

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

IN THE MATTER OF
WINDSOR POLICE SERVICE

AND

POLICE CONSTABLE DONALD ZIMMERMAN #20549

DISCREDITABLE CONDUCT
INSUBORDINATION
BREACH OF CONFIDENCE

DISPOSITION WITH REASONS

Before: **Inspector Andrew Randall**
Windsor Police Service

Appearances:

For the Prosecution: **Inspector Jason Bellaire**
Windsor Police

Counsel for the Defence: **Edward Parent**
Administrator - Windsor Police Association

Hearing Date: **October 17, 2019**

Allegation of Misconduct

Police Constable (PC) Donald Zimmerman is alleged to have committed **Discreditable Conduct** in that, on or about December 13, 2018, he used insulting language or was otherwise uncivil towards TM through Facebook posts, 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, contrary to section 2(1)(a)(xi) of the Police Services Act of Ontario Code of Conduct Ontario Regulation 268/10, Section 80(1)(a) of the Police Services Act, R.S.O. 1990, c. P.15.

-AND FURTHER THAT-

Police Constable (PC) Donald Zimmerman is alleged to have committed **Insubordination** in that, on or about December 13, 2018, he, without lawful excuse, disobeyed a lawful order by exchanging Facebook posts with TM, and failed to adhere to the Amherstburg Police Service Directive stating, "all Members shall ensure their use of social media is appropriate and consistent with ethical and professional conduct under all APS Policies, Procedures Directives, Orders, etc.", contrary to section 2(1)(b)(ii) of the Police Services Act of Ontario Code of Conduct Ontario Regulation 268/10, Section 80(1)(a) of the Police Services Act, R.S.O. 1990, c. P.15.

-AND FURTHER THAT-

Police Constable (PC) Donald Zimmerman is alleged to have committed **Breach of Confidence** in that, on or about December 13, 2018, he divulged a matter, which it is his duty to keep secret, to wit, he made a Facebook post divulging personal information made through an MTO Driver Inquiry, contrary to section 2(1)(e)(i) of the Police Services Act of Ontario Code of Conduct Ontario Regulation 268/10, Section 80(1)(a) of the Police Services Act, R.S.O. 1990, c. P.15.

Plea / Penalty Submission

On October 17, 2019, PC Zimmerman appeared before the Tribunal; represented by Mr. Edward Parent (Windsor Police Association Administrator), entered a plea of guilty on all counts, and then acknowledged that the subsequent Agreed Statement of Facts were accurate.

PC Zimmerman was found guilty of **Discreditable Conduct, Insubordination, and Breach of Confidence**, on clear and convincing evidence.

The Prosecution, Inspector Jason Bellaire (Windsor Police Service), and Mr. Edward Parent submitted a joint penalty position of a demotion of First Class Constable to Second Class Constable for a period of six (6) months, pursuant to section 85(1)(c) of the Police Services Act, **and further that** PC Zimmerman be obligated to provide documentation to Human Resources, on a regular basis (suggested monthly), over a one year period,

demonstrating an adherence to treatment for his mental wellness diagnosis, as directed by Human Resources, pursuant to section 85(7)(c) of the Police Services Act.

In support of their joint penalty position, the Prosecution and Defence made submissions with respect to both mitigating and aggravating factors, which were accepted by the Tribunal.

The Police Services Act charges, against PC Zimmerman stem from a complaint to the Office of the Independent Police Review Director (OIPRD), while he was a member of the Amherstburg Police Service.

On January 1, 2019, the Windsor Police Service commenced contract policing for the Town of Amherstburg. The Windsor Police Service has jurisdiction to convene the Tribunal, as the Amherstburg Police Service no longer exists.

The complainant in this matter, known as TM, had standing in the Tribunal, however, the Prosecution submitted that TM did not wish to participate in the hearing, nor be involved in the punitive or penalty portion; TM merely wanted to know the results of the matter, in its entirety.

Penalty Decision

Consistent with the joint penalty position, **Constable Donald Zimmerman shall be demoted from 1st Class Constable to 2nd Class Constable for a period of 6 months, effective immediately, pursuant to section 85(1)(c) of the Police Services Act, R.S.O 1990.**

-And further that-

Constable Donald Zimmerman shall be obligated to provide documentation to Human Resources, on a regular basis (suggested monthly), over a one year period, demonstrating an adherence to treatment for his mental wellness diagnosis, as directed by Human Resources pursuant to section 85(7)(c) of the Police Services Act, R.S.O 1990.

Agreed Statement of Facts

Police Constable Donald Zimmerman (#20554) was a member of the Amherstburg Police Service since April of 2005. In January of 2019, Police Constable Donald Zimmerman became a member of the Windsor Police Service as part of an agreement in which the Amherstburg Police Service was dissolved, and policing duties in the Town of Amherstburg, were assumed by the Windsor Police Service. Currently, PC Zimmerman is assigned to the Court Services unit at the Windsor Police Service (WPS).

Upon being hired by the Amherstburg Police Service in 2005, PC Zimmerman swore an Oath of Secrecy compelling him to secure and protect confidential information, and to

only share or provide for others to view such information in the course of his duties and/or judicial proceedings.

In 2017, PC Zimmerman signed his most current Employee Security Statement Form as a member of the Amherstburg Police Service, allowing him access to the Ministry of Transportation Ontario (MTO) database. By signing this document, PC ZIMMERMAN agreed to not access or use the information in the MTO database for personal reasons.

In December of 2018, PC Zimmerman was still a member of the Amherstburg Police Service and working as a Patrol officer. PC Zimmerman was, at that time, involved with his son's youth football team and also a member of local fitness gym. PC Zimmerman and an adult male (referred to hereafter as "Complainant") were mildly acquainted with each other as each had a son on the same youth football team. Both PC Zimmerman and the Complainant were also members at the same fitness gym.

PC Zimmerman and the Complainant had a previous incident where a heated exchange occurred between both men regarding a matter involving their sons' youth football team; however, there had been no further incidents between them until December 13, 2018.

