

**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 IAN MILBURN**

**DISCREDITABLE CONDUCT**

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**DISPOSITION**

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

**Counsel for the Prosecution:** Mr. Marco Visentini

**Counsel for the Defence:** Ms. K.C. Wysynski

**Hearing Date:** November 4, 2022

## **Allegation of Misconduct (amended)**

It is alleged that Constable Ian Millburn committed the following act of misconduct contrary to section 80(1)(a) of the *Police Services Act*, R.S.O. 1990 c. P. 15, as amended:

### Discreditable Conduct

Constable Ian Milburn is alleged to have committed discreditable conduct in that, on November 10, 2021, being a sworn member of the Hamilton Police Service, he was found guilty of an indictable criminal offence or a criminal offence punishable upon summary conviction, namely that on or about February 11, 2021, he did unlawfully commit an assault upon S.G.<sup>1</sup> contrary to the provisions of section 266 of the *Criminal Code*, thereby constituting an offence against discipline as prescribed in section 2(1)(a)(ix) of the Code of Conduct, Regulation 268/10, as amended.

## **Agreed Statement of Facts (amended)**

The complainant in this matter, S.G., is a 29-year-old transgender person residing in the city of Hamilton. At the time of this incident, she was 28 years of age, residing in a downstairs apartment unit of a four-plex located in the city Hamilton. She has no criminal record.

Constable Ian Milburn, age 52, is employed by the Hamilton Police Service and has been so employed since January 2002. He had approximately three years of police experience in the United Kingdom before joining the Hamilton Police Service. He has no criminal record.

Constable Peter Zafirides, the second officer on the video [marked as Exhibit #4] involved in this incident, was a new police officer having been employed by the Hamilton Police Service for eight months. On February 11, 2021, he was working his third shift on his own following his training with a coach officer. The incident in question was his first call with Constable Milburn. He has no criminal record.

For a period of time leading up to and including February 11, 2021, S.G. was involved in a landlord/tenant dispute with her superintendent. At some point prior to February 11, 2021, she had been served with an eviction notice.

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<sup>1</sup> Initials utilized to anonymize this involved individual

In the afternoon of February 11, 2021, the superintendent, and an electrician, were changing smoke alarms throughout the premises. S.G. objected to this work being done and asked the superintendent if he had a permit, pointing out that there was a lockdown on account of the pandemic. The superintendent told S.G. that he did not owe her any answers and told her more than once to go back downstairs to her apartment unit. S.G. said words to the effect of, “ ... fuck you, you don’t get to fucking tell me what to do.” S.G. started banging the glass on the door of another tenant on the main floor and it appeared to the superintendent that she was trying to enter the other tenant’s unit. The superintendent later advised the Hamilton Police Service in a statement that she struck the door about six times.

The superintendent felt that S.G. was trying to provoke him and his electrician. S.G. returned to her apartment. Fearing possible escalation between S.G. and the other tenant, the superintendent decided to call the police. He made a 9-1-1 call to the Hamilton Police Service at 4:32 p.m. He made it clear in the 9-1-1 call that there was no property damaged and that there were no weapons involved in the incident.

Constable Milburn was dispatched to the residence one minute later. A second officer, Constable Zafirides, was also dispatched on the call. A criminal records check was performed by police dispatch on S.G. and made available to both officers prior to their arrival. This check did not raise any officer safety cautions.

Constable Milburn arrived at 4:48 p.m. and spoke to the superintendent who told him about the eviction notice and S.G.’s earlier conduct. Constable Zafirides arrived at shortly after 4:48 p.m. Constable Milburn was just concluding his conversation with the superintendent when Constable Zafirides arrived. There is no evidence of Constable Milburn passing on the information he learned to Constable Zafirides. Constable Zafirides followed Constable Milburn downstairs to S.G.’s unit. [The video contained on the USB marked as Exhibit #4 was played before the tribunal.]

S.G. had had no interaction with either of these officers prior to February 11, 2021. S.G. was just about to take a shower at the time that Constable Milburn knocked on her door. She put on a robe. For that reason, she only opened the door slightly and kept it latched. At this point an exchange took place between Constable Milburn and S.G., which was captured on S.G.’s video camera.

