

**TORONTO POLICE SERVICE DISCIPLINE HEARING
IN THE MATTER OF ONTARIO REGULATION 268/10
MADE UNDER THE *POLICE SERVICES ACT*, RSO 1990
AND AMENDMENTS THERETO;**

AND IN THE MATTER OF

CONSTABLE FOUAD AL SALEM #10337

AND THE TORONTO POLICE SERVICE

CHARGE: DISCREDITABLE CONDUCT

DISPOSITION WITH REASONS

Before: Inspector Dan Despatie

Greater Sudbury Police Service

Appearances:

Representing the Service:

Inspector Peter Callaghan

Toronto Police Service

Counsel for the Defence:

Mr. Gary Clewley

Hearing Date: September 4th, 2018

Before commencing with my decision on penalty and sentencing in this matter, I wish to thank Mr. Gary Clewley, defense counsel and Inspector Peter Callaghan, the Service prosecutor for their joint submissions as to penalty and exhibits tendered and all the work that went into the agreed statement of facts. Similarly, I acknowledge and thank public complainant Ms. Julia Van Norden for her input and submissions. I have taken all into consideration which has assisted me in reaching my decision.

Note: This decision is divided into four parts: PART I: OVERVIEW; PART II: THE HEARING; PART III: ANALYSIS AND FINDINGS FOR DISPOSITION; and PART IV: DISPOSITION.

PART I: OVERVIEW

Background

1. Constable Fouad Al Salem (PC AL SALEM) #10337 commenced his employment with the Toronto Police Service (TPS) in 2009. PC AL SALEM presently holds the rank of First Class Constable assigned to the Traffic Services Division.

Allegations of Misconduct

2. Constable Fouad Al Salem #10337, being a member of the Toronto Police Service, you are alleged to have committed misconduct in that you acted in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the police force of which you are a member, contrary to section 2(1)(a)(xi) of the Schedule Code of Conduct of Ontario Regulation 268/10 and therefore, contrary to Section 80(1)(a) of the Police Services Act, R.S.O. 1990 as amended. The edited particulars of the allegation are:

Being a member of the Toronto Police Service you were attached to Traffic Services.

On Monday July 28th, 2014, at approximately 09:00 hours, Ms. Julia Van Norden was riding her bicycle southbound on Yonge Street, north of Eglinton Avenue in the City of Toronto. Ms. Van Norden was involved in a collision with a taxi as she rode southbound on Yonge Street.

As a result of the collision, Ms. Van Norden suffered injuries to her hands and legs. The driver of the taxi assisted Ms. Van Norden into his vehicle and transported her to Sunnybrook Health Sciences Centre.

When Ms. Van Norden was released from hospital and returned to her home, she contacted the Toronto Police Service to report the collision.

You were dispatched to the call and attended at Ms. Van Norden's apartment and spoke with her as well as a friend of Ms. Van Norden who was also present in the apartment.

Without speaking to any other witnesses or the involved taxi driver, you advised Ms. Van Norden that if she wished to pursue reporting the collision, she would be deemed to be at

fault and would be charged with Careless Driving. Not wanting to be charged, Ms. Van Norden advised you that under the circumstances, she did not wish to make a report.

You left the apartment without completing a motor vehicle collision report.

Ms. Van Norden's roommate arrived home a short time later and was advised of the collision. Ms. Van Norden's roommate suggested to Ms. Van Norden that based on the severity of Ms. Van Norden's injuries, Ms. Van Norden should report the collision.

Ms. Van Norden contacted the Toronto Police Service a second time and requested that the police return so she could make a report about the collision. Ms. Van Norden asked the call-taker not to send the same officer.

You were once again assigned to the call, attended Ms. Van Norden's apartment and Ms. Van Norden advised you that she wanted to make a report.

You obtained the necessary information to complete a motor vehicle collision report, including information concerning the driver of the taxi.

You then charged Ms. Van Norden with Careless Driving.

In doing so, you committed misconduct in that you acted in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the police force of which you are a member.

Plea

3. On September 4th, 2018, PC AL SALEM pleaded guilty and was found guilty of Discreditable Conduct on the balance of probabilities through clear and convincing evidence. A charge of neglect of duty was withdrawn at the request of the prosecutor.

Decision

4. I have carefully considered the joint submission and relevant information presented by both the prosecutor and defence counsel, the information provided by public complainant Ms. Julia Van Norden as well as reviewed previous Tribunal decisions. In light of the mitigating and aggravating circumstances, and in particular, the seriousness of the matter, I impose the following sanction under Section 85(1)(f) of the Police Services Act (PSA).
5. For Discreditable Conduct in that PC AL SALEM acted in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the police force of which the officer is a member - I order PC AL SALEM to forfeit five (5) days' pay. My reasons for this are as follows.

PART II: THE HEARING

Exhibits

6. The exhibits for this matter are listed in Appendix 'A', attached hereto. To alleviate repetition, all exhibits will be referred to by number without the preface of Appendix 'A'.

Representation

7. In this matter, Mr. Clewley represented PC AL SALEM and Inspector Callaghan represented the TPS. Ms. Public complainant Julia Van Norden was self-represented.

Agreed Statement of Facts (ASoF)

8. The facts of this matter are substantially agreed upon by the parties. The ASoF, filed as exhibit 9, states:

On Monday July 28th, 2014, at approximately 09:00 hours, Ms. Julia Van Norden was riding her bicycle southbound on Yonge Street, north of Eglinton Avenue in the City of Toronto. Ms. Van Norden was involved in a collision with a taxi as she rode southbound on Yonge Street.

As a result of the collision, Ms. Van Norden suffered injuries to her hands and legs. The driver of the taxi assisted Ms. Van Norden into his vehicle and transported her to Sunnybrook Health Sciences Centre.

When Ms. Van Norden was released from hospital and returned to her home, she contacted the Toronto Police Service to report the accident.

Police Constable Fouad Al Salem (10337) of Traffic Services was dispatched to the call. Police Constable Al Salem attended at Ms. Van Norden's apartment and spoke to Ms. Van Norden. A friend of Ms. Van Norden was also present in the apartment.