On December 13, 2018, PC Zimmerman was off-duty and instigated a conversation between himself and the Complainant on a public social media forum. The conversation escalated into both men trading insults and directing offensive dialogue toward each other. During this online dialogue, PC Zimmerman implied that the Complainant was not legally residing in Canada and further, that the Complainant was driving in Ontario without a valid driver's license.

At one point during the online argument, PC Zimmerman used his work computer to log into the Ministry of Transportation Ontario (MTO) database and conducted a Driver's License query seeking the status of the Complainant's Ontario driving privileges. PC Zimmerman used information from that MTO query and published it on the social media forum to bolster his argument. The Complainant's date of birth, city and state (US) were posted on the forum. PC Zimmerman also disclosed the Complainant's License Status on the open forum.

During an investigation by the WPS Professional Standards Branch (PSB), PC Zimmerman admitted that he had accessed the MTO database in a manner contrary to policy and that he had posted the information gleaned from his query on the public social media forum. PC Zimmerman further admitted to participating in the online argument with the Complainant and having directed insulting language at the complainant. In his communications with PSB investigators, PC Zimmerman acknowledged that his actions were inappropriate and below the standards expected of a member of the Police Service.

Exhibits – Prosecution

In support of the joint penalty position, the Prosecution submitted a ***Book of Authorities***,

and a **Book of Records**, jointly known as **Exhibit #5**.

Exhibits – Defence

In support of the joint penalty position, the Defence submitted a document entitled, **WPA Sentencing Submissions for Constable Donald Zimmerman**, known as **Exhibit #6**.

All Exhibits in this matter are listed in Appendix ‘A’.

Submissions on Penalty / Analysis and Findings:

The Prosecution did not call any witnesses.

In lieu of calling any witnesses, the Prosecution relied on excerpts from **Exhibit #5 - Book of Authorities** and **Book of Records**.

The Prosecution submits that, on December 13, 2018, a conversation, via social media (Facebook), between PC ZIMMERMAN and the complainant occurred. During this conversation, PC ZIMMERMAN directed insulting language and was otherwise uncivil toward the complainant.

The Prosecution submitted excerpts of the Facebook conversation, entitled, *“When you Black & wond...”*, in the **Book of Records – Tab 2**, and submitted that it is evident that PC Zimmerman and the complainant both traded insults, and seemed to equally participate in the online argument.

The Prosecution further submitted that the Ontario Civilian Police Commission (OCPC) has concluded many times that police officers are held to a higher standard both on and off duty. In the matter of *Horton and the Ontario Provincial Police*, the Commission stated:

“It is well settled that a police officer is held to higher standard of conduct than a member of the public not only while being on duty but also when off-duty. That is so by reason of the office held, the powers granted and the need to maintain the public trust in and respect for the police service.”

The Tribunal reviewed excerpts of the Facebook conversation, and noted the following comments made by PC Zimmerman:

- *“little birdy told me you might not be here legally, would be a shame if Canada Customs found out”*
- *“not much too (sic) say loser like pretty much speaks for yourself”*
- *“Oh ya nice form on boxing. Couldn’t fight your way outta a wet paperbag. Nice dropping the hands”*
- *“Learn how to spell you illiterate oaf”*
- *“I may be ugly, but you’re stupid and you can fix that. Why don’t you lfex (sic) in front of the mirror some more or hit on women at the gym while*

you're married. Oh wait maybe you can do your handstands on the dumbelss (sic). That should impress them"

- *"Maybe you shouldn't be driving without a licence. Hate for you to get stopped."*
- *"Just checked. Nah you don't. Born 77/08/07 Oak Park Michigan Never licence in Ontario"*
- *"Not harassment Just talking"*
- *"Have a great day"*

Upon reviewing the Facebook posts, the Tribunal noted that, in addition to TM, and PC Zimmerman, atleast three (3) other parties were involved in the conversation.

During the conversation, TM states, *"Fin Zimmerman was enough for you to call the police. Oh wait you are the police..."* Although not confirmed by PC Zimmerman, in the submitted excerpts of the conversation, it provides the others involved in the conversation, with the notion that PC Zimmerman is a member of a Police Service.

The Prosecution submitted that PC Zimmerman, while engaging in the Facebook conversation, committed **Discreditable Conduct** as he used insulting language or was otherwise uncivil toward TM, and it was done in a manner prejudicial to discipline, or likely to bring discredit upon the reputation of the police force.

The Prosecution referenced the Amherstburg Police Service **Social Media Policy**, Section III – Procedures – A. General Procedures, section 1(a), in the **Book of Records – Tab 4**, which states:

"All Members shall ensure their use of social media is appropriate and consistent with ethical and professional conduct under all APS Policies, Procedures, Directives, Orders, etc."

The Prosecution submitted that in behaving as he did during the Facebook conversation, PC Zimmerman disobeyed or neglected to follow the Amherstburg Police Service Social Media Policy, and therefore committed **Insubordination**, in that he, without lawful excuse, disobeyed a lawful order.

The Prosecution further submitted that, during the online conversation between PC Zimmerman and TM, PC Zimmerman divulged Ontario Ministry of Transportation information relating to TM's driver's license status, and that a subsequent investigation confirmed that PC Zimmerman had conducted a driver's license query of TM, using the MTO's Inquiry Services System (ISS), on December 13, 2018.

The Prosecution referenced the Ministry of Transportation Employee Security Statement Form, in the **Book of Records – Tab 5**.

Section 3 of the form states:

“You must not access or use this information for personal reasons. (Examples of inappropriate access or misuse of information include, but are not limited to; making inquiries for personal use or processing transactions on your own records or those of your friends or relatives; accessing information about another person, including locating their residence address, for any reason not related to your work responsibilities or not authorized by the Requester)”

Section 4 of the form states:

“You may disclose information only to individuals who have been authorized to receive it through appropriate procedures which have been authorized by MTO. (Examples of unauthorized disclosures include but are not limited to: looking up someone’s address for a friend.)”

