taken by Mr. Migicovsky, that for this reason, these three counts of discreditable conduct are more serious in nature than the remaining counts of misconduct. Constable Manning was not charged with breach of confidence, but he did in fact divulge information that he was duty bound to protect.

I accept the testimony of Sergeant Coveyduck. I am convinced that the documents posted in these three counts of misconduct contained some authentic information that had been marked privileged, Third-Party Rule. Constable Manning was not permitted to possess this restricted information at the time that the documents were tweeted and was never permitted to disseminate the information. I am not impacted by how he came into possession of the material. As I have noted, an associate chart links people for reasons that could be lawful and legitimate, or it could be to facilitate the mechanisms of a criminal organization. The insinuation of Constable Manning's posts insinuates the latter. This is serious misconduct.

Third-Party Rule documents receive the highest restriction level. I am convinced that all police officers are aware that they are not permitted to disseminate restricted documents. Undercover officers in particular would be attentive and vigilant when it comes to protecting sensitive information because their safety could be put at risk if confidential information is released

It is reasonable to conclude that any member of the public would be shocked to know that a former, highly regarded officer who had been assigned to work undercover, was later disseminating restricted information that he purported to have accessed while working on that assignment. Third-Party information is restricted because of the damage it could cause to the public, or to members of a police service, if that confidential information is released. Public dissemination of this confidential material via Twitter by a person who identified himself as a serving member of the Hamilton Police Service is a clear violation of trust, consequently damaging the reputation of the Hamilton Police Service.

The tweet found at tab f of Exhibit #13 relates to Count #4. During a conversation between individuals on Twitter on July 4, 2019, @mobinfiltrator stated:

I find it ironic how a #HamOnt City Councillor can be openly and unfairly critical of the #LGBTQ community, yet still be the biggest cocksucker in the City.
#resignsammerula

Sergeant Licop found the comments to be inappropriate and unprofessional. I agree, Constable Manning's use of language is offensive. For a police officer to make an utterance of this nature about a member of Hamilton City Council on a public social media platform is appalling behaviour. It is indisputable. I am confident that any member of the public would agree and in so doing, Constable Manning tarnished the reputation of his employer.

The tweet found at tab g of Exhibit #13 is in relation to Count #5. Sergeant Licop testified that @mobinfiltrator posted four photographs on July 14, 2019, of residential homes. The houses were identified as being on Graham Ave. s, Ottawa St. s, Sanford Ave. s. and Barnesdale Ave. n, all in the City of Hamilton. The house numbers had been blackened out and they were unable to be viewed as a result. The tweet read:

Identified all #SamMerulla's properties. Now background on his wife to see whats [sic] in her name.

I accept the testimony of Sergeant Licop and Mr. Merulla. All four properties belonged to Mr. Merulla and/or members of his family who resided in some of the houses. The actual house numbers were redacted on the posts but identifying the houses would be reasonably easy by walking or driving in the respective areas. I conclude that Constable Manning blocked the actual address numbers, because he knew boundaries existed that he could not cross. Yet, posting these pictures and the accompanying commentary crossed the line of what can be considered an acceptable tweet, nonetheless.

Mr. Merulla has been involved in politics for a lengthy period of time and as a result, his name is well known in Hamilton. Mr. Merulla testified that during his tenure as councillor, he has come to expect negative attention and feedback from some members of the public. This is outside the realm of what could be considered reasonable pushback from any member of the public, never mind from a police officer. I find it incomprehensible how a police officer could find it acceptable to publicly disseminate pictures of a politician's residence on social media with the assertion that he is conducting further background checks on his family. One of the residences posted was that of Mr. Merulla's and another was the residence of Mr. Merulla's daughter. The public knows Constable Manning is a police officer. Constable Manning indicated he was about to conduct a background check into Mr. Merulla's wife. The insinuation is that the Merullas are profiting from inappropriate or illegal activity.

The tweets found at tab h, and tab i of Exhibit #13 pertain to Count #6. Sergeant Licop testified that on August 28, 2019, the following was posted on the Twitter feed of @mobinfiltrator:

You can all go fuck yourselves! I'll publish the full document later on. This will be a very public investigation.

A photograph of a letter dated August 27, 2019, addressed to Constable Paul Manning accompanied the tweet. The document was titled: "OIPRD Complaint – Proceeding – PCC2019-045, Salvatore (Sam) Merulla and it included portions of the first two paragraphs of the letter. The same letter in full can be found at tab 1 of Exhibit #13. Written on Hamilton Police letterhead, the letter notified Constable Manning that he was named as the subject officer in a complaint filed by Mr. Merulla.