Without speaking to any other witnesses or the involved taxi driver, Police Constable Al Salem advised Ms. Van Norden that if she wished to pursue reporting the collision, she would be deemed to be at fault and would be charged with Careless Driving. Not wanting to be charged, Ms. Van Norden advised Police Constable Al Salem that under the circumstances, she did not wish to make a report.

Police Constable Al Salem left the apartment without completing a motor vehicle collision report.

Ms. Van Norden's roommate arrived home a short time later and was told of the collision. Ms. Van Norden's roommate suggested to Ms. Van Norden that based on the severity of Ms. Van Norden's injuries, Ms. Van Norden should report the collision.

Ms. Van Norden contacted the Toronto Police Service a second time and requested that the police return so she could make a report about the collision. Ms. Van Norden asked the call-taker not to send the same officer.

Police Constable Al Salem was assigned to the call, he attended Ms. Van Norden's apartment and Ms. Van Norden advised Police Constable Al Salem that she wanted to make a report.

Police Constable Al Salem obtained the necessary information to complete a motor vehicle collision report, including information concerning the driver of the taxi.

Police Constable Al Salem charged Ms. Van Norden with Careless Driving.

Positions on Penalty

9. The positions on penalty are in congruence. Defence and prosecution agree by joint submission to a forfeiture of five (5) days' pay. Ms. Van Norden said she didn't have the requisite experience or knowledge on this to give a specific number, but hoped that the decision makes an impact with other officers and with the community. A summary of Inspector Callaghan's, Ms. Van Norden's and Mr. Clewley's submissions, in support of this position, follows.
10. No witnesses were called by the prosecution or the defence.

Submissions

Prosecutor (summary)

11. Inspector Callaghan offered that this is a joint submission on the part of the prosecution and the defence and that the appropriate disposition in this case should be the forfeiture of five (5) days' based on the following factors.
12. First the *public interest*. The public has to be able to trust that when they call upon police to do their job they will do it in the best interest of the community. In this case, the prosecutor referred to the TPS core values, although the core values recently changed, he cited the core values as they were at the time that these alleged facts took place and made reference to the Book of Records, exhibit 5, tab 1.
13. Julia Van Norden called upon the Toronto Police Service for assistance, Inspector Callaghan submitted, and PC AL SALEM failed to live up to those TPS core values and he brought discredit upon the TPS by failing to discharge his duty with diligence, professionalism and integrity. The introduction in the Standards of Conduct at exhibit 5, tab 2, reads, "*The community expects Toronto Police Service members to conduct themselves and discharge their duties with diligence, professionalism and integrity; practice fairness and equality in their official dealings with the public; and be seen to act within the spirit and letter of the law; act in the public interest and give priority to official duties and responsibility.*" The prosecution noted that this document is available to all service members on the Service's intranet.
14. Furthermore, Callaghan pointed out that it was PC AL SALEM's duty to conduct a thorough and unbiased investigation. He did not do so. In fact, he tried to dissuade Ms. Van Norden from filing a report. Ms. Van Norden had to face Highway Traffic Act charges for simply asking PC AL SALEM to do his duty. Ms. Van Norden, her friend, and her roommate were left with reason to doubt the honesty and integrity of the TPS. The prosecutor added, "*we must do all we can to encourage and maintain public confidence in our honesty, integrity*"; a quote from former Chief Blair found at tab 3, in the Book of Records in a document entitled "From the Chief - Professionalism and public trust"; available on the Service's intranet.

Prosecutor (summary) - continued

15. In terms of the *seriousness of the misconduct* - there is no doubt that this is serious misconduct, cited the prosecution. Anytime a police officer fails to do his or her duty, it is serious misconduct. More than that, anytime a member of the public has to face charges unnecessarily, it is serious misconduct. Ms. Van Norden insisted she wanted a motor vehicle collision report filed, and she was subsequently charged with careless driving. Even though the prosecutor in that case ultimately withdrew the charges - because there was no reasonable prospect of conviction - that aggravates the seriousness of the misconduct. Had PC AL SALEM conducted a proper investigation in the first instance, Ms. Van Norden would not have had to face those charges.
16. The prosecutor expressed that as far as the *recognition of the seriousness of the misconduct* it has long been recognized that a guilty plea is an acknowledgement of the seriousness of misconduct. In this case, PC AL SALEM did plead guilty and he has to be given some credit for pleading guilty.
17. Inspector Callaghan went on to outline the *employment of history* of PC SALEM by bringing the Tribunal's attention to the Book of Records, exhibit 5, tab 5, containing the summary of items from PC AL SALEM's employment file. Similarly, he highlighted PC AL SALEM's evaluations at tab 6, which in his words, "*reflect the fact that his work performance meets the minimum standard, but it is in no way superior.*" Callaghan noted five award recommendations from the public in PC AL SALEM's file.
18. At tab 8, Callaghan emphasized the history of discipline in PC AL SALEM's file. He did underscore that the references within - are to a different name - and that PC AL SALEM has legally changed his name with the Service since the time of those entries. The prosecutor continued by pointing out that three of the award recommendations occurred after the allegations in question and that should be given some mitigation towards penalty; reflecting the fact that the officer has made some good efforts since this misconduct.
19. Insofar as the *ability to reform or rehabilitate the police officer* the prosecution noted that a guilty plea is seen as a sign that he can be rehabilitated. Furthermore, he stated that the award recommendations occurring after the previous discipline should be taken as some sign that there is some prospect of rehabilitation, although it is somewhat concerning that this case has occurred after previous discipline and in light of that, somewhat of a set-back.
20. In terms of *consistency of disposition*, Inspector Callaghan cited that there were a number of cases that he and Mr. Clewley included for review in exhibit 4, the Book of Authorities. He reported that it was difficult to find cases that reflected similar allegations that were charged as discreditable conduct therefore most of the cases are, in fact, neglect of duty. He submitted that the penalties in those cases were still instructive in this matter. Most cases are well established, and they are in a range of a forfeiture of two-three days based on the previous history with the involved officers. With that, he argued that he and the defence were, in this case, suggesting that a slightly higher penalty is appropriate and brought my attention to ***Jones and Peel Regional Police, OCCPS 89-13, July 1, 1989*** at tab F, wherein the penalty in that case was five days therefore putting this joint submission, in the appropriate range.