On October 26, 2017, in his capacity as a member of the Amherstburg Police Service, PC Zimmerman signed a *Ministry of Transportation Employee Security Statement Form*, which were further signed by Sgt Melissa Taylor (Employee Manager), and Sgt Donald Brown (Local Administrator).

The Prosecution referenced the Ministry of Transportation Driver Inquiry search result, in the **Book of Records – Tab 6**.

The search result, in the name of TM, with a birthdate of 1977-08-07, revealed that they were “Never Licenced (NEVER LIC)”.

The Tribunal noted that this information is consistent with the comment made by PC Zimmerman to TM when he stated, *“Just checked. Nah you don’t. Born 77/08/07 Oak Park Michigan Never licence in Ontario”*

The Prosecution referenced the Ministry of Transportation Inquiry Services System query, in the **Book of Records – Tab 6**. This query confirmed that PC Zimmerman queried TM, on December 13, 2018, at 14:16 hrs.

The Prosecution then referenced a memorandum in the **Book of Records – Tab 7**, in which the Prosecution submitted that PC Zimmerman admitted to accessing the Ministry of Transportation database.

The memorandum, dated April 23, 2019, was from PC Zimmerman, to Sgt Todd Pearce of the Windsor Police Service Professional Standards Branch. In the memorandum, PC Zimmerman writes, “I stated that I was unsure of the dates but again confirmed that I had run (MT).”

The Prosecution further referenced PC Zimmerman’s Oath of Secrecy, in the **Book of Records – Tab 8**.

The Honourable Justice Guy DeMarco, OCJ. witnessed the Oath of Secrecy, signed by PC Zimmerman, on April 18, 2005.

Within this Oath of Secrecy, it reads:

“...I will not disclose, communicate or convey or allow to be disclosed, communicated, or conveyed directly to any person, any private or confidential information whatsoever obtained by me in or about the performance of my duties while in agreement with the Amherstburg Police Service...”

The Prosecutor submitted that the information disclosed by PC Zimmerman, during the online Facebook conversation, was available for reference as a result of his Ontario Ministry of Transportation Ontario database query, and that by accessing, and disclosing the information, PC Zimmerman committed **Breach of Confidence**. He divulged the information, which is his duty to keep secret.

The Defence did not call any witnesses.

In lieu of calling witnesses, the Defence submitted the following from a document entitled, **WPA Sentencing Submissions for Constable Donald Zimmerman**, known as **Exhibit #6**:

“Today, before you we have Constable Donald Zimmerman is 49 years old. Zimmerman is married with two children. Zimmerman’s 17 year old son is graduating from High School this year with plans to attend the University of Windsor Football program and his 13 yr old daughter is presently in the 8th grade.

Constable Zimmerman has been employed with the Windsor Police Service since January 2019 with previous police time with Amherstburg from 2005. Constable Zimmerman has progressed through the ranks in accordance with the policies of the Service and terms of the Unit “A” Collective Agreement to his current position as a senior 1st class constable.

Constable Zimmerman has been an active sworn officer since his promotion to constable, from cadet, in April 2005.

During this period, Constable Zimmerman has demonstrated many positive attributes during his time on the job. Zimmerman has been volunteering in youth football for the past five (5) years and presently volunteers for the Essex Ravens, University of Windsor Lancer football team and Riverside High School football.

Constable Zimmerman is here today to accept responsibility for all his actions, which can be deemed to be discreditable.

Constable Zimmerman has been willing from the beginning, to plead guilty and move forward serving any penalty assessed to him.

Constable Zimmerman will work towards regaining the trust and respect from the community and his peers.

Constable Zimmerman is completely aware that trust and respect are key components to the position of police officer.

The conduct to which Constable Zimmerman pleads guilty today does not reflect those qualities that the Windsor Police Service or the citizens of the community require of its members. Constable Zimmerman's off duty actions in December 2018 tarnish both Zimmerman's reputation and more importantly the reputation and credibility of the Windsor Police Service. Constable Zimmerman knows this. Therefore, in determining the appropriate punishment, this type of conduct and the impact on the Police Service cannot be overlooked or lightly dismissed.

Although, the conduct of Constable Zimmerman cannot be defended or excused, we would like to provide some explanation to the events that have transpired before, during and after these events.

Constable Zimmerman was as a volunteer with the Essex Ravens Football program where his son and the complainant's son played together. During this period, Constable Zimmerman became aware of illicit behaviour from the complainant's son and a few other players. Zimmerman advised the coaching staff to the behaviour and was present as the player's parents were notified, and players subsequently penalized. The complainant took issue with allegations with complete denial. The complainant displayed aggressive behaviour while making threatening gestures and comments towards the coaching staff and Zimmerman.

PC Zimmerman, during this period was recovering from a serious motor vehicle accident which left him with broken vertebrae in both his neck and back, nerve damage to his left hand and limited mobility. In addition, there was the pending amalgamation of Amherstburg Police with Windsor Police causing angst among all the members of Amherstburg. Zimmerman was on light duties and frustrated with his medical recuperation. Zimmerman admits regrettable comments were made after the incident and he engaged in conduct not becoming of an officer with the Windsor Police.

We would like to assure that Constable Zimmerman's guilty plea is a true reflection of his remorse and awareness of the gravity of this situation. Constable Zimmerman has taken several steps to ensure that this conduct

will not repeat itself. Constable Zimmerman continues to attend for professional counselling.

As you are aware, the Hearing Officer and Prosecution have had an opportunity to review certain medical information, which mitigates these events. Zimmerman has identified his Mental Health issues, and has continued with regular treatment. Zimmerman would be able to satisfy any requirement by this Tribunal to provide continuous medical information to prove the treatment.

In determining the appropriate punishment, the prosecutor Inspector Bellaire and I have reviewed several cases and a joint brief of Authorities has been provided for your consideration. There are no exact similar circumstances, however we feel our joint position considers all disposition considerations and a balance has been achieved with relation to penalty applied against the misconduct. In this case, both parties are adopting the same position.

Considering all the circumstances that are before this tribunal, Constable Zimmerman is entering a plea of guilty. Constable Zimmerman acknowledges his misconduct and accepts the consequences for his actions. He recognizes the stress and embarrassment these actions may have caused on his family, his co-workers, the police service and the complainant.

