GREATER SUDBURY POLICE SERVICE DISCIPLINE HEARING

UNDER ONTARIO REGULATION 268/10

MADE UNDER THE POLICE SERVICES ACT, RSO 1990,

AND AMENDMENTS THERETO

IN THE MATTER OF THE GREATER SUDBURY POLICE SERVICE
AND CONSTABLE MELISA RANCOURT, 30091

Charges: *Discreditable Conduct*, O.Reg. 268/10, s. 2(1)(a)(xi)

Discreditable Conduct, O.Reg. 268/10, s. 2(1)(a)(xi)

DECISION

Hearing Officer:	Superintendent (retired) Peter Lennox
Prosecutor:	Mr. Joël Dubois
Defence Counsel:	Mr. David Butt
Hearing Date:	October 13, 14 and 27, 2022
Decision Date:	November 18, 2022

Police Constable Melisa Rancourt, 300091

DATE: FRIDAY, NOVEMBER 18, 2022

Retired Superintendent Lennox: Before beginning my penalty decision in this matter, I thank Mr. David Butt (defence counsel) and Mr. Joël Dubois (the prosecutor) for their submissions. They have assisted me in reaching my decision.

References in this finding to "defence counsel" apply to Mr. Butt, and to "the prosecutor" refer to Mr. Dubois.

There were six electronic appearances in 2022. At the sixth appearance, I directed that the scheduled hearing dates be vacated as defence counsel needed time to discuss a draft agreed statement of facts, and new hearing dates were set. Ultimately, there were three days of in-person hearings at two hotel locations in the City of Sudbury. The hearing dates were October 13, 14 and 27, 2022. The final date, October 28, was not needed as defence counsel withdrew his preliminary motion on jurisdiction.

On the first two dates, as there was no agreed statement of facts, a number of civilian and police witnesses gave testimony about the incidents that led to Const. Rancourt being charged with two counts of discreditable conduct. The third date was set to hear a pre-hearing motion as to jurisdiction, but defence counsel did not proceed with the motion, and submissions to penalty were heard on that date.

Const. Rancourt pled guilty to both counts on October 13, 2022. Following the testimony of the witnesses, the charges having been proved on clear and convincing evidence, I found her guilty of both counts on October 27, 2022.

This document will summarize the testimony of the seven civilian and police witnesses and the submissions by counsel for the parties, and outline my analysis of the

submissions, cases and other documents submitted. A list of exhibits – cases and other documents – is found in the appendix.

Finding

The penalty in this matter, imposed under s. 85(1)(c) of the *Police Services Act*, will be a gradation in rank from first-class constable to third-class constable for a period of one year, followed by one year in the rank of second-class constable, conditional on satisfactory performance of duty by the officer and the concurrence of her unit commander. The respondent officer will also be required to perform 40 hours of volunteer work through the Friends of Simon Wiesenthal Centre for Holocaust Studies, and this is imposed under s. 85(7)(c) of the *Police Services Act*.

Summary

On Thursday, October 27, 2022, having pled guilty, the respondent officer was found guilty of two charges of discreditable conduct, contrary to the *Police Services Act*. Clause 2(1)(a)(xi) in the Code of Conduct from Ontario Regulation 268/10 describes the offence as "acts in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the police force of which the officer is a member".

The specifics of the charge against Const. Rancourt are found on the Notice of Hearing (N.O.H.) [Exhibit 3] and were gleaned in greater depth by the testimony of the witnesses for the prosecution. I note that the N.O.H. includes a "Notice of Increased Penalty" that informs the respondent that "the penalty of dismissal or demotion may be imposed if the misconduct … with which you are charged is proved on clear and convincing evidence".

Defence and Service counsel both made submissions on penalty. Counsel for the parties differed substantially on the recommended penalty in this matter. The prosecution recommended a gradation in rank from first-class to fourth-class constable,

with one year spent at the ranks of fourth-, third- and second-class constable (as permitted by s. 85(1)(c) of the Police Services Act). Defence counsel recommended that the respondent forfeit between 24 and 40 hours off, to be served concurrently for both counts (as permitted by s. 85(1)(f)), and that I impose a period of 40-60 hours of mandatory volunteer work at the Friends of Simon Wiesenthal Centre for Holocaust Studies (s. 85(7)(c)).

Prosecution Witnesses

The prosecutor called four members of the community and three police officers to give testimony under oath or affirmation.

