



Before commencing my decision on penalty and sentencing in this matter, I would like to thank Mr. David Butt, defence counsel, and Inspector Shane Branton, the Service Prosecutor, for their joint submissions as to penalty and exhibits tendered, all of which have 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 Robert (PC Smith) Smith # 8438 commenced his employment with the Toronto Police Service (TPS) in 2002. PC Smith presently holds the rank of First Class Constable and assigned to 51 Division, Primary Response Unit.

### **Allegations of Misconduct**

2. Constable Robert Smith #8438, being a member of the Toronto Police Service, you are alleged to have committed misconduct in that you are guilty of a criminal offence that is an indictable offence or an offence punishable upon summary conviction, contrary to section 2(1) (a) (ix) 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 particulars of the allegation are:

Being a member of the Toronto Police Service, attached to number 51 Division, you were assigned to the Priority Response Unit.

On Friday, May 10th, 2019, you were working in a uniform capacity with an escort. You had been in the area of 350 George Street, Toronto, following up on a missing juvenile.

After canvassing an address, you and your escort interacted with a male party R.P who had been drinking and was in the middle of the road. The male was disorderly with you and your escort as you attempted to move him off the roadway.

You kicked this male in the buttocks and pushed him by his shoulder causing him to fall. You attempted to provide assistance to the male who declined.

Unknown to you the male suffered a broken leg.

You and your escort then left the area.

A short time later police received a call to attend 354 George Street. R.P. reported that his leg had been broken during your interaction with him.

R.P. was transported to hospital and diagnosed with a broken tibia and fibula. The Special Investigations Unit invoked their mandate.

On Thursday, October 3<sup>rd</sup>, 2019, you were charged with Assault Causing Bodily Harm.

On Friday, July 24, 2020, you attended the Ontario Court of Justice, Toronto Region. You pled guilty to the offence of Assault Causing Bodily Harm contrary to the *Criminal Code of Canada* before Judge D. Olewkiw. A finding of guilt was registered.

In doing so, you committed misconduct in that you were found guilty of a criminal offence that is an indictable offence or an offence punishable upon summary conviction.

## **Plea**

3. On October 29, 2020 Constable Robert Smith (8438), pleaded guilty and was found guilty of Discreditable Conduct, contrary to the Police Services Act.

## **Decision**

4. I have carefully considered the joint submission and relevant information presented by both the prosecutor and defence counsel 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) (c) of the Police Services Act (PSA).

For Discreditable Conduct in that PC Smith is guilty of: a criminal offence that is an indictable offence or an offence punishable by summary conviction - a reduction in rank classification from First Class Constable to Second Class Constable for a period of 6 months after which PC Smith can be returned to his previous classification of First Class Constable.

My reasons for this are as follows.

## **PART II: THE HEARING**

### **Exhibits**

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

### **Representation**

6. In this matter, Mr. Butt represented PC Smith and Inspector Branton represented the TPS.

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

7. The facts of this matter as amended are substantially agreed upon by the parties.

The ASoF, filed as exhibit 3, state:

Constable Robert Smith has been a member of the Toronto Police Service since 2002. He is attached to 51 Division, where he was assigned to the Priority Response Unit.

On Friday, May 10<sup>th</sup>, 2019, Constable Smith was working in a uniform capacity with his escort. Constable Smith was following up on a missing elderly in the area of 350 George Street, Toronto.

After canvassing an address, Constable Smith and his escort interacted with a male party, R.P., who had been drinking and was in the middle of the road. The male was disorderly with Constable Smith and his escort. Constable Smith attempted to move him off the roadway.

Constable Smith kicked this male in the buttocks and pushed him on his shoulder causing him to fall. Constable Smith attempted to provide assistance to the male who declined.

Unknown to Constable Smith and his escort the male had suffered a broken leg. Constable Smith and his escort then left the area.

A short time later police received a call to attend 354 George Street. R.P. reported that his leg had been broken during the interaction with Constable Smith.

R.P. was transported to hospital and diagnosed with a broken tibia and fibula.

The Special Investigations Unit invoked their mandate.

Constable Smith's actions were contrary to the Standards of Conduct.

As a result of an investigation by the Special Investigations Unit, Constable Smith was charged under the *Criminal Code of Canada*.