Therefore, we feel that the proposed sentence is appropriate in law and in the circumstances.

For your information, the six-month reduction in rank from Senior 1st class constable to 2nd class constable will result in a lost income of approximately \$7500.00 dollars.

The severity of this penalty reflects the severity of the acts of misconduct and sends a strong message by the Windsor Police Service to its members and the people of this community.”

The Defence submitted that PC Zimmerman accepted full responsibility for his out of character actions, at the first opportunity, admitted to his conduct, is remorseful, and immediately plead guilty.

Both, the Prosecution and Defence, made further submissions to address necessary considerations in an effort to guide the Tribunal to an appropriate decision; specifically the acceptance of the joint submission penalty.

In line with the responsibility of the Tribunal to impose a penalty that balances the expectations of the community, the needs of the Windsor Police Service, and fairness to

PC Zimmerman, the Tribunal analyzed the joint penalty position submitted by the Prosecution and the Defence.

These considerations, and analyses, are outlined, as follows:

Public Interest

The Prosecution submitted that Public Interest is a significant consideration for the Tribunal, as PC Zimmerman participated in a conversation, in violation of the Service's Social Media Policy, on an open social media forum, and disclosed confidential information because of his work-based access to a government database.

The Prosecution believes that, by disclosing this information, over a public social media forum, PC Zimmerman called into question whether the Service is capable of being a steward of this information, and believes that if the Service cannot provide a guarantee that confidential information will remain so, the confidence of the public, in the Service, could be imperiled.

The Prosecution submitted that the only remedy to the incident, in terms of Public Interest is the Service's ability to demonstrate accountability, through its discipline process.

The Defence submitted that PC Zimmerman appreciates Public Interest in discipline matters, as the public needs to see that members are held accountable when there is misconduct placing the Service into disrepute.

The Defence understands that members are held to a higher standard, and will be served a penalty that satisfies both a specific and general deterrence to prevent any reoccurrence, or dissuade misconduct, in general.

The Tribunal believes that Public Interest is of paramount importance in that it is a fundamental requirement for policing, and is crucial to maintaining public trust. The public places their trust in officers to uphold the oath they took, and conduct themselves with integrity. Members of the former Amherstburg Police Service and the Windsor Police Service must conduct themselves professionally, at all times, including those times when off-duty. The public's trust in its Police Service diminishes when the conduct of a police officer falls short of expectations. A Police Service cannot function without the trust of the public. Members of the community have no choice but to believe that those that have been sworn to protect their personal information, will do so.

PC Zimmerman broke the trust placed upon him by the public.

The Tribunal is confident that the public, if made aware of PC Zimmerman's misconduct, would be dismayed by his behaviour.

Any penalty imposed must reinforce that the Windsor Police Service does not condone this type of behaviour, and it must demonstrate to the public that the Service holds its members accountable for their actions, accordingly.

The Tribunal finds Public Interest to be a significant aggravating factor in this case.

Seriousness of the Misconduct

With respect to Seriousness of Misconduct, the Prosecution submitted PC Zimmerman's behaviour was "childish and unprofessional", and that his actions were not motivated by good faith, and were simply part of an effort to "disparage and embarrass the complainant".

The Prosecution believes that PC Zimmerman's conduct, while not criminal in nature, or part of an enduring behavioural sequence, was deliberate and intentional, and is at the higher end of the overall spectrum of misconduct.

The Prosecution outlined that this incident is not a unique moment in PC Zimmerman's career, as his employment history contains previous incidents of misconduct.

The Prosecution stated that PC Zimmerman's misconduct was not born of a momentary lapse of judgement during his job related duties, as it was an off-duty incident, which occurred while PC Zimmerman utilized a social media forum.

The Prosecution believes that PC Zimmerman's actions had limited consequences to the complainant, however, believes that the consequences for the Service are significant as PC Zimmerman's actions not only had the potential to tarnish the reputation of the Service, but also had the potential to jeopardize the Service's access to the Ministry of Transportation Inquiry Service Subsystem, which is an essential information asset for the Service to fulfill some of its core duties.

The Defence concedes that any member who places the integrity or reputation of the Service into question is deemed discreditable, and should be dealt with accordingly.

The Defence understands that the Windsor Police Service expects its members to act in accordance to its policies, procedures, and the Police Services Act of Ontario, as would PC Zimmerman's previous employer, the Amherstburg Police Service, and that the failure to do so will result in charges of misconduct, which can become public.

The Defence submitted at PC Zimmerman will strive to earn trust and exceed expectations, as already witnessed by his demeanor and excellent work ethic displayed in his role with the Windsor Police Service.

With respect to the Seriousness of the Misconduct, the Tribunal believes that the seriousness of PC Zimmerman's misconduct is at the higher end of the spectrum.

His actions were researched, planned, and deliberate, and displayed of a lack of honesty, and integrity.

The Tribunal finds the Seriousness of the Misconduct to be a significant aggravating factor.

Recognition of the Seriousness of Misconduct / Ability to Rehabilitate

The Prosecution submitted that PC Zimmerman, has displayed remorse, plead guilty before the Tribunal, and has apologized to the complainant on more than one occasion, therefore appears to recognize the seriousness of his misconduct

The Prosecution went further to note that PC Zimmerman has recognized that his behaviour may be a result of mental wellness challenges, and that he has now taken steps to address those challenges.

The prosecution emphasized that the Service always looks to support members in need of mental wellness support, and is encouraged that PC Zimmerman is seeking appropriate supports in an effort to make a positive change.

The Defence submitted that Zimmerman recognizes the misconduct, which is confirmed by accepting the Agreed Statement of Facts, and by immediately pleading guilty, in the Tribunal.

With respect to Recognition of the Seriousness of Misconduct / Ability to Rehabilitate, the Tribunal believes that PC Zimmerman has accepted responsibility for his actions by pleading guilty, and has displayed remorse.

