



TORONTO 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 THE  
THE TORONTO POLICE SERVICE  
AND CONSTABLE SHAMEER KHAN (10479)

Charges: 1) Insubordination  
2) Discreditable Conduct

**DECISION**

Hearing Officer: Superintendent Neil Corrigan,  
Toronto Police Service

Prosecutor: Inspector Dominic Sinopoli, Toronto Police Service

Defence Counsel: Mr. Gary Clewley

Case Number: 5.2016

Hearing Dates: June 15, 2016

Decision Date: September 29, 2016

SENTENCE  
Constable Shameer Khan #10479

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**Date: September 28, 2016**

**Reference: 5/2016**

**Superintendent Corrigan:** Before commencing sentencing in this matter, I would like to thank Mr. Gary Clewley, defence counsel and Inspector Domenic Sinopoli, the Service prosecutor, for their submissions and exhibits tendered, all of which have assisted me in reaching my decision.

On June 15, 2016, Constable Shameer Khan badge number 10479, pled guilty and was found guilty of one count of Insubordination and one count of Discreditable Conduct, contrary to the Police Services Act (PSA).

**Summary**

The facts are summarized from the Notice of Hearing and the Agreed Statement of Facts (ASF) (Exhibit 4) as follows:

Police Constable Shameer Khan #10479 has been a member of the Toronto Police Service since August 24, 2009. At the time of the incident, he was assigned to Traffic Services where he was performing his duties in a uniform capacity.

On Thursday, June 18, 2015, PC Khan was working the day shift relief as a solo enforcement unit operating police vehicle 6000 under the call sign of Traffic 23.2. This vehicle is a marked police scout car equipped with an In-Car Camera System (ICCS) and with a wireless microphone that is to be attached to the officer's uniform.

PC Khan had positioned himself on The Queensway west of The West Mall, for the purposes of enforcing the speed limit along The Queensway.

At approximately 8:55am, PC Khan stopped the complainant who was travelling west along The Queensway and investigated her for a speeding infraction. PC Khan made a

demand for her documents and returned to his vehicle. A few minutes later, he returned to her vehicle with her documents and issued her a warning notice for speeding, but retained the documents. During the course of this interaction, PC Khan referred to the complainant as being “feisty”. PC Khan then engaged the complainant in conversation unrelated to his policing duties which included her upcoming wedding.

Afterwards, PC Khan told the complainant that he would spoil the warning that he issued to her. PC Khan returned to his vehicle with the warning notice. A few minutes later he returned to the complainant’s vehicle.

PC Khan continued the conversation about her wedding and spoke about his duties as a police officer. The complainant was of the opinion that he was trying to “pick her up”. PC Khan talked to her about his trip to India and in doing so, he pulled out his cellular phone and showed her a short Indian film.

In addition, he insisted that she take down his cellular number. The complainant complied and typed his name and number into her phone. However, after doing so, PC Khan suggested that she text him, which she believed was his way of ensuring he gets her cellular phone number. The complainant felt intimidated and then texted him only her name.

At approximately 9:25 am, PC Khan issued her the spoiled warning and returned her documents. The complainant left.

A short while later, the complainant received a friendly text message, from the officer. She did not respond to the text message and there was no further communication between the two of them after this point.

The investigation revealed that the complainant was detained for approximately 30 minutes and that in fact PC Khan, had spoiled a warning notice for speeding.

The investigation further revealed that on the same day, at the same location, PC Khan investigated two other members of the public for *Highway Traffic Act* offences and in doing so, failed to activate his ICCS or microphone during those investigations

## **Prosecution Submissions**

The prosecutor began his submissions by indicating that neither he nor defence counsel would be calling upon any witnesses in this case.

The prosecutor tendered a Book of Records (Exhibit 5) and a Book of Authorities (Exhibit 6) as exhibits.

The prosecutor stated that he and counsel would jointly be proposing that the appropriate penalty would be a forfeiture of six days for Charge #1 and for two days for Charge #2 to be served consecutively, for a total of eight days.

The prosecutor submitted that the disposition proposed is consistent with previous cases and satisfies the principals of discipline. The objectives of discipline are to; correct unacceptable behaviour, deter others from similar behaviour, and to assure the public that the police are under control.