On Tuesday, July 24, 2020, Constable Smith attended the Ontario Court of Justice in Toronto, Ontario. PC Smith pled guilty to the offence of Assault Causing Bodily Harm contrary to the *Criminal Code of Canada* before Justice D. Oleskiw. A finding of guilt was registered. Constable Smith received a conditional discharge with a period of probation for 6 months,

In doing so, Constable Smith committed misconduct in that he is guilty of a criminal offence that is an indictable offence or an offence punishable upon summary conviction.

### **Positions on Penalty**

8. The positions on penalty are in congruence. Defence and prosecution agree by joint submission to a reduction in rank classification from First Class Constable to Second Class Constable for a period of 6 months after which PC Smith can be returned to his previous classification of First Class Constable. A summary of Inspector Branton and Mr. Butt's submissions, in support of this position, follows.

### **Witnesses**

9. No witnesses were called by the prosecution or the defence.

### **Submissions**

#### **Prosecution Submissions** (submitted electronically)

10. The prosecutor - Inspector (Insp.) Branton began his submissions by entering a Book of Records (Exhibit 4), and a Book of Authorities (Exhibit 5).
11. Inspector Branton submitted that the facts in this case are straightforward, the Misconduct is clear and the disposition proposed is consistent with previous cases and satisfies the principles of our discipline system.

12. He first outlined the objectives of discipline, which are to: correct unacceptable behaviour, deter others from similar behaviour, and assure the public the police are under control.
13. Inspector Branton highlighted that there are fifteen considerations governing the determination of an appropriate disposition and they can be found in the 2017 *Legal Aspects of Policing Manual*, by Ceysens and Childs; these principals were submitted at Tab 1, in Exhibit 4. The prosecution fully considered all 15 of these principles and in the submissions to penalty, noted the following as particularly relevant in this matter.
14. Inspector Branton submitted that PC Smith's actions have *public interest* implications as it relates to the public trust. He reiterated the necessity for the public to be assured that the police are under control. In addition, that PC Smith had breached that trust. For this reason, PC Smith is being held accountable for his conduct and that is what society expects from its Police Service.
15. Inspector Branton brought my attention to Exhibit 5, Tab A – Bright, Konkle and the Niagara Board of Inquiry, 1997 that speak to the necessity of a police officer to be of good character. He referenced the following passage in support, "*Good character in a police officer is essential to both the public's trust in the officer, and to a police service's ability to utilize that officer. The public has the right to trust that its police officers are honest and truthful, and that, absent extenuating circumstances, they will not be officers any longer if they breach this trust.*"
16. Inspector Branton then referenced Exhibit 4, Tab 2, which contained the criteria for hiring a police officer in the PSA. He highlighted that at section 43(1) (d) the mandated need for an officer to be, "*of good moral character and habit*". Branton submitted that character in a police officer is essential to both the public's trust in the officer and to a Police Service's ability to utilize that officer. In regards to this matter, PC Smith's conduct does not meet the standard expected by either the TPS or the Public.

17. In addressing *public trust*, Inspector Branton referenced to Exhibit 4, Tab 3; of the submitted Book of Records. Herein, the Toronto Police Service Standards of Conduct was reviewed in which the Introduction states, “*Toronto Police Service members are held to a higher standard of conduct than other citizens. Not only is 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*”.

18. The importance of *public trust* is further addressed by the prosecutor with reference to Exhibit 4; the submitted Book of Records, at Tab 4 – Oath of Office. Herein, Inspector Branton quoted PC Smith’s signed and sworn Oath when he joined the TPS as being, “*I, solemnly swear/affirm that I will be loyal to Canada, that I will uphold the Constitution of Canada and that I will, to the best of my ability, discharge my duties as Police Constable with the Toronto Police Service, faithfully, impartially and according to law*”. The prosecutor submitted that PC Kotzer had broken the public trust by failing to abide by the procedures designed to guide him and protect the public. His actions were contrary to the needs of the Service to ensure that the police are under control.