Not clearly shown on the video, because of the angle of the video camera, was the fact that, at the time that Constable Milburn interrupted S.G. while she was giving

her initial account, Constable Milburn put his foot in the door so that S.G. was unable to close it. From S.G.'s position at her apartment door when she had opened it to make her "bullying of a position" comment, she observed that Constable Milburn made a grimace on his face when he lunged at her. She also indicated that Constable Milburn "... held out his left fist or one of his fists." She said in her statement to the police, "... the main the main thing I remember ... was the look on his face, the fist, and the speed at which he was approaching me."

[The video showed Constable Milburn walking away from S.G.'s door. S.G. opened the door, and uttered comments directed at Constable Milburn. Constable Milburn turned and lunged quickly toward the door which was immediately closed by S.G. It was not clear in the video whether Constable Milburn had a clenched fist]

After the lunge by Constable Milburn, S.G., from her apartment unit with the door closed, said in a normal tone of voice, "yeah fuck you sir." Following this, Constable Milburn, as he was making his way upstairs from S.G.'s apartment unit, said, "now that was fun." S.G. did not hear Constable Milburn's comment.

A detailed, frame-by-frame analysis of the video by the Hamilton Police Service investigators revealed that S.G.'s door remained open for approximately one second of Constable Milburn's lunge before it was completely closed. His right hand cannot be seen in the video. Constable Milburn never made contact with the door. Throughout the interaction between Constable Milburn and S.G., Constable Zafirides remained approximately one and a half feet behind Constable Milburn simply observing and did not speak with S.G. Constable Zafirides was unaware that Constable Milburn had turned back and lunged at S.G. until he observed the video on social media sent to him by a work colleague.

Constable Zafirides was dispatched to another call at 5:01 p.m. and Constable Milburn told him that he would "take care of this," referring to the paperwork for the call at the residence. Constable Milburn remained on the call until 6:23 p.m. He did not speak to the superintendent after the interaction with S.G. Constable Milburn typed an "Event Remark" on his terminal into the call history at 6:21 p.m. which read as follows:

Event remark – S.G. was banging on the windows and yelling at the other tenant, no assault took place and no damage was caused. S.G. is being evicted and it is causing tension between the tenants. S.G. refused to open the door for police without the latch being engaged. She was argumentative and began citing building codes etc., however she was warned about consequences of criminal acts.

No report was prepared by Constable Milburn. In his notes, he wrote:

She would only speak to us through a latched door, made comments about building codes and unlawful work, etc. Sounded like Freeman of the land stuff, I cut her off and told her that if she caused any damage she'd be arrested. Continued to interrupt me, wouldn't let me finish etc.

There was no mention in Constable Milburn's notes of the interaction with S.G. that was the subject of the criminal charge.

The video had made its way onto social media by the evening of February 11, 2021, (Twitter) and went viral thereafter.

S.G. initiated her complaint with respect to Constable Milburn's conduct at approximately 5:45 p.m. on February 11, 2021. S.G. spoke to a Staff Sergeant later that evening and indicated that she wished to proceed with a formal complaint. Between 6:00 and 7:00 p.m., Staff Sergeant Stephen Caton spoke briefly to Constable Milburn about the call. Constable Milburn maintained that S.G. was belligerent and would not listen.

S.G. provided a detailed audio statement to Detective Obrovac of the Hamilton Police Service on February 16, 2021. During the course of that interview, when asked what she thought was happening with Constable Milburn's lunge, S.G. stated:

Well I thought that either A, he was going to actually hit me ... Like, like, like knock me down. Like ... body check me like football player kinda style ... or to effect an arrest.

S.G. also believed that Constable Milburn "held out his left fist or one of his fists" when he lunged at her.