As a result a number of parties take a direct interest in this process; the general public, citizens who may have been affected, the employer, the employees, and the respondent officer.

The prosecutor stated that he had reviewed 15 considerations governing the determination of an appropriate disposition. He would be referring to the ones he believed would apply to this matter.

The prosecutor referred to the public interest and stated Constable Khan's actions had grave implications on the public trust. Constable Khan violated the public trust and that of the complainant, when he detained her at the side of the road.

Constable Khan also violated the trust of the Service by failing to follow the policy and procedures of the Service, particularly as it relates to the In-Car Camera System (ICCS).

Constable Khan's duties are governed by procedures and policies and the *Police Services Act (PSA)*. In the *PSA*, the duties of a police officer are noted at section 42.

which include “performing the lawful duties that the Chief of Police assigns”. (Exhibit 5, Tab 1)

The prosecutor referred to the importance of public trust and quoted, from the Standards of Conduct, (Exhibit 5, Tab 2) where past Chief of Police Blair noted,

*“I want to impress upon you the necessity of maintaining the public’s trust and the grave implications for all of us if it is lost. Actions by members that break the law and violate the public trust diminish the public’s perception of the professionalism of the police and tarnish the reputation of the service.”*

### **Prosecution Submissions Continued**

Chief Blair further noted:

*“As a member of the Service, the single most important role you fulfill is maintaining the trust and support of the public.”*

The prosecutor stated that Constable Khan swore to uphold his duties when he signed up to be a police officer. He did so by taking an Oath of Office (Exhibit 5, Tab 3) on January 14, 2010.

Constable Khan knows that as a police officer he is held to a higher standard, one which is expected of us by the public and the Service. This standard is noted within the Introduction section of the Service Standards of Conduct (Exhibit 5, Tab 4). Then Chief Blair noted:

*“The Toronto Police Service members are held to a higher standard of conduct than other citizens. Not only an expectation from the community, this standard is an expectation we place upon ourselves. This higher standard of behaviour is necessary to preserve the integrity of the Service.”*

The prosecutor submitted that the misconduct of Constable Khan was serious. Constable Khan detained the complainant for 25 minutes during rush hour for no official policing reason. The detention was not related to policing activity; the complainant did

not feel like she was free to leave. The officer had her identification and she felt obligated to indulge the officer.

Constable Khan also aggravated the seriousness of the misconduct by not utilizing the ICCS. The use of the ICCS during investigative contacts is not optional and he did not use it during his contact with the complainant. He also failed to use his camera for two other investigations that morning.

The prosecutor submitted that Constable Khan has recognized the seriousness of his misconduct, as he is here today and has entered a plea of guilty to two counts of misconduct. A guilty plea is regarded as recognition of the seriousness of the misconduct. This is illustrated in the Commission's decision in Carson and the Pembroke Police Service 2001, OCCPS, (Exhibit 6, Tab A). The Commission noted,

*"We have no doubt that a guilty plea should be recognized as a mitigating factor and taken into account along with other factors in determining an appropriate penalty."*

The prosecutor submitted that Constable Khan's guilty plea demonstrated that he has accepted responsibility for the misconduct; he is prepared to face the consequences for his actions and get back to becoming a productive member of the Service.

The prosecutor spoke to the matter of employment history and submitted that Tribunals are guided in how to assess employment history in association with recognition of the seriousness of the misconduct and the potential to rehabilitate. He referred to the *PSA* (Exhibit 5, Tab 5) where the commentary cited several Commission cases and noted:

*"Employment history will aggravate a disposition in cases that involve a number of recent findings of misconduct or a number of similar findings of misconduct, or a history of serious misconduct".*

The prosecutor submitted that the weight that is attributed to the previous misconduct is gauged by the seriousness of that misconduct; the time of the previous misconduct; and the similarity in the previous misconduct.

The prosecutor referenced Grbich and Aylmer Police Service 2002, OCCPS, (Exhibit 6, Tab B) where the Commission commented that there are other factors which can be relevant, either mitigating or aggravating. In doing so, the Commission identified employment history and experience as one of these factors.

The prosecutor referred to Constable Khan's personnel file history (Exhibit 5, Tab 6). There are two entries which resulted in positive documentations and nine letters of appreciation. There are also two past conduct issues.