The Tribunal finds the recognition of the Seriousness of Misconduct to be a mitigating factor.

Handicap or Other Relevant Personal Circumstances

The Prosecution stated that PC ZIMMERMAN has self-disclosed information relating to his mental wellness as part of the joint submission, but deferred to the Defence to provide information related to this consideration.

The Prosecution added that it has been established by the Ontario Police Commission that a disability does not, by its presence or diagnosis, exonerate a member for aberrant behaviour when they stated, "It is well settled that disability can offer an explanation but not an excuse for misconduct."

The Defence referenced medical information, previously reviewed by the Prosecutor, and Hearing Officer, in camera, and submitted that it mitigates the events.

The Defence submits that PC Zimmerman has identified Mental Health issues, has continued with regular treatment, and would be able to satisfy any requirement to provide continuous medical information to prove the treatment.

The Tribunal commends PC Zimmerman for self-disclosing his mental wellness issues, and for continuing with regular treatment.

PC Zimmerman will need to satisfy the Service that he is adhering to any treatment for his mental wellness by submitting documentation, on a regular basis.

With respect to Handicap or Other Relevant Personal Circumstances, the Tribunal finds it to be a mitigating factor.

Employment History

The Prosecution referenced the *Personal Conduct Record for Constable Donald ZIMMERMAN*, in the **Book of Records – Tab 10**, and submitted the following regarding PC Zimmerman’s Employment History:

- Since 2015, PC Zimmerman has accumulated a significant volume of PSA convictions, including seven (7) counts of Neglect of Duty, three (3) counts of Discreditable Conduct, and one (1) count of Insubordination, within seven (7) separate occurrences.
- In February of 2017, PC Zimmerman was demoted from 1st Class to 2nd Class Constable, for a period of six (6) months, for Discreditable Conduct, in relation to an off-duty incident where he was uncivil manner towards a citizen.
- In September of 2018, PC Zimmerman was again demoted from 1st Class to 2nd Class Constable, for a period of four (4) months, for two (2) counts of Neglect of Duty, and one (1) count of Discreditable Conduct.

The Prosecution referenced the *Agreed Statement of Facts – APS Discipline Hearing for Constable Donald ZIMMERMAN, 2018 (Previous Matter)* in the **Book of Records – Tab 9**, and submitted that the Hearing Officer, Supt (Ret.) Morris Elbers, noted that PC Zimmerman has “*apologized to the Tribunal and assured the Tribunal that these actions will not be duplicated in the future.*”

The Prosecution further referenced comments made by Hearing Officer, Supt (Ret.) Morris Elbers, in the *Agreed Statement of Facts – APS Discipline Hearing for Constable Donald ZIMMERMAN, 2018 (Previous Matter)* in the **Book of Records – Tab 9**.

Hearing Officer, Supt (Ret.) Morris Elbers stated, “*I feel relatively confident that from this experience and pleading guilty at the earliest opportunity Constable Zimmerman has learned from his indiscretion and that he is fully prepared to take responsibility for his actions.*”

The Defence indicated that PC Zimmerman has been employed as a police officer since 2005, and is currently assigned to the Court Services Division, as a result of a serious motor vehicle accident, which occurred while on duty, in the Town of Amherstburg.

With respect to Employment History, positive employment history, in the form of Performance Evaluations, was not submitted to the Tribunal; however, the Tribunal took into consideration PC Zimmerman’s Community Based Volunteer Work. As submitted by the Defence, PC Zimmerman has been volunteering in youth football for the previous five

(5) years, and that he volunteers for the Essex Ravens football team, University of Windsor Lancer football team, and Riverside High School football team.

PC Zimmerman was previously demoted for a period of six (6) months, followed by a period of four (4) months, one year later.

This incident occurred in December 2018, at a time when PC Zimmerman was still under a previous demotion. This is very concerning to the Tribunal; therefore, in line with progressive discipline, the length of demotion should be for a term greater than the most recent demotion of four (4) months.

The Tribunal believes that PC Zimmerman's negative employment history is an aggravating factor for consideration.

Potential To Reform or Rehabilitate the Police Officer

The Prosecution submitted that the Service believes that PC Zimmerman has the potential to reform, and rehabilitate, and that while his employment history in isolation does not provide much of a foundation for this belief, it is PC Zimmerman's remorse, and acute understanding, that his conduct was inappropriate that encourages the Service to believe in him.

The Prosecution believes that PC Zimmerman has demonstrated a degree of courage and humility in confronting his mental wellness challenges, and has taken steps in seeking a path away from his established pattern of conduct.

The Prosecution stated that the Service also takes guidance from previous decisions by the Commission, which has consistently emphasized the importance of rehabilitation, even in cases of serious misconduct, as references in an excerpt in the case of *Andrews and Midland Police*, which states:

"Rehabilitation is a very important and significant factor when considering an appropriate penalty...Unless the offence is so egregious and unmitigated the opportunity to reform should be a significant consideration."

The Defence submits that PC Zimmerman's first attempts to resolve the matters indicate that he is remorseful, is completely aware of his responsibilities to the public and the Service, has admitted that his conduct is discreditable, and is anxious to return to full duties to prove his value and work within the Service.

The Defence further believes that PC Zimmerman's potential to reform or rehabilitate can be viewed by his immediate return to work after the serious motor vehicle accident, his continuing presence in his present position within the court security office, and the "hard-hitting penalty" of demotion, which provides motivation to ensure that past misconduct is not repeated.

The Defence believes that PC Zimmerman has lengthy police experience, education and a support system that places him in a position to provide a valuable commodity that the Service can utilize for the best interest of the public.

With respect to Potential to Reform or Rehabilitate the Police Officer, the Tribunal believes that by admitting to his misconduct through his guilty plea, confronting his mental wellness challenges, and by seeking and maintaining treatment, PC Zimmerman has taken steps to rehabilitate.

The Tribunal finds that the Potential to Reform or Rehabilitate the Police Officer is a mitigating factor.

Effect on Police Officer and Police Officer's Family

The Prosecution submitted that there would be an impact on PC Zimmerman and his family, through financial loss, and yet another major blemish on his professional record and reputation.