On the morning of March 5, 2021, Constable Milburn was interviewed by Detective John Obrovac in the presence of his counsel, Mr. Gary Clewley. During the course of that interview, the video recording of the interaction was played. Constable Milburn indicated that it was the first time he had seen the video. Constable Milburn said that he was aware that it existed but purposely stayed away from the news. Constable Milburn said he knew that the video was out there, but he didn't want to watch it. During the course of the interview, Constable Milburn stated:

...she just started. I forget what I said to her first but she started going on about building codes and what he's doing isn't fair and all this sort of stuff. So I realized pretty quickly that this was going to be... I didn't want to get

into an argument about building codes and eviction processes and stuff like that. I knew it was already in process. She probably already knew everything she needed to know as well as him so I said, you know what, I'm not going to go down that road. I'm just here to give you a warning. So I tried to. I tried to do that and she cut me off. I tried again and she cut me off again. So I said no, I'm not playing this game. So I raised my voice so I could use tactical communication to get the point across that I was here to do. If you do this you're going to be charged. If you do this you're going to be charged and umh and that was it.

And then um I turned to leave and she opened the door again and but opened it all the way this time and started yelling something about being a bully. I don't remember exactly what she said but ah umh I lost my cool for a minute and I apologize for that and I ... I went "boo" or something like that. I can't remember what I said and ah I didn't mean to scare her, I didn't mean her you know to feel threatened or assaulted or anything like that. I just wanted her to close the door and go back inside her apartment. I just wanted to get out of there and ah she did and I left.

I just wanted her to go back into her apartment and close the door. I lost my temper for a second. I apologize for that.

During the interview, Constable Milburn was asked what his intention was after turning around? He replied:

Like I said, I just wanted her to go back into her apartment.

Constable Milburn denied having either fist closed during his lunge at S.G. He stated:

I'm sorry that she was so intimidated by it by me, I mean. I wish I could apologize or change it. Nothing I can do now.

In response to being asked what he would have done had S.G. not closed the door, Constable Milburn stated:

I don't know. I wasn't going to assault her if that's what you're getting at. I wouldn't, that was never ever entered my mind unless I had to defend myself.

Constable Milburn conceded that there was nothing that S.G. did to cause him to believe he had to defend himself and acknowledged that at no point did he perceive S.G., to be a threat or that he was about to face bodily harm. Later in the statement,

when asked again about his intent with the lunge, Constable Milburn stated:

I already explained it. I mean ... I just wanted her to go back inside, close the door and be done. I didn't have any intention to scare her or make her feel like she'd been assaulted or cause her alarm or distress. I just wanted it to be done.

Constable Milburn, after having the end portion of video replayed for him, indicated that he did not remember saying, "that was fun."

On May 6, 2021, Constable Milburn was arrested by Detective Obrovac for assault and released by way of an Undertaking.

On May 18, 2021, Constable Milburn was charged on Court Information 21-4988 with one count as follows:

That on or about the 11<sup>th</sup> day of February, 2021, he did unlawfully commit an assault on S.G., contrary to the provisions of Section 266 of the *Criminal Code* of Canada.

On November 10, 2021, Constable Milburn appeared in the Ontario Court of Justice before the Honourable Justice Joseph Nadel. On that date, Constable Milburn pleaded guilty to Count 1 on Court Information 21-4988.

Following the finding of guilt, Justice Nadel imposed a conditional discharge, with probation of 18 months. One of the conditions of the probation order was that Constable Milburn perform 150 hours of community service work.

Constable Milburn was diagnosed with Post-Traumatic Stress Disorder (PTSD) in April 2015. At the time of the incident in February 2021, Constable Milburn was experiencing significant personal hardship and symptoms associated with PTSD. Constable Milburn's wife suffers from a serious mental health disorder and had made multiple suicide attempts. At the time of the incident, Constable Milburn was in the middle of a difficult custody battle, all of which impacted his decision making.

Constable Milburn voluntarily underwent assessment and treatment at the Centre for Rational-Emotive Therapy following his interaction with S.G. He completed 10 sessions of anger management training coupled with additional assigned readings. He received positive feedback after successfully completing the program including, being remarked as having "a keen understanding of the circumstances that led to the charges against him." The treating psychologist identified that Constable Milburn's PTSD and custody battle likely played a role in his over-reaction with

S.G. Constable Milburn was noted to be “filled with remorse and regret” as well as “introspective and determined to prevent this regrettable situation from reoccurring.”

Constable Milburn re-engaged in regular therapy for his PTSD in 2021; therapy is ongoing. Part of ongoing therapy includes cognitive processing therapy strategies to address symptoms related to PTSD to ensure that he is able to effectively and appropriately discharge his duties as a Hamilton Police Officer.