19. In addressing the *seriousness of the misconduct*, Inspector Branton noted that PC Smith’s conduct is serious misconduct and is an affront to our stated standards and values. To that extent he indicated, on January 19<sup>th</sup>, 2018 the Toronto Police Service as part of its transformational change introduced new core values located in Exhibit 4, at Tab 5 of the Book of Records. He submitted, PC Smith’s actions have a direct link to two of those values:

- a) Do the right thing: by acting professionally, with integrity, and without prejudice, even in the most challenging circumstances, when no one is watching, and on and off duty; holding others accountable to the same standards, challenging inappropriate behaviours; and asking ourselves, “Have I live up to my word and values?”

- b) Reflect and Grow: by recognizing that we do not have all the answers; seeking and acting on input and feedback from the communities and our colleagues; acknowledging and learning from our mistakes and successes; and asking ourselves, “What else can I do to improve?”

20. The Prosecutor added, that though PC Smith had not lived up to the word or values that society expects of us in *Do the Right Thing*, he has acknowledged his mistake by pleading guilty and is seeking to move past this incident to improve himself, in keeping with the core value of *Reflect and Grow*.

21. On the principle of *recognition in the seriousness of misconduct*, the Prosecutor referred to Christian, Grbich, and Aylmer, 2002, OCCPS (Exhibit 5, Tab B). The Prosecutor drew attention in the decision to the fact that, in Williams and the Ontario Provincial Police, 1995, OCCPS the Commission identified three key elements a Hearing Officer must take into account when imposing a penalty. These are the nature and seriousness of the misconduct; the ability to reform or rehabilitate the officer, and the damage to the reputation of the Police Force that could occur if the officer remained on the Force.

22. Inspector Branton, also highlighted from the same decision, that, the Commission has also instructed that there are other factors to be considered in light of particular misconduct which include the *recognition of the seriousness of the misconduct*, the *employment record*, the *public interest* in the administration of justice, general and specific deterrence and the need for consistency.

23. Inspector Branton, in assessing PC Smith’s recognition in the seriousness of misconduct, he asked that I consider PC Smith’s post-incident conduct, and in particular his guilty early plea in this tribunal and in criminal court.

24. Inspector Branton then submitted from Exhibit 4, Tab 6 - Court Transcript – R. v Smith – July 24/20 OJC, Toronto, Ont, comments of Justice D. Oleskiw, “*Constable Smith’s two to three second physical response to [REDACTED] misbehavior was a momentary lapse of judgment. While it was unlawful, the force was minimal and*

*not premeditated in any way. Constable Smith had a legitimate law enforcement purpose for engaging [REDACTED] and was not using force to further any extraneous abuse of his authority. His unlawful, yet minimal use of force was a spur of the moment action and a three-second loss of judgment in the context of an exemplary career spanning some 18 years. His conduct on May 5, 2019 was out of character, which is more accurately reflected in the pro-social, community spirited way in which he has lived the rest of his life, as attested to by the letters of reference and his employment file.”*

25. The prosecutor also submitted that by way of his guilty plea PC Smith has accepted the responsibility for his misconduct. He has demonstrated that he is willing to face the consequences and to continue to be a productive member of the Service. In support, the prosecutor pointed to Exhibit 5, Tab C - Carson and Pembroke Police Service, 2001, OCCPS which stated, *“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.”*

26. Included in the Book of Records (Exhibit 4, Tab 7), are pages 350 to 354 of the 2017 Ontario PSA by Ceysens and Childs, which guides us on how to assess an officer’s employment history in association with recognition of the seriousness of the misconduct and potential to rehabilitate. Inspector Branton focused on Factor 7 - Employment History, wherein the commentary cites several Commission cases and in summary makes the following determinations with respect to this factor. *“Employment history is an important disposition in all cases. Employment history as a mitigating or aggravating consideration closely relates to the disposition consideration of rehabilitation potential.”* With that, he considered PC Smith’s employment history mitigating given the potential to reform or rehabilitate the officer.