During the examination of the witnesses, defence counsel commented on the record that there is no disagreement with respect to the facts in issue, but that there was no agreed statement of facts because counsel for the parties had been unable to agree on one. He said that he felt very badly for the witnesses as they should not have been required, and repeated several times that their evidence was not in dispute.

Evidence of Ms. Susan Mullen

Ms. Mullen works part-time as a front-desk clerk at the Espanola Recreation Complex, and also as a paralegal at the Manitoulin Legal Clinic. She was working on the day of the incident, September 26, 2021, stationed at the front desk of the Complex. Her duties were to check people into the gym, answer the phone and handle ice-rental bookings.

Ms. Mullen identified a copy of an incident report [Exhibit 5] that she filled out before leaving that day. The report was about patrons' "Refusal to provide vaccine passport", and contained text that was consistent with her spoken evidence.

She said that she had been told by Krystal Bouwmeester, another employee at the Complex, that Const. Rancourt and her spouse had posted [on social media] that they intended to attend the Complex and not show a vaccine passport. She recalled that, at that time, recreational facilities in Ontario were required to have patrons provide proof of a [coronavirus] vaccine and identification to enter.

In accordance with Complex procedures, a screener, Alex Sokoloski, was tasked with asking patrons for proof of receiving the vaccine. This was reinforced by notices on the doors to the facility as well as on the Complex's website and social media.

Ms. Mullen saw Const. Rancourt enter the lobby, which she described as "chaotic" with people, at about 9:45 a.m. with her spouse and Krista Ellin. She knew that the person was Const. Rancourt. Later, she added that she had known Const. Rancourt for about 10 years through the minor hockey association, and also knew her when she was a police constable in Espanola.

She heard the screener ask for proof of vaccination. The response was, "No, thank you", after which the three walked into the ice-rink area. They did not stop at the screening table.

Ms. Mullen consulted with other Complex staff who said that it was her responsibility to contact police. She called the OPP, and Const. Jason Koehler attended with another officer. Ms. Mullin told them what happened, identified the women verbally and said that they were in the ice rink. The officers then entered the ice-rink area.

Later in the day, at about 2:00 p.m., she saw Const. Rancourt and her spouse, Dana Rancourt, enter the facility again. She was aware that the couple had children participating in the hockey program. She again consulted with colleagues and contacted police. At that time, Bailey Bouwmeester was acting as supervisor at the facility, and Ms. Mullen informed the attending officer of this.

The next time she saw Const. Rancourt and Ms. Rancourt, they were being led out of the building in handcuffs by the police. At that time, she heard Const. Rancourt shout, “I hope you’re proud of yourself for calling the Nazis” in a loud, angry tone.

She described her reaction as “shocked”, as this was not the behaviour she would have expected of Const. Rancourt.

Under cross-examination, Ms. Mullen was shown a reference letter she wrote for Const. Rancourt in 2018 on behalf of the Espanola Minor Hockey Association when the Espanola Police Service was disbanded and the respondent was applying for another police service. The letter gave a positive account of Const. Rancourt’s qualities and attitudes, and all the comments were positive.

She also said that Const. Rancourt had provided her with an apology a short time before this hearing, after the witness summonses had been issued. When asked if Const. Rancourt’s behaviour was consistent with her character or out of character, she replied that it was “a bit of both”, as she was hardworking, committed and dedicated to hockey, but also could be aggressive, headstrong and opinionated. She said that she had no information on her role as a police officer, just as a hockey volunteer.

Evidence of Mr. Alex Sokoloski

Mr. Sokoloski works for the Town of Espanola in the Public Works Department. On September 26, 2021, he was on his first day checking vaccine passports at the recreation complex. His job was to check vaccine passports of people entering the facility.

He recognized Const. Rancourt, and saw her on that day. The prosecutor showed Mr. Sokoloski three videos [Exhibits 10, 11 and 12]. In the first, he identified Ms. Mullen near a metal gate and identified himself sitting at a table in

the lobby. He identified a woman in a blue mask walking past the table as Const. Rancourt. He indicated that he asked for her vaccine passport, and that the response had been “No, thank you”, accompanied by a shake of the head.

There were several other people moving around in the lobby.