Constable Khan's positive and negative documentations and letters of appreciation were provided for consideration (Exhibit 5, Tab 7). The prosecutor noted that Constable Khan's prior misconduct included incidents which can be deemed related, as they involved the officer being neglectful in his duties.

### **Prosecution Submissions Continued**

The prosecutor referred to the last three performance appraisals for Constable Khan (Exhibit 5, Tab 8), which he submitted were less than impressive in relation to his performance. The appraisals were average and the latest two indicated the need for the officer to improve his performance and heed the advice of his peers and supervisors. It was the prosecution's position that his employment history should be regarded as an aggravating factor or at the very least a neutral factor.

The prosecutor spoke to Constable Khan's potential to reform or be rehabilitated. He referenced the decision in *Grbich* where the Commission noted:

*"Every attempt should be made to consider whether or not rehabilitation is possible. A police service and the community in which it is situated make a significant investment in each police officer. Unless the offence is egregious and unmitigated, the opportunity to reform must be a key consideration".*

The prosecutor referred to Andrews and Midland Police Service, 2002, OCCPS, (Exhibit 6, Tab C) where the Commission noted;

*“The commission believes that rehabilitation is a key factor to be taken into consideration when a penalty is imposed, especially when the officer has a prior unblemished employment record. Unless the officer is beyond rehabilitation, in which he would be a candidate for dismissal, the door should be kept open for the officer to be rehabilitated. The penalty should be tailored to provide him with the opportunity to do so.”*

The prosecution submitted that Constable Khan had taken the first positive step toward rehabilitation as he had accepted responsibility for his actions through his guilty pleas.

The potential to rehabilitate the officer is founded upon mitigating factors which included accepting responsibility and a good employment record. Constable Khan has accepted responsibility for his actions but his employment history is not favourable. This does not mean that Constable Khan cannot turn things around; it does mean that we cannot rely on his employment history as an indicator.

The prosecutor spoke to the issue of consistency of disposition and submitted that a true symbol of fairness was consistency. He referred to Buckle and the Ontario Provincial Police, 2005, OCCPS (Exhibit 6, Tab D) where the Commission addressed the issue of consistency. The Commission noted,

*“Consistency in disciplinary penalties is the hallmark of fairness”.*

The prosecutor proposed a penalty of six days forfeiture on Charge #1 with an additional two days for Charge #2, for a total forfeiture of eight days. He submitted that this disposition reflected the Service’s growing intolerance to breaches of public trust and this penalty was consistent with prior cases.

The prosecutor referred D’Souza and Toronto Police Service, 2007, OCCPS, (Exhibit 6, Tab E) and D’Souza and Toronto Police Service, 2009, O.J. No 1390 (Exhibit 6, Tab F). In that case Constable D’Souza was conducting traffic duties at the Canadian National Exhibition (CNE). The complainant was the Associate Director of the CNE and was travelling in his vehicle with his 10 year old son. He was attempting to gain access to the CNE grounds. Constable D’Souza stated to the complainant, “Everyone’s a moron”.

The complainant requested the officer's badge number which resulted in Constable D'Souza issuing him an offence notice for not obeying the officer during a traffic direction.

At the disciplinary hearing, he was found guilty of misconduct for his rudeness and for issuing an unfounded ticket. The officer was assessed a reprimand for his comments and for issuing the ticket he received a penalty of five days.

The officer appealed the conviction and the penalty to OCCPS. The Commission upheld the conviction yet varied the penalty to three days. The officer appealed the Commission's ruling to the Divisional Court and the Court upheld the Commission's ruling.

### **Prosecution Submissions Continued**

The prosecutor referred to the case of Khawaja and Toronto Police Service, 2013 (Exhibit 5, Tab G) where the officer investigated a motorist for a *Highway Traffic Act* (HTA) offence. He issued the female driver three offence notices. The officer engaged in conversation with the complainant about her job and discovered her company employed temporary workers. The officer inquired about employment for his son and the complainant was left with the impression that her ability to get his son a job would impact how the tickets would be dealt with at court.

Constable Khawaja and the driver exchanged phone numbers and communicated in the subsequent months. In the end the complainant's company did not hire the officer's son.

At court the officer spoke to the complainant and the prosecutor. The complainant was left with the impression that the court disposition was related to her not employing the officer's son. After a guilty plea at the officer's disciplinary hearing, the officer was assessed a penalty of eight days.