27. In support of the above submission, of positive employment history, Inspector Branton pointed at Exhibit 4, Tab 8. Here Branton outlined PC Smith's complementary activities. The officer has 21 unrelated activities that have resulted in positive documentations. Further, at Tab 9, the Prosecutor indicated that PC Smith has 28 positive documentations and letters of Appreciation.
28. Further, Inspector Branton submitted that included, at Tab 10 of Exhibit 4, are performance appraisals for PC Smith from 2015 to 2020. A review of his performance appraisals reveals common language used by a variety of supervisors to acknowledge PC Smith and the type of work that he produces. Words that are used include, "reliable with a wealth of knowledge and experienced who has served as a Coach Officer to mentor new members. Supervisors also commented that PC Smith is dedicated, valued and as having a positive attitude". The prosecutor submitted that this officer's employment history suggests that he will remain a productive officer demonstrating usefulness to the Service.
29. Inspector Branton, further added in regards to the *potential to reform or rehabilitate* by drawing attention to Exhibit 5, Tab B where the Commission noted in Christian and Grbich and Aylmer, 2002, OCCPS that, "*every attempt should be made to consider whether or not rehabilitation is possible. A police service and the community in which it is situated makes a significant investment in each police officer. Unless the offence is egregious and unmitigated, the opportunity to reform must be a key consideration*".
30. Further in regards to the *potential to reform or rehabilitate the officer*, the Prosecutor drew attention to Exhibit 5, Tab D where the Commission noted in Andrews and Midland Police Service, 2002, OCCPS, "*The Commission believes that rehabilitation is a key factor to be taken into consideration when a penalty is imposed, especially, when the offender has a prior unblemished employment record. Unless the officer is beyond rehabilitation (in which case 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.*"

31. The Prosecutor then submitted that he believes that PC Smith can reform and continue to be a productive member of the Service. That this can be observed not only in various awards, but also in his performance appraisals. The Service, the community, and he has invested a great deal in himself and should continue to do so.
32. In terms of *consistency of disposition*, Inspector Branton cited from Exhibit 5, Tab E, in Buckle and Ontario Provincial Police, 2005, OCCPS the principle as found in Schofield and the Metropolitan Toronto Police, 1982 where it was stated, “*each case must be judged on the facts peculiar to it. Consistency in the discipline 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.*”
33. Inspector Branton also cited that earlier case law decisions contained in Exhibit 5, at Tab F - Kerec and Peel Regional Police Service, 2016, Tab G - Webber and Peel Regional Police Service, 2016, Tab H - Hominuk and Toronto Police Service, 64/2010, 2012, Tab I - Thomas and Toronto Police Service, 41/2012, Tab J - Moorcroft and Toronto Police Service, 71/2009, 10/2010, 2012, Tab K - Glen and Toronto Police Service, 71/2011, which showed an appropriate range of penalty. He then summarized each of the historic cases, highlighting the similarities and differences, as they equate to PC Smith’s matter.
34. In the area of *specific and general deterrence* the prosecution submitted, that the correlation between penalty and deterrents, both general and specific, were cited from Exhibit 5, Tab D, in Andrews and Midland Police Service, 2002, OCCPS, where the Commission stated, “*He was also correct that the penalties imposed for misconduct must be strong enough to send a clear message to other officers that such conduct or any conduct of this nature will not be tolerated*” and further that, “*sufficient to punish and to deter while not causing undo or excessive hardship while demonstrating that reoccurrence will not be tolerated.*”

35. Inspector Branton added on the issue of *general deterrence*, that the penalty, when published on the Service's Intranet, in this case should also send a clear message to all officers in the Service, and consistent with the repeated corporate messaging, that this type of misconduct is not acceptable and will not be tolerated.
36. The Prosecutor, in addressing the *damage to the reputation of the Service* submitted that, the Service's reputation suffers every time one of our officers breaches the oath of office. It negatively affects the public's trust. Inspector Branton added that tolerance for police misconduct is at an all time low.
37. The prosecutor also pointed to the fact that this incident received no known media coverage.
38. Inspector Branton concluded his submission by indicating that the three key elements of consideration when determining penalty are sending a clear message to the officer; to other members and the community consistency with other similar decisions should be balanced against causing any undue hardship to the member. Moreover, that the weight of all of the above relevant factors should be considered.
39. As such, the Prosecutor submitted that the appropriate disposition was a reduction in rank classification from First Class Constable to Second Class Constable for a period of 6 months.