Prosecutor (summary) - continued

21. In the area of *specific and general deterrence* the prosecution noted that disposition in this case has to send a message first to the Service as a whole that this kind of conduct cannot be tolerated and it needs to be reinforced with the officer that he has begun on a path that if he were to continue could lead to serious consequences and ultimately dismissal. The penalty should be appropriate to send the message that this cannot continue, remarked Callaghan.
22. Inspector Callaghan advised he wanted to make his final point, about the *damage to the reputation of the police service*. Three members of the public were involved in this matter, a friend of Ms. Van Norden's, her roommate, and the complainant herself. He stated he would let Ms. Van Norden speak for herself as to what she thought of the events on this day, but what the Tribunal will hear from her, will speak to the damage to the reputation of the Service. Those citizens involved expected a certain level of service and the TPS expected their officer to provide better service than he did on this occasion. PC AL SALEM's conduct is no doubt damaging in the eyes of the three individuals and, if other members of the public became aware of these allegations, there is no doubt that they would think less of the TPS for the kind of service that was provided by the officer in this case.
23. Based on all the noted factors and the cases referenced, the prosecution submitted that a forfeiture of five days is the appropriate penalty in this case.
24. In support of these arguments the prosecution drew my attention to the following information in exhibit 4 submitted as a Book of Authorities: ***Allen and Hamilton-Wentworth Regional Police, OCCPC 95-01, May 4, 1995, Bettes and Peel Regional Police, OCCPS 96-01, February 6, 1996, D'Souza and Toronto Police Service, OCCPS 07-10, June 26, 2007, Fright and Hamilton Police, OCCPS 02-10, November 18, 2002, Hayward and Sarnia Township Police, OPC 87-14, November 5, 1987, Jones and Peel Regional Police, OCCPS 89-13, July 1, 1989, Precious and Hamilton Police, OCCPS 02-08, May 10, 2002, Soley and Ontario Provincial Police, OCCPS 96-05, May 27, 1996.***
25. In support of these arguments the prosecution drew my attention to the following cases in exhibit 5 submitted as a Book of Records: ***TPS Core Values, TPS Standards of Conduct – Introduction, From the Chief – Professionalism and the Public Trust, Procedure 07-01 Transportation Collisions, Complimentary Activity from Personnel File – Police Constable Fouad Al Salem, Evaluations – Police Constable Fouad Al Salem, Routine Order 2012.02.24-0240, Conduct Issues – Police Constable Fouad Al Salem, Internal Resume Police Constable Fouad Al Salem.***

Public complainant (summary)

26. A statement from the complainant, Julia Van Norden was tendered as an exhibit and read into the record.

27. Ms. Van Norden advised that she wanted to read her statement for the situational construction of the experience on behalf of the public. She noted she attended the Tribunal in order to simply tell the truth, while detailing the events of Monday July 28th, 2014.
28. She began by highlighting that she was cycling on her way to work from Mount Pleasant & Erskine to Yonge & Eglinton. The commute is about 10-15 minutes to the train station. As she rode southbound along the right lane of the street she was heading in a straight line. About one or two car lengths ahead of her a pedestrian waved their hand up to sign for a taxi. Moments later, the taxi cab to the left of her made a sharp turn to pull over to the right side of the road at the curb. At this time, Ms. Van Norden was struck by the front right passenger door of the vehicle. She was flipped over her handle bars, hitting her head, injuring and bruising her legs which got caught between the bike pedals. She landed on the road a couple feet in front of the taxi cab and to the right.
29. Moments later, seven to eight people on the street came to see that she was alright. The taxi driver then offered to, and subsequently took her, to the hospital. Ms. Van Norden jotted down the driver's information along with his phone number because she had planned to report the incident to the Traffic Police, as she believed that it was a requirement when involved in an accident. While at the hospital she had x-rays done where she learned that nothing was broken. Later, she was diagnosed with musculoskeletal injuries, post-traumatic stress and a head injury and could not work, or walk, for about two weeks.
30. She was accompanied by a friend while at the hospital and returned home and called the TPS to report the incident. Do to her inability to walk arrangements were made for an officer to attend her apartment. Once the officer arrived Ms. Van Norden explained to him what happened that morning when she was struck by a taxi cab.
31. The officer explained that the collision was her fault and that if Ms. Van Norden chose to report it; she would have to go to court. According to the complainant, the officer advised that there were no bike lanes on the streets. She stated that at that point she put her faith into the TPS and trusted the officer's recommendation to not go through with filing the report. PC AL SALEM left the apartment without filing a report.
32. Her friend returned to the apartment and they discussed what occurred with the officer. Having had the opportunity to reflect on what happened, and with counsel from both her friend and her father, she decided to call the TPS once again. Still with the mindset that she was sure she needed to report all traffic incidents and believing it may be a city by-law, she felt compelled to follow through with reporting this incident. Ms. Van Norden reported the matter once again and asked that they send a different officer in order for her to solicit a second opinion. Later the same evening PC AL SALEM returned to her apartment once again.

Public complainant (summary) - continued

33. Upon his arrival, Ms. Van Norden contends that PC AL SALEM immediately said he was laying a charge for careless driving against her. At that point he started recording the conversation and asked for her statement, which made her feel threatened and therefore she declined to submit one given she had already provided a statement earlier the same day. Van Norden advised that while

the officer was out printing the ticket her roommate said something to her about PC AL SALEM's demeanour noting that he seemed slightly aggressive and disrespectful. When he returned, the officer issued her a \$490.00 ticket for careless driving under the Highway Traffic Act. Prior to leaving PC AL SALEM asked the complainant for the contact information of the taxi driver which she then provided. Lastly, it is Ms. Van Norden's recollection that PC AL SALEM made some comments questioning her and her friend's education level and suggested that if the friend drove, she needed to be careful on the street.