### **Joint Penalty Position / Disposition**

Constable Milburn entered a plea of guilty to one count of discreditable conduct. In so doing, he acknowledged that the Agreed Statement of Facts was accurate. The Agreed Statement of Facts, in conjunction with the video footage of the incident, amount to clear and convincing evidence, consequently, I find Constable Milburn guilty of discreditable conduct.

Ms. K.C. Wysynski represented Constable Milburn at the hearing while Mr. Marco Visentini represented the Hamilton Police Service as prosecutor. The complaint was a Chief’s complaint, consequently S.G. did not have standing at the hearing, but Counsel were comfortable with S.G. participating to the extent that she asked questions about the process and provided a victim impact statement.

Counsel provided a joint penalty position of a six-month demotion in rank. I can find no judicious reason to deviate from that position and consequently, Constable Milburn will be sanctioned accordingly.

### **Reasons**

Constable Milburn’s conduct is no longer in question, what is left to be determined is whether the proposed sanction is appropriate; does the joint penalty position strike a balance between community expectations, fairness to Constable Milburn, and the needs of the organization?

I am not bound by the joint penalty submission, however, to reject it, I would have to find that it is outside the reasonable range of available penalties for similar misconduct and that it conflicts with commonly held proportionality considerations. In the matter of *Krug and Ottawa Police Service*, 21 January 2003, OCCPS, the Commission identified factors that must be taken into consideration when determining an appropriate penalty. I will rely



on the penalty factors that are relevant to this case; factors which will provide guidance and assist me in determining whether the proposed sanction is fitting.

### Public Interest

The public has an interest in ensuring police officers maintain a remarkably high standard of conduct. That trust is eroded when an officer fails to meet those expectations. The public's trust in their police service is fragile. This incident generated significant media attention, and the video of the incident went viral on social media. Constable Milburn's behaviour fell well short of the standard expected by his employer, and the public.

To maintain the public's trust, the public must be ensured that misconduct of this nature will attract an appropriate sanction. The public must have confidence that the Hamilton Police Service will hold members accountable for their actions. A significant sanction is required to contribute to the process of re-instilling public confidence in the Hamilton Police Service, knowing that he was held accountable for his actions.

Public interest is an aggravating factor, but I find that the sanction proposed sufficiently and appropriately addresses this penalty factor.

### Seriousness of the Misconduct

Seriousness of the misconduct is a fundamental consideration in determining just and appropriate sanctions in police disciplinary tribunals. Mr. Visentini submitted that in this instance, the seriousness of misconduct is an aggravating feature in part due to the deliberate course of behavior demonstrated by Constable Milburn. Furthermore the misconduct involves a criminal finding of guilty which in and of itself makes the misconduct serious in nature. Mr. Visentini further submitted that upon review of the video, there was no just reason for Constable Milburn to behave in this manner. Constable Milburn was clearly aware that there was a video camera present that his actions would be recorded and that he would be subject to scrutiny. Nonetheless, despite the camera, and S.G. demonstrating a calm tone, Constable Milburn needlessly escalated the situation. Mr. Visentini submitted that the misconduct ought to be considered at the higher end of the seriousness of misconduct spectrum.

I agree that any misconduct involving a guilty finding in criminal court makes that behaviour seriousness in nature, and it moves the needle toward the more severe end of the spectrum. However, I find this particular misconduct on the less severe end of the spectrum of guilty findings in criminal court. Justice Nadel stated:

All of that said, there was in fact no actual battery, but it was very unprofessional... I've made a finding of guilt. I do not register a conviction. Rather, I grant you a conditional discharge, conditional on a period of good behavior by way of probation on the terms that have been negotiated.

Similarly I find the behavior of Constable Milburn deliberate, needless, irresponsible, and unprofessional; it is serious misconduct that resulted in a guilty finding in criminal court but it is less serious than most other guilty findings in criminal proceedings.