### **Defence Counsel Submissions**

40. Mr. Butt to create context of the criminal charge that PC Smith pled guilty to, commenced by revisiting the comments of Justice D. Oleskiw in his decision. Specifically Counsel pointed to Exhibit 4, Tab 6 – *Court Transcript – R. v Smith – July 24/20 OJC, Toronto, Ont* and quoted the following comments, at paragraph 27, "*The many character reference letters filed confirm that Robert Smith has made numerous valuable contributions to the community and that the incident on May 5, 2019 was completely out of character for him*". From paragraph 29, "*Constable Smith's actions toward [REDACTED] were done with the intention of clearing the*

*roadway and not with the intention to harm... The force used in both of these actions was not capable of causing the injury by themselves... the contributing causes to the ankle injury were that [REDACTED] stumbled on the curb, likely because he was intoxicated".* Finally from, paragraph 30, *"Constable Smith immediately checked to see if he was okay. With no apparent injuries, [REDACTED] told him and his partner to "go fuck yourself" and did not say that he was injured, in pain or needed an ambulance. Accordingly, there is nothing about Constable Smith's after the fact conduct that is remotely aggravating".*

41. Mr. Butt also submitted that PC Smith was sentenced to 50 hours community service in his criminal trial – and that he completed all the hours required within approximately two months. Adding that PC Smith intends to continue volunteering and will eventually complete 70 hours (20 hours in excess) of his sentence.

42. Counsel then submitted that all the cases submitted by Prosecution, in Exhibit 5 – Book of Authorities support the joint submission of a 6-month demotion.

43. Mr. Butt then submitted that PC Smith had pled guilty on his first appearance, before this Tribunal. In addition, that this should be considered in arriving at an appropriate disposition.

44. Counsel then turned to PC Smith's *employment history*. Referencing, at Tab 8 - Activity Report /Awards Recommendations - TPS 950 and Constable Smith #8438 – Positive Documentations at Tab 9, Mr. Butt indicated that Constable Smith had brought much credit to the TPS in the eyes of the public and other police officers that he had dealt with over the years. Counsel also submitted that the officer's record of excellent service and multiple Letters of Appreciation and support, as supplied in Exhibit 6, Tab 1-15 further support his past excellence as an officer.

45. Mr. Butt then reminded the Tribunal regarding the principle set out regarding joint submissions in R. v. Cook, 2016 SCC 43, and submitted that, the decision-maker should go along with the joint submission proposed by counsel unless it shows that *"the proper functioning of the justice system has broken down"*.

46. Counsel submitted that he joins the Prosecutor – Inspector Branton in recommending a demotion of six (6) months.

**Prosecution Reply:**

47. Nil.

**Analysis and Decision:**

48. In Williams and the Ontario Provincial Police, 1995, OCCPS the Commission identified three key elements a Hearing Officer must take into account when imposing a penalty. These are the nature and seriousness of the misconduct; the ability to reform or rehabilitate the officer, and the damage to the reputation of the Police Force that could occur if the officer remained on the Force.

49. The Commission has also instructed that there are other factors to be considered in light of particular misconduct, which include the recognition of the seriousness of the misconduct, the employment record, the public interest in the administration of justice, general and specific deterrence and the need for consistency.

50. Exhibit 5, Tab 2 - the PSA, s 43(1) (d) notes, *“(a police officer) is of good moral character and habits”*.

51. In this case, Constable Smith violated the public trust by committing the criminal offence of Assault Bodily Harm. He failed to meet the standard of conduct expected of him. There is a clear occupational requirement for police officers to prevent criminal offences.

52. The public must have confidence in the ability of the Service to deal with any misconduct on the part of its members and as such, the public has an interest in ensuring that Constable Smith is held accountable for his actions.

53. There is no doubt that the misconduct was serious as evidenced by the circumstances leading to Constable Smith’s arrest and criminal conviction. The

evidence, as provided in the Agreed Statement of Facts is also aggravating. Constable Smith's Assault Causing Bodily harm involved a member of the public as the victim.

54. I do take note, at Tab 6, of Exhibit 4, Court Transcript – R. v Smith – July 24/20 OJC, Toronto, that Constable Smith exercised his option to plead guilty to the criminal offence, he was charged with, at the earliest opportunity presented. These present as a mitigating factor.