34. This second interaction with PC AL SALEM left Ms. Van Norden feeling mentally, emotionally and physically traumatized. She submitted that she began to question how the world could be such a negative, unsafe and scary place.
35. The complainant remarked that in the weeks that followed she stood on the side of the intersection at the collision location holding a sign hoping to find a witness to the event. She requested disclosure four times before it was provided to her in provincial court when the prosecutor asked the Constable to provide it, which he finally did. She needed family and friend support every time she attended court. In her own words, Ms. Van Norden *"felt weak, overwhelmed and scared and most of all confused."* It took a lot of time, energy and out of pocket expenses on her behalf to get where she is today. Further, after receiving full disclosure, she described being in awe and disbelief as the diagram of the incident showed she had rear-ended the taxi cab. Both her statement and that of the taxi driver refuted this account of events, this did not make any sense, and she advised that the provincial prosecutor later pronounced that she was charged erroneously and threw out the charge two years after the incident.
36. Ms. Van Norden emphasized that it took, and required a lot of strength to write and submit a complaint because of the trauma and inconvenience related to the way this was handled by the TPS. Every time the issue came up it would trigger stress and emotional disturbance.
37. She was forthright about why she submitted a complaint as a result of this occurrence. She believed that if it was dealt with differently, it could have changed the course of her life, mental health and career. The complainant noted that she has grown a lot from this post-traumatic stress and moved into a state of post-traumatic resilience in service of the community and the public. Her resolve in attending the Tribunal relates to her willingness to signify the impact that this event had on her, and those who have supported her in order to prevent anything similar from happening in the future to any innocent victim, man or women that would put their trust in the Police Service to protect them and serve them.
38. In conclusion Ms. Van Norden stressed the impact this situation had on her. The emotional and mental turbulence and stress of being charged without grounds after being hit by a car was a huge weight. Strain and weight on her relationships with those supporting her through the process. Many weekends and holidays spent preparing for a court date wherein she would eventually never have to speak at. Financial strain based on the costs and time to attend to these matters in trial and court and preparation for said responsibilities associated to responding to the charge. Strain on the progress of her career because of the stress and overwhelm, related to this incident. Doubt and mistrust in the TPS, fear of the city leading her to moving out of town and rarely visiting. Fear and anxiety being in the city itself during, and throughout the time of the trial. Rift and strain on relationships with those that were required to be present and submit statements. Family and friends noted a change in her personality and overall outlook and demeanour towards life, she noted. Doubt and anxiety towards the city and its officials, extending to the majority of authority figures.

39. As an outcome, Ms. Van Norden stated she hoped that this would properly reinforce the significance of the event and also protect the public, the community and innocent victims. She added that although PC AL SALEM pled guilty, that it was not until the last moment and prior to that he denied all allegations which she sees as relevant.

Defence (summary)

40. Mr. Clewley began by highlighting that although he didn't want to quarrel with Ms. Van Norden, it was not accurate that PC AL SALEM waited until the last second to plead guilty. It was always his intention to plead guilty to this and take responsibility and that was communicated to the prosecutor. The defence contended that they were ready to do this in April, but the complainant wasn't available so the matter was adjourned on consent, although PC AL SALEM was ready to go.
41. The prosecutor interjected, adding that there was a bit of confusion in terms of scheduling after the guilty plea was arranged but that he believed - in this moment - Ms. Van Norden was speaking to the period prior to that, and after she filed her complaint. That although the complaint wasn't filed until 2016, there was an intervening period that she is referring to not up to the point where arrangements were made to come to the Tribunal and enter the guilty plea.
42. Defence and prosecution agreed that PC AL SALEM never intended to challenge the misconduct through a full blown hearing with a not guilty plea.
43. As such, given his guilty plea, Mr. Clewley submitted that the officer gets the benefit of remorse. He also advised that PC AL SALEM asked that the defence apologize directly to Ms. Van Norden at the Tribunal. He apologized for the inconvenience and the rest of the things that the complainant suffered as a result of this incident. Furthermore, he noted the officer wanted to apologize to the TPS for any negative effect this matter had on its reputation, which he is mindful of.
44. Mr Clewley outlined that the good news was that PC AL SALEM's performance at work did improve after this incident, as supported by a review of his submitted performance appraisals. This he said, was proof that he has learned from the experience and has committed himself to doing his job better.
45. Defence advised that in Toronto there is no reliance on discipline that's over five years old and there are a couple of matters here on the conduct side that go back to 2011. He asked that the Tribunal not take those into account in assessing a penalty.
46. With respect to the penalty, Mr. Clewley suggested that Inspector Callaghan fairly described what the case law suggests is a suitable range. It is somewhere between three and five days which he thought was a fair estimate. PC AL SALEM agreed to the high end of that, which he noted, was to the officer's credit. These cases are only as good as the similarities to the one before this Tribunal and there is no exact case; however, in the neighbourhood of failing to do your duties as required - which PC AL SALEM acknowledged he failed to do on this occasion - the case is more than supported by this joint submission that was carefully considered by the defence and the prosecution.

47. In closing, Mr. Clewley asked that the Tribunal honour the proposed joint submission and impose the penalty selected within. This happened more than four years ago and PC AL SALEM has learned from the experience and has committed himself not to repeat it, and be back here before this Tribunal.
48. In support of these arguments the defence drew my attention to the following information in exhibit 4 submitted as a Book of Authorities by the prosecution: ***Allen and Hamilton-Wentworth Regional Police, OCCPC 95-01, May 4, 1995, Bettes and Peel Regional Police, OCCPS 96-01, February 6, 1996, D'Souza and Toronto Police Service, OCCPS 07-10, June 26, 2007, Fright and Hamilton Police, OCCPS 02-10, November 18, 2002, Hayward and Sarnia Township Police, OPC 87-14, November 5, 1987, Jones and Peel Regional Police, OCCPS 89-13, July 1, 1989, Precious and Hamilton Police, OCCPS 02-08, May 10, 2002, Soley and Ontario Provincial Police, OCCPS 96-05, May 27, 1996.***
49. In support of these arguments the defence drew my attention to the following cases in exhibit 5 submitted as a Book of Records by the prosecution: ***TPS Core Values, TPS Standards of Conduct – Introduction, From the Chief – Professionalism and the Public Trust, Procedure 07-01 Transportation Collisions, Complimentary Activity from Personnel File – Police Constable Fouad Al Salem, Evaluations – Police Constable Fouad Al Salem, Routine Order 2012.02.24-0240, Conduct Issues – Police Constable Fouad Al Salem, Internal Resume Police Constable Fouad Al Salem.***