The prosecutor referred to Swart and Toronto Police Service, 2001 (Exhibit 5, Tab H). In that case the officer stopped a female driver in relation to her licence plate sticker. He asked the complainant for personal information unrelated to his duties. He then

asked her to give him a reason why he shouldn't give her a ticket and he suggested she take him for a coffee. He obtained her phone number and released her with no charges.

The officer made several attempts to contact the complainant and left voice mail messages in an effort to get together. His conduct left the complainant feeling scared. The officer pled guilty to discreditable conduct and received a penalty of 5 days.

The prosecutor referred to Saxon and Amherstburg Police, 2011 OCPC, (Exhibit 5, Tab I). Sergeant Saxon was on short term medical leave and contacted an employee with the town of Amherstburg regarding his benefits and financial matters. This was against Service policy which required officers to deal directly with the office of the Chief in such cases.

During the conversation the officer was belligerent and intimidating towards the employee and repeatedly used profane language. The officer was charged with discreditable conduct; he was found guilty and received a penalty of five days. The officer appealed the findings but the Commission upheld the decision. In that case Sgt. Saxon was aggressive and bullying, in that matter and the one before me the complainants felt intimidated by the officers' conduct.

In *Saxon* the Commission noted,

*"We also agree that whether profanity was used or not, it is not central to the issue at hand. Behaviour, including tone of voice and body language can be sufficient to establish incivility."*

The prosecutor referred to Grainer and the Ontario Provincial Police, 2005 OCCPS, (Exhibit 6, Tab J). In that matter, the officer engaged the complainant in conversation while she was working at a restaurant he had attended while on duty. The complainant left the bar as a result of concerns she had with the officer.

On her way home, she was pulled over by the officer. The officer made comments to her that she looked good and then suggested they move to another location so as to not be on the roadway. She followed him a short distance away.

At that location, the officer made sexual comments to the complainant about her body parts and how he would like to kiss her all over. She felt uncomfortable with this conversation. He then went on to inquire about whether she was home alone on weekends making her feel intimidated and violated. After a hearing the officer was found guilty of discreditable conduct and assessed a penalty of twenty days. On appeal to OCCPS, the Commission varied the penalty to fifteen days.

The prosecutor referred to Kan and Toronto Police Service, 2015 (Exhibit 6, Tab K). Constable Kan was charged with investigating members of the public and issuing offence notices without sufficient evidence. In some cases no offences were committed by the defendants. This occurred on nineteen separate occasions. He was also charged with insubordination for not using his ICCS during those nineteen occasions.

### **Prosecution Submissions Continued**

After the guilty plea the officer was assessed a penalty of ten days for the insubordination to be served concurrently with the penalty for discreditable conduct.

An aggravating factor in that matter was the number of events and the fact the victims were all vulnerable members of the community. The prosecutor submitted this is relevant due to the similarity in the lack of use of the ICCS.

The prosecutor spoke to the issue of specific and general deterrence and the correlation between penalty and deterrence; he referred to Andrews and the Midland Police Service, 2002 OCCPS, (Exhibit 6, Tab C). The Commission noted that a penalty must be:

*“Sufficient to punish and to deter while not causing undo or excessive hardship while demonstrating that reoccurrence will not be tolerated.”*

The prosecutor submitted that a penalty totaling eight days would be appropriate. It would send a strong message to Constable Khan and the rest of the Toronto Police Service that his conduct would not be tolerated.

The prosecutor referred to the damage to the reputation of the Toronto Police Service and submitted that anytime an officer was found to have violated the trust of the public, it damaged the reputation of the Service.

In this matter the damaging effect was limited to the complainant and her immediate family. The conduct of the officer has had a lasting and negative effect on the complainant.

The prosecutor submitted that the conduct of the officer, regardless of what his intentions may have been was serious. The officer's conduct was not in keeping with the Service expectations or procedures. A total penalty of eight days is consistent with previous cases it is within the range of penalties, and does not offend the office of the Chief of Police.

### **Defence Counsel Submissions**

Defence Counsel began his submissions by offering an apology on behalf of Constable Khan to the Service for his conduct; he stated the officer has taken responsibility for his actions from the beginning and has pled guilty for his actions.