55. As noted in Carson and Pembroke Police Service, OCCPS, 2001 a guilty plea should be recognized as a mitigating factor. Constable Smith has not tried to blame others for his actions and has accepted responsibility for them. The steps he has taken demonstrate that he has recognized the seriousness of the misconduct.

56. This event will have an effect on Constable Smith. His finding of guilt under the *PSA* will remain with him for a lengthy period of time. He has likely lost and will continue to miss out on professional opportunities until this matter is well behind him and he has restored his reputation. He will have to report this misconduct when he is called upon to testify in court. All of those effects are as a result of the actions of Constable Smith for which he must bear the responsibility.

57. Though I have not been made aware of any media attention, this event has caused some damage to the reputation of the Service. Any member of the who was involved in or was aware of the circumstances of his arrest would not see it in a positive light. In addition, a member of the public was involved as a victim, which led to Constable Smith's arrest. This Tribunal is a public forum and I note members of the media could become aware of this proceeding. If this matter is reported on in the future by the media it will likely cause further damage to the reputation of the Service.

58. All procedural fairness considerations have been addressed in this instance. He was provided the opportunity to make full answer and defence and has had the benefit of an experienced counsel throughout these proceedings.
59. I have reviewed the information from Constable Smith's personnel file in Exhibit 4, at Tab 8 and 9. Constable Smith has been recognized on approximately 28 occasions for his involvement in a number of significant arrests and investigations throughout his career. Those arrests / investigations involved sexual assault investigations, as well as homicide, gang offences and numerous acknowledgments for teamwork and volunteer work.
60. In Exhibit 4, at Tab 10, I reviewed Constable Smith's annual performance appraisals dating from 2015 to 2020. In the appraisals, his supervisors variously commented that he was dedicated, knowledgeable and experienced officer.
61. Supervisors also spoke of his reliability, commitment to hard work, teamwork and positive attitude.
62. Past behaviour is often an indication of what can be expected from a person in the future. Constable Smith has a positive employment history and has been recognized many times for his contributions to community safety, often during challenging or dangerous circumstances. Constable Smith has accepted responsibility for his actions. He entered an early guilty plea in criminal court and pleaded guilty in the Tribunal.
63. As discussed in Andrews and Midland Police Service, 2002, OCCPS, an officer with a prior unblemished employment record should be provided with the opportunity to be rehabilitated. In this case, coupled with his prior positive employment record, the actions he has taken since this event and the observations of those supervisors in a position to observe his behaviour, PC Smith has demonstrated that he has the potential to reform or be rehabilitated.

64. I am satisfied that deterrence specific to PC Smith has been addressed through his acceptance of responsibility, his early guilty pleas, both in this Tribunal and in Criminal Court and his willingness to accept a penalty. In regards to general deterrence, the outcome of these proceedings will be published on TPS routine orders and a summary of this decision will be published on the TPS Intranet. Those documents are available to the entire Service membership and will reinforce the previous messaging in regards to the potential consequences for this type of misconduct.
65. The Commission discussed the need for fairness and consistency in the discipline process in Schofield and the Metropolitan Toronto Police, 1984, OCCPS, penalties must be consistent with prior similar cases. The prosecutor provided a number of historical cases in support of the joint penalty position. The prosecutor sought a penalty of a 6-month reduction in rank classification and Counsel, Mr. Butt, joined Inspector Branton on this position.
66. In reviewing all of the cases, it was apparent that even though many bore a number of similarities to others, there was no consistent penalty that was imposed. Each was considered on its own merits and penalties imposed were in a range that was dependent on all of the mitigating and aggravating factors specific to that case.
67. A penalty must be appropriate to the circumstances and a penalty imposed in one case may not be appropriate in another similar case based on the disposition factors that are present. In the matter before me, the misconduct of PC Smith was serious and the circumstances surrounding his actions involved a member of the public as the victim. His interaction with a member of the public on the date of the occurrence were not in keeping with the expectations of a police officer. In this case, a penalty of a reduction in rank classification is appropriate based on a consideration of all of the disposition factors. The penalty I am imposing is within the range of penalties for other cases involving similar misconduct.

68. In mitigation, PC Smith has contributed much to community safety, which is reflected in his positive employment record. He accepted responsibility for his actions by entering a guilty plea both in criminal court and at the earliest opportunity in this Tribunal.