Prosecutor's reply (summary)

50. Inspector Callaghan replied that Mr. Clewley correctly pointed out that, generally, the Tribunal takes into account five years of previous discipline history for an officer when considering a hearing decision. However, he stressing that PC AL SALEM has a previous hearing decision from 2011, and these allegations for which he finds himself before this Tribunal occurred in 2014, so that's within the range. The prosecution then left it for this Tribunal to choose how best to address that matter adding that both prosecution and defence have agreed on position in this case and therefore not much turns on it.
51. I then asked Ms. Van Norden if she had been spoken with by the defence or the prosecution prior to today in regards to the joint submission application; and, what her feelings were on that?
52. Ms. Van Norden replied that she did not have the adequate knowledge or expertise in regards to being able to suggest a right or just outcome. However, she suggested that whoever was making this decision should really reflect on what the community would want, and how severe the penalty would be considered in their eyes.
53. The complainant was asked once again if she understood that if this joint submission was accepted by the Tribunal PC AL SALEM would be forfeiting five days' pay. I explained the process the prosecution and defence used to make this recommendation insofar as a review of similar past cases through the submitted Book of Authorities, in order to find similarities and make an appropriate request at resolution.
54. Ms. Van Norden thanked the Tribunal for that explanation.

55. Inspector Callaghan re-emphasized that this is a joint position on behalf of Mr. Clewley and himself that allows Ms. Van Norden to take her own position on penalty, and ultimately, it falls on the Tribunal to make the final decision. He went on to say that prosecution and defence didn't want to box Ms. Van Norden into saying that she had to agree to these five days. The Tribunal can place whatever weight is required on Ms. Van Norden's submissions but the joint submission of prosecution and defence is that five days is appropriate.
56. I reiterated that Ms. Van Norden was given the opportunity to address that and she said she didn't have the requisite experience or knowledge on this to give a specific number, but hoped that the decision makes an impact with other officers and with the community.
57. Ms. Van Norden agreed and stated she would like the outcome to be enough to prevent any officer in the future from acting in the way that her matter was handled.
58. Mr. Clewley chimed in stating that this was otherwise known as the principals of specific and general deterrence which he and Inspector Callaghan took into account when they came up with the joint proposal.

PART III: ANALYSIS AND FINDINGS FOR DISPOSITION

Summary of Misconduct

59. On Monday July 28th, 2014, at approximately 09:00 hours, Ms. Julia Van Norden was riding her bicycle southbound on Yonge Street, north of Eglinton Avenue in the City of Toronto when she was involved in a collision with a taxi. As a result of the collision, Ms. Van Norden suffered injuries to her hands and legs. The driver of the taxi assisted Ms. Van Norden into his vehicle and transported her to Sunnybrook Health Sciences Centre. When Ms. Van Norden was released from the hospital and returned to her home, she contacted the Toronto Police Service to report the collision. PC AL SALEM of Traffic Services was dispatched to the call and attended at Ms. Van Norden's apartment and spoke with her. A friend of Ms. Van Norden was also present in the apartment. Without speaking to any other witnesses or the involved taxi driver, PC AL SALEM advised Ms. Van Norden that if she wished to pursue reporting the collision, she would be deemed to be at fault and would be charged with careless driving. Not wanting to be charged, Ms. Van Norden advised PC AL SALEM that under the circumstances, she did not wish to make a report. PC AL SALEM left the apartment without completing a motor vehicle collision report.
60. Ms. Van Norden's roommate arrived home a short time later and was advised of the collision. Ms. Van Norden's roommate suggested to Ms. Van Norden that based on the severity of Ms. Van Norden's injuries, Ms. Van Norden should report the collision. Ms. Van Norden contacted the Toronto Police Service a second time and requested that the police return in order for her to report the collision. Ms. Van Norden asked the call-taker not to send the same officer. PC AL SALEM was assigned to the call and once again, attended Ms. Van Norden's apartment. Ms. Van Norden advised PC AL SALEM that she wanted to have a report submitted for the

collision. PC AL SALEM obtained the necessary information to complete a motor vehicle collision report, including information concerning the driver of the taxi. PC AL SALEM charged Ms. Van Norden with careless driving without conducting a proper and fulsome investigation.

Factors for Consideration

61. The facts and PC AL SALEM's guilt are not in dispute; prosecution and defence have submitted a joint submission with relevant information requesting a forfeiture of five (5) days' pay.
62. Determining the most appropriate sanction requires striking a balance between community expectations/public reassurance, fairness to the involved officer as well as organizational requirements. One must always keep in mind the goal of the discipline process which includes correcting errant behaviour and deterring future misconduct.
63. In the case of this particular misconduct, in order to determine a fitting sanction I have considered the mitigating and aggravating factors as they relate to the principles of discipline. I have reviewed the significant amount of material contained within the exhibits submitted by both the prosecution and the defence. I have reviewed the contents of a letter submitted as an exhibit by the complainant in this matter, Ms. Julia Van Norden. While I may not reference all aspects of the information presented, my decision has taken everything presented into consideration.
64. In doing so I have identified the following key issues to help with this decision.
 - a. **How do the similar matters presented and their dispositions measure up against the facts in this case?**
 - b. **Is there any reason to deviate from the proposed joint submission?**
65. A variety of considerations apply to the process of determining an appropriate disposition in the event misconduct is established. The Ontario Civilian Police Commission (OCPC), as well as many adjudicators in previous cases, has identified various matters that must be taken into consideration when determining penalty. Paul Ceyssens, in "Legal Aspects of Policing" summarized the factors which may be either mitigating or aggravating as follows:
 1. *Public interest;*
 2. *Seriousness of the misconduct;*
 3. *Recognition of the seriousness of the misconduct;*
 4. *Employment history;*
 5. *Need for deterrence;*
 6. *Ability to reform or rehabilitate the police officer;*
 7. *Damage to the reputation of the police force;*
 8. *Handicap and other relevant personal circumstances;*
 9. *Effect on police officer and police officer's family;*
 10. *Management approach to misconduct in questions;*
 11. *Consistency of disposition;*
 12. *Financial loss;*
 13. *Effect of publicity.*