S.G. read the following Victim Impact Statement onto the record. I note that when it was read, S.G. modified it slightly and made additional comments, all of which were taken into consideration. For the purpose of this decision however, the following will suffice to provide the general impact Constable Milburn's behaviour has had on S.G.:

Immediately after the assault, I left the Hamilton jurisdiction for a number of days out of fear for my personal safety. I deeply struggled with my feelings after the event and had felt powerless as a result.

After the events, I had a stomach-ache and irritable bowels that results in diarrhea. Acute stress causes these issues for me. I experienced anxiety, nervous sweating, heat palpitations, poor sleep, nightmares, night sweats, weight loss, a resurgence of compulsive hair pulling called trichotillomania that I previously had managed and under control, recurring flashbacks of the actual events of Mr. Milburn lunging at me, and intrusive thoughts as well as a general experience of fear and distrust of other people.

I have avoided going outside where I can and even then I feel unsafe in my home after this. It feels like any sense of safety I did have was taken from me. Taking care of my daily activities of living are more difficult now as someone who is on ODSP and is someone who is permanently disabled for reasons. I struggle with my meal preparation because I lack a healthy appetite since this event.

I have less motivation to complete chores in my apartment including fearing and avoiding going grocery shopping for myself. My disabilities have flared up as a result of this assault and I have sought counselling since this event to cope with these. I have as a result of the assault felt incapable of taking care of my daily activities of living including meal preparation and cooking. Because of this I have incurred expenses related to ordering takeout food or delivery grocery services. I have felt scared to leave the house to get groceries for myself among other tasks. I am deeply concerned for my security as the accused is a police officer in Hamilton. Ian Milburn abused his authority as a police officer and assaulted me. It

is well known that police officers have culture and reality of loyalty amongst each other and so I have real concerns about any possible future contact I may have with Ian Milburn.

I would feel unsafe if Ian Milburn was an officer to respond to any issues I have or any issues related to me. I feel that I would be treated with bias and potentially be the target of a reprisal. I would prefer to have no contact whatsoever with Ian Milburn personally or in his duties as a police officer. I also have fear that even if Ian Milburn was to never contact me again, I fear for the potentially for my personal information to be shared with other police officers who may then target me for reprisal on behalf of their colleague in law enforcement.

This whole experience has deeply, deeply damaged my faith in the police as well as damaged my belief in their capacity to effectively respond to crime, issues involving civilian safety, as well as civil landlord or tenant issues. I fear that my being assaulted, and a police officer being charged as a result will end up in my being surveilled, targeted, and harassed or potentially further harm by the police especially as a transgendered woman. These fears are also exacerbated by the fact that I am a transwoman, previously mentioned, and I am in fact more vulnerable to targeted violence because of this. I fear I could become the scapegoat in an attempt for revenge by either Ian Milburn or by any other police officer employed by the Hamilton Police Service.

This is serious misconduct which has had an obvious negative impact on S.G. It is behaviour which cannot be tolerated by the Hamilton Police Service and which warrants a fitting sanction. The seriousness of Constable Milburn's behaviour is an aggravating factor for consideration, but I find the joint penalty position reasonable; it corresponds to the seriousness of the misconduct.

### Employment History

Mr. Visentini submitted that Constable Milburn had no previous disciplinary conduct noted in his file and submitted that the entirety of his employment history ought to be deemed a mitigating factor for consideration.

Ms. Wysynski walked the tribunal through a series of Constable Milburn's Performance Appraisal and Development Plans. Ms. Wysynski noted that although an appraisal does not exist capturing Constable Milburn's performance since this the date of this incident, Constable Wilburn has continued to perform well and has contributed fully and positively to the Hamilton Police Service. Ms. Wysynski noted that the common theme throughout

his career is that Constable Milburn has been recognized as a natural leader, reliable, and having superior instincts dealing with the public.

The most recent Performance Appraisal Development Plan can be found at tab 14 of Exhibit #9. It is for the assessment period of 2020. Supervisor comments included:

Ian continuously demonstrates his ability to work well with his squad mates and is a true team player... Ian is a senior officer on the squad; he is reliable, and dependable. Ian's communication style is excellent. When speaking with parties he remains calm and professional and he has consistently displayed how empathetic and compassionate he can be. He is also able to remain calm when dealing with high stress calls.