He submitted that Constable Khan acknowledged that, he was out of line when he was interviewed by Professional Standards in relation to this matter. He had made an error in keeping the complainant longer than was necessary to conduct a routine traffic stop.

Counsel submitted that Constable Khan got carried away and that the complainant played along and this played a part in his actions.

He acknowledged that Constable Khan should not have detained the complainant longer than necessary. He submitted that the notion that the complainant was detained in some fashion does not accurately describe what happened. Counsel does not however, dispute the ASF.

Counsel submitted that the conversation between Constable Khan and the complainant was inappropriate but was not designed for any kind of ulterior purpose.

Counsel referenced Constable Khan's record (Exhibit 5, Tab 7) and acknowledged the officer has work to do to demonstrate he is prepared to play by the rules. He read an e-mail dated February 18, 2016 from a member of the public who wrote:

*"P.C. Khan is one of the kindest, most gracious people I have had the honour to meet. I thank him for everything he did that day and I thank him for everything he does to serve this great city of ours every day. We are lucky to have such an amazing and kind hearted officer serving us."*

Counsel referred to an email dated January 26, 2015, from another member of the public, who had come in contact with Constable Khan. The e-mail stated:

*"I said this night was my first accident and with emotions running wild you calmed me right down and dealt with the situation professionally and with human kindness. Please don't change a thing about how you go about your job."*

Counsel referred to an e-mail dated July 6, 2014 from a member of the public, who had experienced smoke coming from their car, Constable Khan was off duty and stopped to help. The member of the public wrote:

*"Officer Khan voluntarily stopped offered his assistance at such a late hour and spent over an hour ensuring our car was safe enough to drive back to our home all the while taking time away from his own wife and family. In addition Officer Khan drove back home to his home to pick up additional tools necessary to fix our car. I was beyond impressed with his professionalism, honesty and helpfulness and while I offered to pay him several times, he repeatedly refused my request and encouraged me to pay it forward to another person who may require help. To me this demonstrates the qualities I expect to see in all officers in Toronto and I am grateful to him for helping us during this time."*

Counsel referred to a letter of appreciation from the public, dated May 16, 2014, where Constable Khan had responded to a 911 call for service. The member of the public wrote:

*“I wanted to let you know that his impeccable professional, courteous and positive attitude towards the situation immensely helped me. I would like to take this opportunity to thank P.C. Shameer Khan for what he had done. This experience gives me belief that such wonderful people like him still exist and he is a wonderful asset to the esteemed Toronto Police Dept.”*

Counsel referred another e-mail from a member of the public, dated May 6, 2014, where the member of the public wrote:

*“Constable Khan was very polite and asked me if I was managing the tire myself, I told him I think so. He went over to the tow truck driver and said a few words to the driver and he was on his way. He came back to my situation asked me to stand up and stay back away from the highway and he proceeded to change the tire himself. Wow, here we were four seniors seeing the best of the Toronto Police Service helping us. I have been in Canada 46 years and always had a lot of respect for the Police Officers I have met in the past. Constable Khan stayed with us till we drove away and followed behind me to make sure we were on our way. Thank you for a job well done.”*

Counsel submitted that Constable Khan has done well and these letters are indicative of Constable Khan’s behaviour as a representative of the Toronto Police Service.

Counsel referred to a letter from a member of the public, dated February 9, 2011. He stated the author is a professional mediator and called police to assist with a dispute with his son. The author of the letter wrote:

*“I want to commend Officer Khan for the thoughtful, insightful and gentle way he handled the whole situation. He spoke to my son not only as a police officer, but as a son himself and as someone with a breadth of experience beyond his chronological age.”*

Counsel referred to a letter from a member of the public, dated January 2, 2011 where Constable Khan and another officer were good ambassadors for the Toronto Police Service. The author had recently lost a member of the family and wrote:

*“These two officers were diligent and very helpful to us in adjusting to our circumstance. They were truly excellent ambassadors for the Toronto Police. Their ability to empathize with our family on that day helped ease what was for us a very traumatic loss. Each performed their duties in an exemplary manner and applied admirable tact in communicating procedures to us. In closing, I commend them to you in the highest regard for their excellence in service.”*

Counsel submitted that these letters from five different people reflect who the officer is and who he could be in the days ahead. Constable Khan has come before the Tribunal and pled guilty. This is a good step towards his rehabilitation and he has learned his lesson.