66. There is no requirement that any one factor be given more weight than another. Aggravating factors can serve to diminish the weight of any mitigating factors. If these considerations are relevant in a particular case as described by Paul Ceyssens, in "Legal Aspects of Policing" *"they will constitute mitigating consideration or aggravating consideration (or occasionally neither one), depending on the circumstances."*

Factors for Consideration -Continued

Public Interest

67. Nothing was submitted by any party suggesting this case carried any significant amount of media attention. However, several people were aware of PC AL SALEM's actions such as those involved, including the complainant Ms. Van Norden along with her friends and family, the taxi driver, TPS internal investigators and TPS Command Staff to name but a few.
68. It most certainly is true that the community expects that police officers be held to a higher standard and when an officer is found guilty of misconduct, the public wants to see that its Police Service holds its members accountable to that higher standard. Only an appropriate remedy to this fair and transparent process will help ensure public confidence can be maintained. The opportunity to be a police officer, to serve and protect citizens from within our communities is an honour and a privilege, not a right. Those that cross the line must be reprimanded accordingly in order to maintain that public confidence.
69. Exhibit 5, tab 1, the Toronto Police Service Vision Statement from 2014-2016 Business Plan reads, *"We take pride in what we do and measure our success by the satisfaction of members and our communities."* This document also highlights the Core Value of, *"Fairness – we treat everyone in an impartial, equitable, sensitive, and ethical manner."* Clearly PC AL SALEM's actions on the day in question missed the mark. He left members of his community dissatisfied and was not fair in his dealings with Ms. Van Norden which reflects poorly on both him and the TPS.
70. On several occasions Ms. Van Norden noted that the final decision in this matter needs to make an impact with officers of the TPS and with the community.
71. The TPS has strict Standards of Conduct that are available to all officers via the Service's intranet. Furthermore, tendered in exhibit 5, tab 3, a document from former Chief Blair labelled "From the Chief - Professionalism and public trust" asserts, *"as law enforcement officials, we will always be held to a higher standard"* it continues with, *"we must do all we can to encourage and maintain public confidence in our honesty, integrity."* Unmistakably this order emphasizes the TPS' position on its long established set of core values and that any deviation by its members is unacceptable.
72. This is an aggravating factor.

Nature and seriousness of the misconduct

73. There is no dispute that PC AL SALEM failed to conduct a proper investigation in relation to this motor vehicle collision and the facts surrounding that are not up for deliberation. The results of that have left the complainant with long lasting emotional effects. It has clearly impacted her negatively.

Factors for Consideration -Continued

74. All parties are in good agreement that this case is serious. Discreditable conduct by an officer based on an on-duty incident involving a third party complainant may even be shocking to members of the community and other law enforcement partners. It is extremely concerning that an officer duty bound to assist the public and investigate crimes with integrity and professionalism – did the exact opposite in this case.
75. This matter has dragged on for years, and resulted in not only trauma to the complainant but the huge inconvenience and time wasted on preparing for a provincial court matter that was ultimately withdrawn given the lack of evidence attributed to a sub-standard investigation by PC AL SALEM.
76. This too is an aggravating factor.

Recognition of the seriousness of the misconduct

77. Although some confusion exists regarding timing, PC AL SALEM did enter a guilty plea to discreditable conduct before this Tribunal.
78. Through his counsel, PC AL SALEM apologized to both Ms. Van Norden and the TPS for his role in this matter and the negative impact it had. Time will tell if he has truly recognized the seriousness of his misconduct but this provides him the opportunity to move forward and the ability to get his career back on track.
79. This is a mitigating factor.

Employment history

80. PC AL SALEM began his policing career in 2009 and yet this is not the first time as an officer that he finds himself the subject of an investigation. He does have a history of discipline dating back to 2011 although Mr. Clewley submitted that those matters are not relevant given the timeline of this current matter and the fact five years has passed. In this regard, I side with the prosecution that noted, the misconduct PC AL SALEM is addressing before this Tribunal occurred back in 2014 therefore, within five years and relevant. Having said that, I am mindful that since the original misconduct in 2011 and the relapse in 2014, absent any evidence to the contrary, PC AL SALEM has not found himself the subject of any serious misconduct allegation as of this writing in 2019.
81. The Tribunal received documentation related to his work performance in the form of complimentary activity from 2009 to 2016 as well as Uniform Performance Appraisals and Development Plans from 2015 to 2016 in exhibit 5, tab 6 and 7.
82. During that time PC AL SALEM was commended six times, twice after being charged in the 2014 matter involving Ms. Van Norden. Of note is a letter of thanks received from a member of the public in 2016 thanking officers for their assistance in a motor vehicle collision investigation involving the author's family member.
83. A review of the included Uniform Performance Appraisals and Development Plans rank PC AL SALEM in most categories as satisfactory and/or meets expectations with some improvement from

2015 to 2016. In the 2016 Plan, completed two years after the incident that brought PC AL SALEM before me in this matter his Sergeant wrote, *“in the past year, I have noticed an improvement in PC AL SALEM’s work performance, he has shown a positive approach to his duties and responsibilities.”* Staff Sergeant Ralph went on to add, *“he has been able to continue on with his front line enforcement and investigation duties with no problem.”* Although not spectacular, it appears that PC AL SALEM’s conduct is moving in the appropriate direction since this incident.