The Prosecution further submitted that PC Zimmerman would face challenges in obtaining job enrichment opportunities, in specialty units, or promotion, due to his conduct record, along with the possibility of suffering damage to his public reputation within his community.

The Defence submitted that PC Zimmerman is an active participant in all aspects of his family, and has the full support of his spouse and children.

The Defence concurs that the penalty of a demotion for a period of six (6) months will cause financial strain, in the amount of \$7,000, and will cause embarrassment to PC Zimmerman, and his family.

The Defence believes that the embarrassment will continue while PC Zimmerman works to prove to his co-workers, and peers, that he is worthy of his position as a member of the Windsor Police Service, and the responsibility that comes with the position.

With respect to the Effect on Police Officer and Police Officer's Family, the Tribunal believes that PC Zimmerman's misconduct will have a negative effect on him, and his family.

PC Zimmerman's misconduct will impact him financially, and professionally. He will have difficulty testifying in Court, as he will have to disclose additional misconduct, through the McNeil Process. His honesty and integrity will be called into question each time he is called upon to testify.

The Tribunal finds that the Effect on Police Officer and Police Officer's Family is a mitigating factor for consideration.

Specific and General Deterrence:

The Prosecution submitted that Specific Deterrence is relevant in that PC Zimmerman has been disciplined for similar conduct in previous matters.

The Prosecution points out that PC Zimmerman has taken positive progressive steps by acknowledging that his behaviour was unacceptable, and that he has addressed his mental wellness, however, it should be clearly conveyed that the Service supports the six (6) month demotion, and will likely support a decision seeking his dismissal should there be future similar-of-fact incidents of misconduct.

Regarding General Deterrence, the Prosecution believes that the penalty will serve to articulate the Service's position on how it will respond to off-duty misconduct, and misuse of personal database information.

The Defence submitted that there exists a need to deter other officers from similar behaviour in the future, and that other officers need to be aware that, adherence to rules, procedures, and the laws is an essential job function, otherwise there will significant consequences.

With respect to PC Zimmerman, the Defence believes that the penalty of a six (6) month demotion is significant enough that if he finds himself in any similar situation, in the future, he will be deterred from responding in the same manner.

The Defence concedes that PC Zimmerman is fully aware that any further misconduct will surely result in the termination of his employment.

With respect to Specific and General Deterrence, the Tribunal believes that PC Zimmerman's behaviour cannot be tolerated, and appropriate sanctions must be instituted that demonstrate to the public, and to other officers, that the Windsor Police Service will not condone, or tolerate, such misconduct.

Specifically, the sanctions must deter PC Zimmerman from committing further misconduct. He must be aware that should he commit similar misconduct in the future, he will most certainly face an increased penalty, up to and including Dismissal.

Similarly, other members of the Windsor Police Service should be reminded that misconduct of this nature is inexcusable, and will result in significant consequences.

The Tribunal finds that Specific and General Deterrence is a necessary consideration.

Damage to the Reputation of the Police Service

The Prosecution submitted that while PC ZIMMERMAN's conduct in this matter was troubling, there was minimal impact on the reputation of the Service.

The Prosecution believes that PC Zimmerman's actions likely caused more personal embarrassment to himself, than to the Service.

The Prosecution referenced an excerpt from the RCMP External Review Committee in their Discussion Paper 8 – Sanctioning Police Misconduct – General Principles:

“The issue of "harm to the reputation of the police force" needs to be carefully examined in the context of each case. Police discipliners should not automatically resort to this criteria as a justification for a severe sanction without some evidence that damage to the reputation of the force has occurred and is so great that a severe sanction is warranted. The assumption that the reputation of the police force is damaged by the misconduct of an individual police officer can be easily overstated. Seldom will the isolated misconduct of one police officer result in the loss or substantial lowering of a good police force's overall reputation. The public and others are normally intelligent enough to appreciate that the individual misconduct of one police officer ought not to be visited upon the reputation of the entire police department.”

The Prosecution submitted that the Service accepts that PC Zimmerman's acts of misconduct did not resonate “beyond his immediate orbit.”, and that it followed appropriate protocol, and acted with a measured and appropriate response, once it was made aware of PC ZIMMERMAN's behaviour.

The Defence submitted that ZIMMERMAN understands the value of having a police service with a positive reputation as this ensures a healthy relationship between the public and law enforcement.

With respect to Damage to the Reputation of the Police Service, the Tribunal believes that, in the eyes of TM, and the others involved in the public Facebook conversation, there is no doubt that PC Zimmerman's actions possess a propensity to compromise the level of trust that the public has placed on the Service . This is particularly damaging to the remaining members of the Service, who act in accordance with Directives, Policies and Procedures, on a daily basis.

PC Zimmerman's misconduct has called into question the honesty and integrity of all members of the Police Service, which again calls into question the level of trust that the public places on the Service. The credibility of the Windsor Police Service is of paramount importance, and cannot be tarnished.

The Ontario Civilian Commission on Police Services has articulated the following approach regarding the meaning of “likely” to bring discredit upon the reputation of the police force:

“The measure used to determine whether conduct has been discreditable is the extent of the potential damage to the reputation and image of the service should the action become public knowledge.”

The tribunal finds that the Damage to the Reputation of the Police Service is an aggravating factor in this matter, and forms the basis of Discreditable Conduct; to wit “bring discredit upon the reputation of the police force of which the officer is a member.”

Consistency of Penalty

The Prosecution and Defence jointly submitted four (4) cases for consideration and review, by the Tribunal, in **Exhibit #5 - Book of Authorities**, which are appeals to the Ontario Civilian Police Commission (OCPC).

The Prosecution referenced the first case, *Barlow and Ottawa Police Service (2011 ONCPC 9)*, at **Tab A**.

PC William Barlow was convicted of four (4) counts of Neglect of Duty, two (2) counts of Breach of Confidence, two (2) counts of Insubordination, and one (1) count of Discreditable Conduct. The penalty in this case was dismissal.