Counsel submitted that the proposed penalty of eight days in total is a fair penalty. It is within the range of sentencing and is a joint submission.

### **Analysis and Decision**

The facts in this matter are not in dispute Constable Khan on June 18, 2015 was assigned to Traffic Services and was operating a marked police vehicle which was equipped with an ICCS. During the course of his duties he investigated members of the public for *HTA* offences and he failed to comply with Service procedures as they relate to the ICCS.

Further on June 18, 2015, Constable Khan investigated a female member of the public for a *HTA* offence. During that investigation he acted improperly by; engaging in personal conversations, insisting the female record his personal cellular phone number, detaining the female for reasons unrelated to his official duties, and spoiling a Provincial Offences Notice. The actions of Constable Khan left the female member of the public feeling intimidated, scared and distressed.

The prosecutor and counsel jointly requested a penalty of a forfeiture of six days on Charge #1 and a forfeiture of two days on Charge #2 for a total of eight days and submitted it would be appropriate in this case.

In order to arrive at an appropriate penalty, there are a number of factors which must be considered, including the public interest, the Service interest and the principle of fairness in the treatment of Constable Khan.

In conjunction with those factors there are three objectives to discipline which must be at the core of all dispositions. Those are to correct unacceptable behaviour, to deter others from similar behaviour, and to assure the public that the police are under control.

To arrive at a balanced, fair, and reasonable disposition I have considered the submissions of the prosecutor and of counsel on behalf of Constable Khan. I have examined all mitigating and aggravating factors, and I have assigned the appropriate weight to each factor.

The role of police officers is unique in our society, and they are entrusted with extraordinary powers over the general public. With power comes a significant obligation and a responsibility to exercise it within the parameters of the *PSA* and within Service Governance.

The public has placed their trust in the Service and it is incumbent upon each officer to consistently perform their duties in an honest and ethical manner in order to bring credit to the Service.

Past Chief of Police William Blair wrote to all Service members in Standards and Conduct, (Exhibit 5, Tab 2);

*“I want to impress upon you the necessity of maintaining the public’s trust and the grave implications for all of us if it is lost. Actions by members that break the law and violate the public trust diminish the public’s perception of the professionalism of the police and tarnish the reputation of the service.”*

Chief Blair further stated:

*“As a member of the Service, the single most important role you fulfill is maintaining the trust and support of the public.”*

Constable Khan swore an Oath of Office on January 14, 2016 (Exhibit 5, Tab 3), and he had a duty to follow Service Standards and uphold the conduct expectations. In this case he breached those standards and his actions were in direct violation of the acceptable level of conduct for police officers.

Past Chief William Blair wrote that all police officers are held to a higher standard of conduct than other citizens (Exhibit 5, Tab4):

*“The Toronto Police Service members are held to a higher standard of conduct than other citizens. Not only an expectation from the community, this standard is an expectation we place upon ourselves. This higher standard of behaviour is necessary to preserve the integrity of the Service.”*

### **Analysis and Decision Continued**

I agree that the actions of Constable Khan on June 18, 2015 were a serious breach of our standard's and subsequently the penalty for such a breach must reflect the seriousness of that conduct.

In assessing what is reasonable I am mindful of the objectives of discipline: to correct the behaviour, to deter others from similar behaviour, and to reassure the public.

In reviewing the facts of this case I have some trepidation in determining what is fair in assessing the appropriate penalty as I do not have a clear explanation for the behaviour of Constable Khan when he failed to use the ICCS appropriately.

I am left to conclude that he either forgot to properly operate this equipment or he consciously did not operate it correctly.

In either of these two scenarios, Constable Khan was at best negligent and at worst wilfully disobedient.

In *Carson* the Commission noted:

*“We have no doubt that a guilty plea should be recognized as a mitigating factor and taken into account along with other factors in determining an appropriate penalty.”*

I accept that Constable Khan's guilty plea on these two charges of misconduct is a positive indicator of acceptance of responsibility and an indicator of the first step to rehabilitation.

When assessing penalty it is important to maintain context of the events for which Constable Khan has pled guilty. Are these events isolated events when looking at the totality of his employment history?