Ability to reform or rehabilitate the police officer

84. PC AL SALEM plead guilty, apologized to the complainant and to his employer and has seen an moderate improvement in his work since this unfortunate incident.
85. Nothing has been tendered to suggest PC AL SALEM’s ability to reform sufficiently and to remain a useful member of the Police Service is in jeopardy. He acknowledged his wrongdoing and asked for the chance to put this behind him. Both the prosecution and the defence agree he can succeed moving forward. Based on everything I have learned throughout this hearing, I too, am optimistic that this is true.
86. This is a mitigating factor.

Specific deterrence

87. The tendered joint submission is a vote of confidence in PC AL SALEM from both counsel. PC AL SALEM accepted responsibility for the misconduct and has continued to progress well while at work since that time. Time will tell whether this error in judgement has helped PC AL SALEM heed the lessons learned related to specific deterrence. I too agree that he has earned a right to a second chance, however, it must be noted that should PC AL SALEM re-offend surrounding similar circumstances he will face a more strict remedy.

General deterrence

88. Addressing general deterrence presents different challenges. There can be no question that this type of misconduct cannot be condoned by any Police Service and is unacceptable behaviour for any police officer, regardless of anything that may serve to mitigate the severity of the specific case. Any disposition must send a message that reflects this position and that offers no excuse for the behaviour.
89. Ms. Van Norden herself was adamant that for her the specific number of days forfeited were not the focus, as long as the sanction makes an impact with other officers and with the community. She stressed that the main goal was to prevent other officers from acting in the way PC AL SALEM did when he handled her matter.
90. Mr. Clewley made it a point to highlight that he and Inspector Callaghan took all deterrence factors into consideration while agreeing to the joint proposal on penalty.

Factors for Consideration -Continued

91. The results of this hearing will be shared on the TPS intranet and available for all officers to see and serve as a reminder that discreditable conduct in this form - or any for that matter – will be subject to serious repercussions.

Damage to the reputation of the police service

92. The Toronto Police Service has a reputation as progressive police organization with a remarkable history.
93. They proudly state in their Standards of Conduct found at tab 2, exhibit 5 that, *“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 on ourselves. This higher standard of behaviour is necessary to preserve the integrity of the Service.”* The Standards go on to state, *“therefore, the Chief of Police must have the authority to correct and discipline any member who, through their behaviour, brings discredit to the reputation of the Service.”*
94. One of the TPS’ core values is integrity. The TPS states *“we are honourable, trustworthy, and strive to do what is right.”*
95. In exhibit 5, tab 3, a quote from former Chief Blair in the document entitled “From the Chief - Professionalism and public trust”; which is available to all TPS on the Service’s intranet hit home. It read, *“We must continue to honour our oath of office. We must hold ourselves accountable to the highest standards of ethics and professionalism. We must maintain and uphold the public’s trust.”*
96. The facts of this case fly in the face of this value. PC AL SALEM’s actions were neither honourable nor professional and that then cries out for a degree of accountability.
97. Police officers hold an “oath of office” and their work must reflect the responsibilities that come with that position. They are expected to uphold a higher standard. PC AL SALEM deviated from that in his interactions with Ms. Van Norden. Those close to her were also witness to his unacceptable approach and shoddy investigation which undoubtedly damaged the reputation of the TPS.

Consistency of disposition

98. I did consider and review all matters submitted which were helpful. I noted that the cases to which I referred did vary in facts at issue thereby outlining various mitigating and aggravating factors.
99. As the prosecutor contented, it was difficult to find cases that reflected similar allegations where misconduct was outlined as discreditable conduct, and in fact, most of the submitted cases referred to neglect of duty. The submitted case law was dated, showed a wide range of sanctions, all as a result of appeals to the Ontario Civilian Commission on Police Services (OCCPS). Most resulted in OCCPS decisions to reduce penalties to a forfeiture of two-three days based on the previous history of the involved officers.
100. The defence, relying on the same cases, agreed that the disposition proposed fell within the appropriate range in the interest of balance and consistency, based on the circumstances. He was clear that no exact cases existed, however, in the realm of - officers failing to do their duties – when compared with the submitted cases, this resolution is supported by the joint submission.
101. After a review of all facts submitted, I believe the outcome as proposed by the involved parties is on point and consistent with past referenced cases.

102. I am mindful of the Commission's decision in ***Carson and Pembroke Police Service, OCCPS (2001)***, in referencing the key elements in order to arrive at a consistent and fair penalty.

Key Issues

103. As a trier of fact I am bound to review the case law submitted to me by both counsel. In this instance they referred to the same material. My findings took into consideration the key issues identified in this matter.

a. How do the similar matters presented and their dispositions measure up against the facts in this case?

104. In my review of the appended cases, and included in ***Precious and Hamilton Police, OCCPS 02-08, May 10, 2002***, I was guided by the Commission's statement in its decision in ***Schofield and Metropolitan Toronto Police, OCCPS (1984)***, "*consistency in the disciplinary process is often the earmark of fairness. The penalty must be consistent with the facts and consistent with similar cases that have been dealt with on earlier occasions.*"
105. None of the submitted cases are directly on point to all the circumstances of this case; however it would be a rarity to find one that was. In my view, ***Bettes and Peel Regional Police, OCCPS 96-01, February 6, 1996***, may be the closest in that it involved a sub-standard motor vehicle collision investigation with a third party public complainant wherein certain procedures were not followed and the reporting was less than complete and accurate. Ultimately, the OCCPS reduced the hearing officer imposed penalty to a reprimand. Having said that, that case did have several mitigating factors that were non-existent in this case; including a relatively new officer recently working without a coach officer, with little collision investigation experience and no prior disciplinary record.
106. ***Jones and Peel Regional Police, OCCPS 89-13, July 1, 1989***, is also an interesting case involving a public complainant wherein the officer was charged with discreditable conduct when he failed to provide appropriate assistance to a member of the public calling in seeking assistance. In this case from 1989, the OCCPS reduced the hearing officer imposed penalty to a five day loss of pay.
107. Most other similar fact cases tendered saw dispositions in the range of a two-three days forfeiture of pay. All the cases have their nuances, the facts and issues were varied and aggravating and mitigating factors comparable and not.
108. These served as a good base for review and were used as a guideline. However, this case was judged according to the facts presented in order for a fair and balanced disposition to be rendered.