Ian is extremely capable, dependable, and well respected on the squad. He has expressed that he has interest with respect to career development... and all of his supervisors are supportive of this.

The Performance Appraisal and Development Plan for 2019 can be found at tab 13. In part, this report includes the following supervisor comments:

Ian is one of the most senior members of the squad. He knows the roles and responsibilities of a patrol officer and completes his tasks with little to no supervision. Ian clears for calls for service when he is able. Ian has one of the busiest beats for calls for service in terms of follow-ups. He manages his follow-ups well. His reports are well written and cover off the facts and issue.

The Employment Record Document Brief contains other, more historical Performance Appraisal and Development Plans. I note that each one contains additional positive commentary from his supervisors and I acknowledge that Constable Milburn has been an asset to the Hamilton Police Service during the course of his career, exemplifying the characteristics any police service would appreciate in a member.

I find employment history to be a mitigating penalty factor for consideration.

#### Recognition of the Seriousness of the Misconduct / Ability to Rehabilitate

Remorse can be an important factor when considering the appropriate disposition. Mr. Visentini noted that on November 10, 2021, Constable Milburn entered a guilty plea in the criminal proceedings. He acknowledged the agreed statement of facts and accepted the joint penalty position. Furthermore, Constable Milburn entered a guilty plea before this tribunal, he acknowledged that the agreed statement of facts was an accurate

representation of the circumstances, and he agreed to a very significant joint penalty in the form of a six-month demotion in rank.

Exhibit #9 is the Employment Record Document Brief. At tab 4 is a written apology submitted to the court by Constable Milburn dated November 9, 2021. It stated:

I am writing to you to address the assault that occurred at your apartment on February 11, 2021. I would like to take this opportunity to apologize to you and to accept full responsibility for what happened that day. I have had no choice but to reflect on my actions, as they were caught on camera, and for this I am grateful that I can better understand the trauma my actions have caused you.

I have attended and I continue to attend counseling and I realize how much my actions have affected you. I do not wish to cause you anymore distress by you having to attend court to relive the incident once again.

I intend to continue counseling to better deal with stressors in my life and to ensure that nothing like this will never happen again. Although this has been one of the most negative moments in my life, I hope that it will be a catalyst for a positive change.

Please accept my apologies and I wish you well in the future.

Constable Milburn addressed the tribunal and offered another apology to his family, the tribunal, the Hamilton Police Service and to S.G. direct.

I find Constable Milburn to be sincerely remorseful; he demonstrated this with his guilty pleas, by attending counselling, and with heartfelt apologies, both in written form, and in person before S.G. and this tribunal. Accepting responsibility for his actions is essential in order for Constable Milburn to rehabilitate.

At tab 1 of Exhibit #9 is a reference letter from Detective Lauren Troubridge dated October 22, 2021. Detective Troubridge worked alongside Constable Milburn and his supervisor over the years. Detective Troubridge stated:

Ian is a senior member of our service and well respected by his peers. I often had conversations with other supervisors, and we all spoke very highly of Ian as a person and as an officer on our squad. I know Ian to be dedicated to work... he showed that he was capable, he did not need supervision, and he made good decisions.

I have seen how Ian deals with people in the community, and he is kind, patient, and compassionate. I have seen how he speaks to people, how he can be empathetic to them, their feelings, and their situation... Not only does Ian demonstrate that he cares about his job in the community he serves, but he cares about his coworker's. Ian reaches out to people when they are struggling, and he makes himself available as a support, no matter what..

At tab 2 of Exhibit #9 is reference letter from Sergeant David Allchin where in part, he stated:

I worked as one of Ian's direct supervisors from September 2019 - December 2020. In that time, I came to learn that he was someone who could be relied upon. Able to self manage and use his time wisely, he knew his role and responsibilities and could be counted on to complete them with little supervision...

Prior to my departure from Ian's squad he expressed an interest in pursuing a career development spot within the organization. Based on the actions an effort that I had witnessed from Ian I supported him in his goals.

Shane Groombridge provided a reference letter and stated:

I have supervised Ian Milburn for approximately two years (2019 and 2020). During this time I found him to be a respectful and professional officer. Ian was always honest and he was an asset to the squad.