Constable Khan has been a member of the Toronto Police Service since August 24, 2009. His Personnel File (Exhibit 5, Tab 6) contains two positive documentations and nine letters of appreciation from the public, as well as two previous conduct issues. The prosecutor submitted that these two conduct matters involved Constable Khan being neglectful in his duties; I accept this assessment of Constable Khan's actions.

The prosecutor referred to the totality of Constable Khan's employment history (Exhibit 5, Tab 6, 9) as "less than impressive." Regrettably I am again inclined to accept the prosecutor's assessment of Constable Khan's overall employment history and view it as an aggravating factor.

Looking forward I must consider Constable Khan's potential for rehabilitation in light of his misconduct and determine if this offence was so egregious as to make reform possible or not.

Although Constable Khan's employment history is less than impressive, that history and this plea to these two charges do not make him a candidate for dismissal at this point in his career.

I am encouraged by Constables Khan's first step towards rehabilitation by pleading guilty to these two conduct matters and by his apology through counsel.

When considering what is an appropriate penalty it must be found in what is fair and reasonable and what is fair and reasonable is often found in consistency.

In this case the prosecutor and counsel have proposed a joint submission on penalty for a total of 8 days.

I have reviewed all the cases the prosecutor has provided and although none of these cases mirrored the circumstances of this case, some cases did provide more assistance in guiding me to an appropriate penalty, those being *D'Souza, Khawaja, Swart, Saxon, Grainer, and Kan*.

Counsel advocated on behalf of Constable Khan and provided some context to the events and Constable Khan's subsequent acknowledgement of his unprofessional conduct.

### **Analysis and Decision Continued**

Counsel provided five positive letters from the public (Exhibit 5, Tab 7) to support his position that these letters better reflected who Constable Khan is as a police officer and a person and they supported his potential for rehabilitation.

In reference to the issues of specific and general deterrence, counsel submitted that Constable Khan has learned from this experience.

I accept that Constable Khan has learned a valuable lesson from this experience. I am, however, left to conclude that he has learned from this experience when he was confronted with his own behaviour through the police disciplinary process and not because of a sense of personal remorse he arrived at himself.

In regards to the issue of general deterrence a strong message must be sent to all members of the Service that conduct similar to that of Constable Khan's, which violates the public's trust, will be treated seriously by the Service.

In this case the public's trust was not honoured by Constable Khan and the penalty must reassure the public that breaches of the public's trust will incur a significant penalty.

I have reviewed all of the cases provided to me by the prosecutor. The penalties in those cases provided a broad range from forfeitures of three days to fifteen days. While none of these cases mirrored the facts in the case before me I find all contained similarities and differences which assisted me in reaching an appropriate decision.

In the end I am left to assess a disposition for misconduct which cannot be justified, which breached the Core Values of the Service, and most importantly violated the rights of a member of the public and undermined the public's trust in the police.

The actions of Constable Khan have brought discredit upon himself and upon the reputation of the Service. What I find most aggravating is that the unprofessional behaviour of Constable Khan has betrayed the confidence of a female member of the public.

Constable Khan was in a position of power and instead of exhibiting the Core Values of the Service and providing the member of the public with a good impression of himself and the Service, Constable Khan left her feeling intimidated, scared and distressed.

Constable Khan's conduct on June 18, 2015 betrayed the public trust and offended the Core Values of the Service. I find some comfort that Constable Khan has accepted responsibility for his conduct, yet he has still work ahead of him to start to earn back the public's trust.

I have weighed the aggravating and mitigating factors and have arrived at a penalty.

I accept the joint submission as to the penalty in this matter. It is within the range of penalties available to me and I find no compelling reason to vary it.

The penalty is imposed under Section 85(1) (f) of the Police Services Act.

For Charge #1 - Insubordination, in that he without lawful excuse disobeyed, omitted or neglected to carry out any lawful order, a penalty of a forfeiture of six days.

For Charge #2 – Discreditable Conduct, in that he acted in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the police force, a penalty of a forfeiture of two days

The penalties on Charge #1 and Charge #2 are to be served consecutively, for a forfeiture of a total of eight days or 64 hours.

A handwritten signature in black ink, appearing to read 'nc', with a large, stylized loop at the bottom.

Neil Corrigan  
Superintendent  
Hearing Officer

Dated and Released Electronically: September 29, 2016