69. I have reviewed the mitigating and aggravating factors and considered the submissions of defence counsel and the Service prosecutor and I have determined a penalty.

## **Penalty**

Will the officer please stand?

The penalty in this matter imposed under 85 (1) (c) of the Police Services Act will be:

For Discreditable Conduct in that he is guilty of a criminal offence that is an indictable offence or an offence punishable upon summary conviction, a reduction in rank classification from First Class Constable to Second Class Constable for a period of 6 months after which time he can be returned to his former classification of First Class Constable.

A handwritten signature in black ink, appearing to read 'Riyaz J. Hussein', with a long horizontal line extending to the right.

Riyaz J. Hussein  
Superintendent  
Hearing Officer

December 1, 2020

Appendix 'A'- List of Exhibits 34/2020 - PC Robert Smith (8438)

Hearing Officer R. Hussein Letter of Delegation (**Exhibit 1**)

Prosecutor S. Branton Letter of Designation (**Exhibit 2**)

Agreed Statement of Facts (**Exhibit 3**)

**Prosecution Book of Records (Exhibit 4)**

Dispositions-2017 Ed., Ontario police Services Act by Ceysens & Childs (Tab 1)

Ontario Police Services Act s. 43(1)-Criteria for Hiring (Tab 2)

Toronto Police Service Standards of Conduct, Introduction, Chief Saunders (Tab 3)

Toronto Police Service Oath of Office-PC Smith (Tab 4)

Toronto Police Service – Core Values (Tab 5)

*Court Transcript – R. v Smith – July 24/20 OJC, Toronto, Ont (Tab 6)*

Employment History, pp 350-354, 2017 Ed., Ontario police Services Act by Ceysens & Childs (Tab 7)

Constable Smith #8438 - Activity Report /Awards Recommendations - TPS 950 (Tab 8)

Constable Smith #8438 – Positive Documentations (Tab 9)

Constable Smith #8438– Performance Appraisals (Tab 10)

**Prosecution Book of Authorities (Exhibit 5)**

Bright, Konkle and the Niagara Board of Inquiry, OCPC, 1997-01 (Tab A)

Christian and Grbich and Aylmer Police Service, OCCPS, 2002 (Tab B)

Carson and Pembroke Police Service, OCCPS, 2001 (Tab C)

Andrews and Midland Police Service, 2002, OCCPS (Tab D)

Buckle and Ontario Provincial Police Service, OCCPS, 2005, (Tab E)

Kerec and Peel Regional Police Service, 2016, (Tab F)

Webber and Peel Regional Police Service, 2016, (Tab G)

Hominuk and Toronto Police Service, 64/2010, 2012, (Tab H)

Thomas and Toronto Police Service, 41/2012, (Tab I)

Moorcroft and Toronto Police Service, 71/2009, 10/2010, 2012, (Tab J)

Glen and Toronto Police Service, 71/2011, (Tab K)

**Defense Book of Records (Exhibit 6)**

Letter from Derek Anderson (March 3, 2020), (Tab 1)

Letter from Sgt. Chu Chang (undated), (Tab 2)

Letter from Ron Deegan (undated), (Tab 3)

Letter from S/Sgt. (ret.) Tony DiVesti (undated), (Tab 4)

Letter from Stanley Ellis (March 7, 2020), (Tab 5)

Letter from S/Sgt. (ret.) Kevin Guest (undated), (Tab 6)

Letter from DC Acer Huang (undated), (Tab 7)

Letter from Sgt. Brian Martell (March 3, 2020), (Tab 8)

Letter from PC David McAllister (undated), (Tab 9)

Letter from Debbie Morgan (March 5, 2020), (Tab 10)

Letter from Justine Olmstead (February 28, 2020), (Tab 11)

Letter from DC (ret.) Robert Strain (March 3, 2020), (Tab 12)

Letter from S/Sgt (ret.) Jeffrey Taylor (March 1, 2020), (Tab 13)

Letter from S/Sgt. Eduardo Wulff (undated), (Tab 14)

Letter from Downtown Yonge Business Improvement Area (March 3, 2020), (Tab 15)

Letter from Canadian Heritage (October 15, 2020), (Tab 16)