Sergeant Licop testified that on August 28, 2019, @mobinfiltrator also tweeted:

And this is #SamMerulla's complaint, which is simply untrue. I've never claimed Merulla was an organized crime member, but a target in my #undercover operation.

The letter above and Mr. Merulla's handwritten complaint had been delivered to Constable Manning. Attached to this particular tweet in addition to the OIPRD complaint cover letter, was a photograph of a partial page (5) of Mr. Merulla's written complaint.

The internal Internet policy states that the Hamilton Police Service crest shall not be posted on the Internet without prior written permission of the Chief of Police. Mr. Migicovsky submitted that Constable Manning was not authorized to post the letter that contained the Hamilton Police logo. This in and of itself is a breach of Policy. But, even if the crest had not been displayed, the posting of this material was clearly intended to disparage and discredit the Hamilton Police Service. A police officer is obligated to demonstrate loyalty to their employer; this behaviour is the antithesis of what is expected of a police officer. I find this behaviour was also an attempt to delegitimize the complaint system. By posting this material, Constable Manning disparaged the complaint process of holding police officers accountable for their behaviour.

Constable Manning tweeted that Mr. Merulla was a "target" of his undercover operation. The insinuation to the public is that Mr. Merulla was the focus of a criminal investigation. To admit in this tweet that he had "never claimed Merulla was an organized crime member," does not make it permissible to publicly comment about an Intelligence probe that was the genesis of Third-Party Rule documents.

The tweet found at tab j of Exhibit #13 relates to Count #7. Sergeant Licop testified that on August 29, 2019 @mobinfiltrator posted a tweet that read:

And this is the apartment I rented, that Merulla mentions. No obsession. I'd actually forgot all about that simple twat until they were stupid enough to send an #OIPRD complaint to me at my home address.

Sergeant Licop noted that the tweet included a link to Constable Manning's Instagram account which in turn included six pictures of the interior of a residence.

I find the calling of a city counsellor a "simple twat" and referring to his employer as "stupid," to be offensive. The comments, in conjunction with the photographs attached, is an obvious attempt to discredit Mr. Merulla, the OIPRD, his employer and to delegitimize the complaint system. The public expects better from its officers. Constable Manning posted pictures on Instagram, linked to his Twitter feed. He alleged the pictures were of an apartment that he rented from Mr. Merulla while working as an undercover officer.

The tweet found at tab k of Exhibit #13 relates to Count #8. Sergeant Licop testified that on September 9, 2019, @mobinfiltrator tweeted:

And here we go...#Merulla should've let this one lie I'd literally forgotten all about him #HamOnt. I will not be attending unless of course we do it at location of my choosing...maybe [REDACTED] In Burlington?

Attached to the tweet is a photograph of the Order to Attend letter delivered to Constable Manning and signed by Sergeant Licop. A copy of the original letter can be found at tab 4 of Exhibit #13. Sergeant Licop testified that at the time of the tweet, he resided on [REDACTED] He was unsure if Constable Manning tweeting out the name of his residential street was meant to be an attempt at humour, or if it was meant to be an intimidating gesture.

I find the post was an attempt to delegitimize the complaint process, he announced to the public that he would not comply with the order to participate in an interview in response to the complaint. Furthermore, the Tweet is meant to intimidate the investigating officer by making him aware that he knew where he lived and that he was willing to make it public knowledge.

At tab 18 of Exhibit #21 is an excerpt from the *Police Services Act*, Regulation 268/10. Section 12 (1) states:

A municipal police officer who is not on duty and who is not in uniform may engage in the following political activities.

1. Expressing views on any issue not directly related to the police officer's responsibilities as a police officer, as long as the police officer does not,
 - i. Associate his or her position as a police officer with the views, or
 - ii. Represent the views as those of a police force...

The section includes additional approved political activities. I do not find that this section applies to any of the tweets in question. On the social media platform he utilized, Twitter, Constable Manning made it known that he was a police officer with the Hamilton Police Service. He made it known that it was his view that city councillor Mr. Merulla was associated to organized crime and that his employer was in essence, turning a blind eye to it. This does not fall under the purview of acceptable political activities; each of the views he presented was based on his perspective of a police officer directly involved in an investigation into Mr. Merulla.