It would appear that the letters were drafted for Constable Milburn's appearance in criminal court, but I find them also applicable to this proceeding. Based on Constable Milburn's employment history and the commentary from his supervisors, this misconduct appears to be out of character for him.

I find Constable Milburn's apologies to be sincere and compelling. I was struck not only by his comments, but also by the emotion by which they were delivered.

Constable Milburn's guilty pleas, his remorse, and his employment history suggest he recognizes the seriousness of his behaviour, that he has taken responsibility for his actions and that he will ensure it is not repeated. I reiterate the comment provided by his treating psychologist noting that Constable Milburn was "filled with remorse and regret" as well as "introspective and determined to prevent this regrettable situation from reoccurring."

I consider the recognition of the seriousness of the misconduct and Constable Milburn's ability to rehabilitate, mitigating factors for consideration.

### Specific and General Deterrence

The need for specific deterrence in this instance is negligible based on Constable Milburn's admission of guilt, the agreed statement of facts, his sincere apology, the fact that this appears to be an isolated incident, and the significant joint penalty proposed. I am optimistic that Constable Milburn has learned from this experience and I would be surprised if he found himself before another tribunal in the future.

Constable Milburn must appreciate however, that similar behaviour of this nature in the future would undoubtedly result in a substantial increase in sanction. Similarly, all members of the Hamilton Police Service must understand allegations of this nature will be taken seriously and will result in a significant sanction.

The joint penalty proposed demonstrates that the Hamilton Police Service has taken Constable Milburn's misconduct seriously, and I am satisfied the proposed sanction ensures other members are dissuaded from conducting themselves in a similar manner.

I consider this factor to be aggravating in nature, but I am satisfied that the joint penalty position proposed by Mr. Visentini and Ms. Wysynski adequately addresses specific and general deterrence.

### Damage to the Reputation of the Hamilton Police Service

Damage to the reputation of a police service is a standard disposition consideration. This penalty factor captures reputational harm arising from the original misconduct and harm that would occur to the reputation of the police service if the respondent police officer were to remain a member. In this instance there is no suggestion that Constable Milburn ought to be dismissed for his behavior. To assess the extent of the damage to the reputation of the police service associated to the misconduct, it is appropriate for me as a hearing officer to place myself in the position of a reasonable person in the community. As noted, a video of the actual misconduct was widely disseminated throughout the community and the matter was documented in the media.

It would be difficult to dispute that Constable Milburn's misconduct being broadly disseminated across the internet and throughout his community, has damaged his personal reputation as a police officer, but also that of his employer. I expect that both Constable Milburn and the Hamilton Police Service have been embarrassed by his behavior. The media coverage and the extent of the viral video compounded the impact on their respective reputations. Today, video footage such as this, lives on forever and will likely be re-disseminated on a regular basis meaning the damage to the reputation of

the Hamilton Police Service is not isolated to the media coverage thus far, and to the release of this decision, it will be long lasting.

The Hamilton Police Service, like all police services in the province of Ontario, is dedicated to developing a positive image in its community. Constable Milburn's behavior did little to enhance that reputation, in fact I am satisfied that a reasonable person in the community would agree that it damaged the reputation of the Hamilton Police Service. The community and the other members of the Hamilton Police Service expect officers to exhibit professionalism when engaged with the public.

The penalty imposed must correspond to the seriousness of the misconduct to help instill confidence in the community, in other members of the police service, and to restore the reputation of the Hamilton Police Service. In this instance, the proposed sanction adequately addresses the aggravating factor of damage to the reputation of the Hamilton Police Service.

#### Disability and other Relevant Circumstances

In his annotated *Police Service Act*, Paul Ceyskens notes that disability and relevant personal circumstances may mitigate a disposition where the respondent police officer adduces evidence to establish a causal relationship between the misconduct and the disability or extenuating personal circumstances. The Agreed Statement of Facts confirmed that Constable Milburn was diagnosed with PTSD in April 2015 and noted that at the time of the incident, was experiencing significant personal hardship and symptoms associated with PTSD which impacted his decision making. The Agreed Statement of Facts also noted that Constable Milburn's treating psychologist identified that his PTSD and custody battle likely played a role in his over-reaction with S.G.