The Prosecution submitted that PC Barlow was convicted on more counts than PC Zimmerman was, the acts of misconduct were clearly more egregious in nature, PC Barlow did not recognize the seriousness of his misconduct, and the acts of misconduct took place over a prolonged period.

The Prosecution noted that PC Barlow had no previous documented incidents related to his acts of misconduct, while PC Zimmerman possesses a documented history of misconduct.

Upon reviewing *Barlow and Ottawa Police Service (2011 ONCPC 9)*, the Tribunal noted that PC Barlow’s misconduct was in relation to confidential information about a Search Warrant being improperly disclosed to a Police Informant. This misconduct is significantly more egregious than that of PC Zimmerman’s.

The Prosecution referenced the second case, *Markham and Waterloo Regional Police Service (2015 ONCPC 04)*, at **Tab B**.

PC Craig Markham was convicted of one (1) count of Breach of Confidence, two (2) counts of Insubordination, and two (2) counts of Discreditable Conduct. The penalty in this case was dismissal.

The Prosecution submitted that PC Markham was convicted on more counts, and his misconduct was more egregious than PC Zimmerman’s was, as PC Markham had shared confidential information in an effort to alert someone, who was under investigation, in part of a larger corruption investigation.

The Prosecution submitted that the similarities in the case are that PC Markham used his position of authority to access confidential databases, namely: NICHE and CPIC, for the purpose of acquiring information about a party, and subsequently shared it, via email, with another party, who was not a member of a police service, while PC Zimmerman posted the information that he had obtained on public social media forum.

The Prosecution stated that *Markham and Waterloo Regional Police Service* also provides “a salient reminder to those who have been charged with the duty to police the community”, and referenced the Waterloo Regional Police Service’s “victim impact statement” at PC Markham’s hearing:

“We police only with the consent of our community. When the security and confidentiality of intimate, private information is brought into question we risk such consent being withdrawn.”

Upon reviewing *Markham and Waterloo Regional Police Service (2015 ONCPC 04)*, the Tribunal noted that PC Markham plead guilty to the Criminal Code charge of Breach of Trust by a Public Official. This was in relation to PC Markham accessing a confidential police synopsis, with respect to an ongoing drug investigation, through NICHE and CPIC, without lawful authority, and then sending it, via email, to a person who is not a member of a police service.

Further investigation also revealed that PC Markham queried three (3) other individuals on the NICHE system, without a legitimate investigative or administrative reason.

This misconduct is significantly more egregious than that of PC Zimmerman’s.

The Prosecution then referenced the third case, *Ogg and London Police Service (2012 ONCPC 3)* at **Tab C**.

PC Scott Dwight Ogg was convicted of four (4) counts of Discreditable Conduct, three (3) counts of Neglect of Duty, and two (2) counts of Insubordination.

The Prosecution submitted that PC Ogg had a significant record of previous misconduct in his employment history, and was supported by the London Police Service in getting treatment for substance dependency with the caveat that the Service was supporting him as a “last chance” opportunity to rehabilitate his career under a number of conditions, including the requirement that he sustain his treatment efforts in dealing with his substance dependency.

PC Ogg was obligated to continue substance dependency treatment for a period of 36 months, and provide regular monthly updates of his treatment to the London Police Service’s Human Resources Department. This was done with the understanding that should he not adhere to the conditions during the 36-month timeframe, the London Police Service would then seek his dismissal. These stipulations were implemented largely due to the officer’s documented record of misconduct.

The Prosecution submitted that, once again, PC Zimmerman's misconduct is less egregious in nature (from a broad perspective), and that there are similarities that "narrow towards parity", however, the Prosecution did not elaborate further.

Upon reviewing *Ogg and London Police Service (2012 ONCPC 3)*, the Tribunal noted that PC Ogg's convictions were for the following reasons:

- PC Ogg having contact with a person known to have a criminal record for drug related offences;
- PC Ogg consuming beer, in contradiction of his condition to abstain from the use of alcohol;
- PC Ogg failing to appropriately investigate a Domestic Violence Occurrence, pursuant to London Police Service procedures;
- PC Ogg leaving his designated patrol area, without permission;
- PC Ogg failing to attend court while on suspension;
- PC Ogg failing to return all London Police Service equipment, pursuant to his suspension, in a timely fashion, and to the appropriate location;
- PC Ogg being observed by a member of the public engaged in erratic driving in his personal vehicle, which resulted in infractions under the Highway Traffic Act; and
- PC Ogg failing to submit the aftercare reports that were required.

This misconduct is significantly more egregious than that of PC Zimmerman's.

The Prosecution then referenced the fourth case, *Lavoie and Greater Sudbury Police Service (2014 ONCPC 18)*, at **Tab D**.

Sgt Gary Lavoie was convicted of thirty-one (31) counts of Discreditable Conduct, three (3) counts of Breach of Confidence, one (1) count of Neglect of Duty, and one (1) count of Insubordination. The penalty in this case was dismissal.

The Prosecution submitted that *Lavoie and Greater Sudbury Police Service* is similar in terms of specific PSA charges; however, the larger volume of allegations and charges clearly distinguishes itself from PC Zimmerman's matter.

Upon reviewing *Lavoie and Greater Sudbury Police Service (2014 ONCPC 18)*, the Tribunal noted that Sgt Lavoie had also been charged criminally in relation to the matters, however, the charges were stayed by the Crown Prosecutor. His misconduct also included conducting unauthorized CPIC and NICHE searches on 18 parties, which were not for work related purposes.

The Tribunal believes that the misconduct of Sgt Lavoie by conducting unauthorized CPIC and NICHE searches on 18 parties is significantly more egregious than that of PC

Zimmerman checking MT's driver's licence status on the Ministry of Transportation's Inquiry Services System (ISS).

With respect to the submitted cases, the Defence submits that there are limited documented cases of penalties with similar circumstances or allegations, and that the case that are available are more egregious than the conduct of PC Zimmerman.