Constable Manning did not participate in the hearing and therefore did not call any evidence in defence of the allegations. However, in an email to me dated September 20, 2021, Constable Manning insinuated he was merely acting out as a whistleblower. In part, he stated:

If whistleblowing on the continuous cover-up of corruption and criminality of our elected official and police officers is misconduct then I am certainly guilty of the same, but will continue to make those disclosure until I am no longer mentally or physically able...

In *Mulligan*, the Commission stated considered the factors the officer had to establish to successfully invoke the whistleblower defence. They Commission stated:

In the context of a police disciplinary hearing, the decision in *EPS Officer AB v. Chief of Police*, 2013 CanLII 74399 considered *Fraser* and other authorities in setting out the factors that the officer had to establish to successfully invoke the "whistleblower" defence. These factors were:

- That illegal acts by EPS or practices or policies of the EPS jeopardized the life, health or safety of the appellant or others.
- That his actions in coming forward were responsible and were not simply based on a difference of opinion with his superiors, including a difference of opinion as to appropriateness of investigation into the alleged misconduct.
- That he had taken all reasonable steps to have the matter addressed internally before releasing the information outside the EPS.
- That he could prove the issues alleged to justify the breach of duty of confidentiality on a balance of probabilities.

As noted, no evidence was called in support of this assertion, but because Constable Manning alluded to it in an email, I will address it briefly. I cannot see how Hamilton Police Service Policy jeopardized the life, health, or safety of any person. I do not accept that the tweets in question characterized responsible behaviour. There is no justification for breaching his duty of confidentiality and there is no evidence that Constable Manning made any attempt to address his concerns with supervisors in advance of his tweets. I do not accept the whistleblower defence applies to this matter.

The Commission in *Mulligan* stated:

As a police officer, Sgt. Mulligan is held to a high degree of professionalism. Such expectation is outlined in the OPP's Professionalism policy. His letter [to the media] fell far below this expectation, and without doubt served to undermine the public's confidence.

I note that during her submissions related to being in-camera, Ms. Clairmont submitted that Constable Manning had gained a high profile in his community with his public and ongoing dispute with a city counsellor resulting in a strong public interest. I also note that at the time, Constable Manning had in excess of 4,100 people following his Twitter account; this is not an insignificant number of people.

In each of the eight counts of misconduct, I find that Constable Manning's behaviour undermined the public's confidence in the policing profession. Constable Manning's tweets are harassing in nature; it is a significant public concern to see a police officer exhibiting this behaviour in such a public setting.

Conclusion

To make a finding of guilty, the evidence must be so clear, so reliable, and so convincing, as to persuade me the allegations are true and the facts in issue satisfied.

I find the evidence in this matter to be overwhelming. The *viva voce* evidence is supported by documentary evidence which had been posted by Constable Manning on his Twitter account. I find that each of the tweets meet the definition of discreditable conduct. Each tweet breached Hamilton Police Service Policy and Procedure 2.14, specifically, the use of non-Hamilton Police Service Internet resources to post any materials, information or photographs to the Internet/Social Networking Site that discredits the reputation of the Hamilton Police Service.

Furthermore, as the evidence relates to Count #1, Count #2 and Count #3, I find Constable Manning posted material which he knew or ought to have known was restricted

and confidential. He was prohibited from disseminating information which was privileged as per Third-Party Rule.

I am satisfied that Constable Manning's tweets amount to behaviour which would diminish the reputation of the Hamilton Police Service from the perspective of the dispassionate member of the public, fully aware of all of the circumstances. I am confident that the general public would find a police officer behaving in this manner, appalling and likely to discredit the Hamilton Police Service.

Decision

I have carefully considered the evidence; I find the evidence meets the definition of clear and convincing as it pertains to each count of misconduct. I find Constable Manning guilty of each of the eight counts of discreditable conduct.

NOTE:

Prior to releasing this decision, I emailed an unvetted version of this document to Mr. Migicovsky to seek input only pertaining to whether the decision had been properly redacted. He concurred with the redactions I had incorporated. In addition, he asked that Sergeant Licop's address from 2019 be vetted; I agreed and complied with the request.

An unredacted copy of this decision will not be filed electronically. I will print the original unredacted decision and place it in a sealed envelope in the event it is required at some point in the future by the Ontario Civilian Police Commission.



Greg Walton
Superintendent (Ret.)
Ontario Provincial Police

Date electronically delivered: November 11, 2021.