Key Issues - Continued

109. As stated and expected, none of the case law before me detailed the exact aggravating factors as the PC AL SALEM case, which included but were not limited to: an inferior collision investigation, the long-standing and wide ranging impact of the officer's behaviour on a public complainant and a previous discipline record. As in the similar cited matters, the PC AL SALEM misconduct was serious.

110. Both *Precious and Hamilton Police, OCCPS 02-08, May 10, 2002*, and *D'Souza and Toronto Police Service, OCCPS 07-10, June 26, 2007*, reference *Williams and OPP* which outlines the elements to be taken into account when gauging a suitable sanction. In *Williams* the commission identified three fundamental elements, "they include the nature and seriousness of the misconduct, the ability to reform or rehabilitate the officer, and the damage to the reputation of the police services that would occur if the police officer remained on the force. Further considerations can include the need for deterrence, provocation, or concerns arising from management's approach. Other factors can be relevant wither mitigating or aggravating a penalty, depending on the conduct in question. These include the officer's employment history and experience, recognition of the seriousness of the transgression and handicap or other relevant personal considerations. In addition, when imposing a penalty, it is important to take into account prior disciplinary cases dealing with similar types of misconduct. This is to ensure consistency."
111. With that, and in the interest of balance and fairness, the PC AL SALEM misconduct was in the big picture comparable to the majority of cases reviewed for which a two-three day loss of pay was levied. Given the referred cases are all dated, and this type of behaviour continues to occur today, the penalties imposed within proved not to always be sufficient for deterrence. Therefore I conclude that in order to continue to address the general deterrence for members of the TPS in similar serious matters - particularly in light of the numerous orders issued cautioning members about their conduct - the PC AL SALEM case is in the high range of comparable and warrants a slightly more severe sanction thereby justifying the jump to five days forfeiture of pay. This sanction better aligns with the environment of today.
112. Having said that, this cannot be the sole reason to impose a higher sanction in a misconduct case. Although an aggravating factor, it most certainly is not the sole factor and it must be weighed in conjunction with all other considerations within a case.
113. In this case as in the referenced material, mitigating and weighty factors were considered in the totality of the circumstances. PC AL SALEM's recognition of the seriousness of his offence, his ability to reform, specific deterrence and the requirement for a balanced and consistent penalty where at the forefront. This was an isolated incident which PC AL SALEM can overcome to be a positive and contributing member of the Toronto Police Service. The disposition was rendered with the primary goal of discouraging this type of misconduct, all the while correcting the behaviour of PC AL SALEM.
114. Without any evidence to the contrary, this appears to be a situation where an officer while on-duty and based on the moment, made a one-time bad decision; yet that decision has had long lasting and on-going repercussions for the complainant which factored into the final disposition.
115. As stated throughout this disposition with reasons, this sanction remains uniform with similar decisions in order to maintain that consistency in sentencing.
116. This matter when viewed objectively and considering all aggravating and mitigating factors did warrant a resolution slightly higher than the offered cases. However, it did not justify a jump to a sanction outside of the joint submission - which I believe - was well thought out by the defence and prosecution when the agreed to proposal was tabled. Similarly, it makes an impact with the involved officer, other officers and the community at large.

b. Is there any reason to deviate from the proposed joint submission?

117. I am aware that I am not bound by the joint submission tendered by the prosecution and the defence; however, given the totality of the evidence before me including the passionate submission by the public complainant, I have no compelling reason to deviate from the joint disposition proposal.

PART IV: DISPOSITION

118. I have carefully considered the joint submission and relevant information presented by both the prosecutor and defence counsel, the information provided by public complainant Ms. Julia Van Norden as well as reviewed previous tribunal decisions. In light of the mitigating and aggravating circumstances, and in particular, the seriousness of the matter, I impose the following sanction under Section 85(1)(f) of the Police Services Act (PSA).

119. For Discreditable Conduct in that PC AL SALEM acted in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the police force of which the officer is a member - I order PC AL SALEM to forfeit 5 days' pay.



Dan Despatie
Inspector Date: 28 June 2019
Hearing Officer

Date: 28 June 2019
Delivered Electronically

Appendix 'A'

The following exhibits were tendered during the hearing:

Exhibit 4: Book of Authorities

- Tab A: Allen and Hamilton-Wentworth Regional Police, OCCPC 95-01, May 4, 1995
- Tab B: Bettes and Peel Regional Police, OCCPS 96-01, February 6, 1996
- Tab C: D'Souza and Toronto Police Service, OCCPS 07-10, June 26, 2007
- Tab D: Fright and Hamilton Police, OCCPS 02-10, November 18, 2002
- Tab E: Hayward and Sarnia Township Police, OPC 87-14, November 5, 1987
- Tab F: Jones and Peel Regional Police, OCCPS 89-13, July 1, 1989
- Tab G: Precious and Hamilton Police, OCCPS 02-08, May 10, 2002
- Tab H: Soley and Ontario Provincial Police, OCCPS 96-05, May 27, 1996

Exhibit 5: Book of Records

- Tab 1: TPS Core Values
- Tab 2: TPS Standards of Conduct - Introduction
- Tab 3: From the Chief – Professionalism and the Public Trust
- Tab 4: Procedure 07-01 Transportation Collisions
- Tab 5: Complimentary Activity from Personnel File – Police Constable Fouad Al Salem
- Tab 6: Evaluations – Police Constable Fouad Al Salem
- Tab 7: Routine Order 2012.02.24-0240
- Tab 8: Conduct Issues – Police Constable Fouad Al Salem
- Tab 9: Internal Resume Police Constable Fouad Al Salem

Exhibit 6: Prosecution's Designation

Exhibit 7: Hearing Officer's Designation

Exhibit 8: Notice of Hearing

Exhibit 9: Agreed Statement of Facts

Exhibit 10: Complainant Julia Van Norden's written address to the tribunal