In his reasons for sentence, justice Nadel stated:

You will be able, undoubtedly, to keep your job but you have sullied your reputation. The case law indicates that anytime a police officer oversteps the constrained power that they are entitled to exercise, it besmirches every other police officer's reputation. You, I am sure, have suffered severely. I know of your background from these letters that you have your own personal difficulties that you were working through and that may be a part of what caused you to act on this occasion.

I appreciate the fact that constable Milburn was experiencing significant personal hardships and symptoms associated with PTSD at the time of this incident, however the evidence fails to convince me that there was a causal nexus between the misconduct and



his medical diagnosis. A causal nexus must exist in order to receive mitigation consideration for this penalty factor. I note that Justice Nadel used the term “personal difficulties **may** have contributed to his actions,” and the treating psychologist used the term “**likely** played a role in his over-reaction with S.G.” (emphasis added)

I do accept that this behavior was out of character for Constable Milburn, and he may have been impacted by these issues, but the evidence falls short of convincing me that a causal nexus existed.

#### Effect on Police Officer and Police Officer’s Family

I accept that the media attention that was created because of Constable Milburn’s misconduct would negatively impact him and his family. It is also clear that the proposed penalty will create a financial hardship for Constable Milburn and his family.

I note that although Constable Milburn was being considered for career advancement, it was stalled as a result of this *Police Services Act* proceeding and will remain suspended for at least the duration of this penalty phase of six-months. All of this amounts to a significant impact on Constable Milburn and his family; it is a mitigating factor for consideration.

#### Consistency of Penalty

The purpose of this penalty factor is to ensure the sanction proposed is within the range of sanctions available; the penalty ought to be consistent with penalties issued in cases with similar circumstances.

Counsel indicated they considered a wide breadth of cases, but provided me with the two that were deemed most appropriate. In the case of *W.B. and Hamilton Police Service*, 24 July 2009, the officer was found guilty of the criminal offence of causing a disturbance by fighting and subsequently found guilty of discreditable conduct. The officer received a demotion in rank for a period of six months from first-class constable to second-class constable as sanction. Ms. Wysynski noted that in *W.B.*, there was an actual assault while there was no physical contact in this instance.

In the matter of *Hamilton Police Service and K.P.*, 27 February 2018, provocation was instrumental; the officer reacted to being spat at by assaulting the individual responsible. The officer was found guilty of assault in criminal court and entered a plea of guilty to discreditable conduct. The result was the hearing officer accepting a joint penalty position of 120 hours.

W.B. was off duty misconduct, but it is helpful in the sense that the officer received a six-month demotion in rank after receiving an absolute discharge in criminal court for what could be considered similar misconduct, albeit physical force and/or direct physical contact did not occur in this instance. I am satisfied that the joint penalty position is within the range of available penalties for this type of misconduct.

## **Conclusion**

Constable Milburn entered a guilty plea to discreditable conduct for behaviour that was unnecessary and unprofessional; it resulted in traumatizing S.G. as noted in her Victim Impact Statement. Constable Milburn's misconduct was serious in nature but, he agreed to the facts in issue and the penalty proposed. He also has a positive employment history and is a strong candidate for rehabilitation. Therefore, I can see no reason to deviate from the sanction proposed. A demotion in rank for six months is balanced, fair, and satisfies the principles governing the appropriate determination of a disposition.

## **Disposition**

Constable Milburn pleaded guilty and was found guilty of discreditable conduct based on the standard of clear and convincing evidence. After weighing aggravating and mitigating factors, I find the proposed sanction meets the goals of the discipline process; it strikes a balance between community expectations, fairness to Constable Milburn and the needs of the organization.

I order Constable Milburn demoted from the rank of first-class constable to the rank of second-class constable for a term of six-months. He will revert back to the rank of first-class constable immediately upon the conclusion of the six-month term.

This order is made pursuant to section 85(1)(c) of the *Police Services Act*, R.S.O. 1990 and it was given orally on November 4, 2022, with immediate effect and with this written decision to follow.



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Greg Walton  
Superintendent (Ret.)  
Ontario Provincial Police

Date electronically delivered: November 14, 2022