Although not presented, the Tribunal is aware of the 2002 Ontario Civilian Commission on Police Services (OCCOPS) Reasons for Decision of *Andrews and the Midland Police Service*, which states, on page 13:

“As the Commission stated at page 615 in its decision in Schofield and Metropolitan Toronto Police: Consistency in the disciplinary process is often earmark of fairness. The penalty must be consistent with the facts, and consistent with similar cases that have been dealt with on earlier occasions.”

With respect to **Consistency of Penalty**, the Tribunal finds that the cases presented are of misconduct that is more egregious than the conduct of PC Zimmerman.

The Tribunal is confident that the Prosecutor and the Defence were diligent in their duties, and researched cases for consistency before agreeing on a joint penalty position.

PC Zimmerman was provided with an opportunity to address the Tribunal; although not required to do so, he addressed the Tribunal, and stated the following:

“I am sorry to the Windsor Police for embarrassing them. My conduct was unbecoming of what a police officer is. I feel that we could all be doing better things than sitting here, doing this today. If you look at my conduct since January, when joining the Windsor Police, I have had several higher-ranking officials, in the Windsor Police, come to me and say that I am doing a great job. The courts system loves me, and loves, in fact, the work that I am doing. I am trying to put the stuff from Amherstburg behind me, and hopefully I can move on.”

Decision

The objectives of discipline are to correct unacceptable behaviour, deter others from committing similar acts of misconduct, and to assure the public that the police are held accountable for acts of misconduct.

The particulars of PC Zimmerman's misconduct are not in dispute, as outlined in the Agreed Statement of Facts, and the Prosecution and the Defence have submitted a joint penalty position.

It is the responsibility of the Tribunal to impose a penalty that balances the expectations of the community, the needs of the Windsor Police Service, and fairness to PC Zimmerman.

The Tribunal must determine whether the joint penalty position is appropriate; does the joint position of a demotion from First Class Constable to Second Class Constable for a period of 6 months strike a balance between community expectations, the needs of the organization, and fairness to PC Zimmerman.

Submissions on penalty by the Prosecution and the Defence have been considered in determining an appropriate disposition with respect to mitigating, aggravating and neutral considerations.

The Tribunal must take into account, as stated in *Schofield and the Metropolitan Toronto Police*, as follows:

“Consistency in the disciplinary process is often an earmark of fairness. The penalty must be consistent with the facts, and consistent with similar cases that have been dealt with on earlier occasions.”

The Tribunal would like to thank the Prosecution and the Defence Counsel for making their respective submissions.

The Tribunal has weighed the mitigating and aggravating factors in determining a suitable penalty in this matter.

Given PC Zimmerman’s previous demotions of six (6) months, and four (4) months, respectively, the seriousness of this misconduct could warrant a sanction greater than the proposed six (6) month demotion.

However, PC Zimmerman entered a guilty plea, at the earliest opportunity, has recognized that his behaviour may be a result of mental wellness challenges, has taken steps to address those challenges, and has made what appeared to be a sincere apology to the Tribunal.

As such, the Tribunal sees no reason to deviate from the proposed sanction.

In addition to the reporting requirements indicating his adherence to treatment for his mental wellness diagnosis, a demotion from 1st Class Constable to 2nd Class Constable is balanced, fair and satisfies the principles governing the appropriate determination of a disposition.

After reviewing all of the evidence and considering the submissions, the Tribunal orders that **Constable Donald Zimmerman shall be demoted from 1st Class Constable to 2nd Class Constable for a period of 6 month demotion, effective immediately, pursuant to s 85 (1)(c) of the Police Services Act, R.S.O 1990, and further that, he shall be obligated to provide documentation to Human Resources, on a regular**

basis (suggested monthly), over a one year period, demonstrating an adherence to treatment for his mental wellness diagnosis, as directed by Human Resources pursuant to s 85 (7)(c) Of the Police Services Act, R.S.O 1990.



Inspector Andrew Randall
Adjudicator
Windsor Police Service

Date electronically delivered: November 4, 2019

Appendix 'A'

The following exhibits were tendered during the hearing:

- **Exhibit 1:** Delegation - Adjudicator - Inspector Andrew Randall
- **Exhibit 2:** Designation – Prosecutor - Inspector Jason Bellaire
- **Exhibit 3:** Notice of Hearing – Police Constable Donald Zimmerman
- **Exhibit 4:** Agreed Statement of Facts
- **Exhibit 5:** Prosecutor - Book of Authorities, and Book of Records, jointly
 - **Book of Authorities**
 - **Tab A** – *BARLOW and Ottawa Police Service* – OCCPS, 2011
 - **Tab B** – *MARKHAM and Waterloo Regional Police Service* – OCCPS, 2014
 - **Tab C** – *OGG and London Police Service* – OCCPS, 2011
 - **Tab D** – *LAVOIE and Greater Sudbury Police Service* – OCCPS, 2014
 - **Book of Records**
 - **Tab 1** – Notice of Hearing / Notice of Right to Disclosure
 - **Tab 2** – Printout of Social Media (Facebook) Conversation Between Complainant and Constable Donald ZIMMERMAN
 - **Tab 3** – Copy of “Code of Conduct” from, the Police Services Act of Ontario
 - **Tab 4** – Amherstburg Police Service Social Media Policy
 - **Tab 5** – Employer Security Statement Form for the Ministry of Transportation Ontario (MTO) – Signed by Constable Donald ZIMMERMAN
 - **Tab 6** – Record of MTO Query of Complainant by Constable Donald ZIMMERMAN
 - **Tab 7** – Response to Professional Standards Branch (PSB) by Constable Donald ZIMMERMAN
 - **Tab 8** – Oath of Secrecy – Signed by Constable Donald ZIMMERMAN
 - **Tab 9** – Agreed Statement of Facts – APS Discipline Hearing for Constable Donald ZIMMERMAN, 2018 (Previous Matter)
 - **Tab 10** – Personal Conduct Record for Constable Donald ZIMMERMAN
- **Exhibit 6:** WPA Sentencing Submissions for Constable Donald Zimmerman containing the following:
 - Submissions upon guilty plea
 - Penalty and Principals at Sentencing