He testified that he did not consult with anyone about the incident, and that he remained at the table afterward. He did not leave the table for eight hours, and saw Const. Rancourt re-enter later with a different child than the first time. This was recorded on the second video. She was in a group of three adults and two children. One of the women stopped [to comply], and the other two with one of the children kept walking. One of the two was Const. Rancourt, and Mr. Sokoloski agreed that the video showed that she did not show proof of vaccination on entry.

The third video showed two women being escorted from the building by a police officer. Mr. Sokoloski indicated that she said something like, “I hope you guys are happy”, which Mr. Sokoloski interpreted as being frustrated at the system. He heard the word “Nazi”, but said that it was not directed to him or anyone else in particular. He couldn’t be specific about when she made the utterance, but said that it must have been when she was close to Mr. Sokoloski at his table.

Mr. Sokoloski remembered other people being in the lobby, and specified that there were adults and young people at a sign-up table for minor hockey nearby.

The prosecutor asked him what he thought when he heard the utterance; he replied that he was in shock, as he had never heard someone say that out loud.

Defence counsel objected to Mr. Sokoloski being asked for an opinion. The prosecutor replied that it speaks to the perception of a member of the public on a discreditable conduct charge. I overruled the objection.

The prosecutor concluded by asking about Const. Rancourt's general tone and demeanour, and Mr. Sokoloski replied that the comment was "just under her breath".

Defence counsel did not cross-examine Mr. Sokoloski.

Evidence of Ms. Krystal Bouwmeester

Ms. Bouwmeester works at the municipal office of the Town of Espanola, and was at the recreation complex on the day in question in her role as president of Espanola Minor Hockey.

She had conversation with Ms. Mullen early in the day to inform her that she had been informed that individuals were coming to the facility who did not intend to show vaccination status. One of them was Const. Rancourt.

The prosecutor showed Ms. Bouwmeester a printout of a Facebook post [Exhibit 6] with a post by "Melly Ran", whom Ms. Bouwmeester identified as Melisa [Rancourt]. Another participant was Krista Ellin, whom Ms. Bouwmeester said she also knows. Ms. Ellin attended the facility that morning with Const. Rancourt.

From her position at a table in the middle of the lobby near stairs about 20 feet from Mr. Sokoloski's screening table, she saw the women enter the complex. They were asked for their vaccination status, but just walked through; if they stopped, it was for no more than a couple of seconds. She heard Const. Rancourt say, "No, thanks". The women stopped at Ms. Bouwmeester's table to do COVID screening which involved only questions about symptoms, and then entered the arena.

After this occurred, she told Ms. Mullen that the protocol is to call the police. When police attended, she showed the officers where Const. Rancourt, Ms. Rancourt and Ms. Ellin were sitting in the stands.

Later in the day, she saw Const. Rancourt re-enter the facility, but took no action. Some time later, she saw Const. Rancourt being brought out in handcuffs. She heard Const. Rancourt, whom she perceived as "upset" and angry but not apparently at any individual, say "I hope you are proud" and then, as far as she can remember, something about standing with the Nazis.

When asked about her thoughts, she testified that she "came to a shock, actually; I can't believe that actually just happened". She testified that there were other people at the minor-hockey table, and there were other parents standing in the lobby. She said there were no children present at that point.

She said that she was acquainted with Const. Rancourt and knew that she was a Sudbury police officer. When briefly questioned by defence counsel, she replied that she was president of the Espanola Minor Hockey Association and that Const. Rancourt, who ran unopposed, is now the vice-president.

Evidence of Mr. Bailey Bouwmeester

At the time of these events. Mr. Bouwmeester was the interim facility operations supervisor. He was at the facility that day to coach minor hockey.

As there was no other supervisor working the weekend, he left the ice when he saw two police officers in the centre stands with Const. Rancourt. When he approached, he was informed that the Rancourts had come in without showing proof of vaccination. He said that he was the person responsible for enforcing town policies.

The officers told Mr. Bouwmeester that he would have to ask Const. Rancourt to leave, and he did so, telling her that under Town policy she could not be in a public building. Const. Rancourt asked him if he was asking her to leave because she was gay; he replied that no, it was because she was a danger to everybody.

Mr. Bouwmeester agreed to allow them to remain until their daughter was off the ice. They left when that happened, though they resisted the direction until the officers told them they had to leave. Also present were Ms. Rancourt and Ms. Ellin.

When asked about his reaction to the incident, he replied that he was concerned about future ramifications for the people involved, especially with respect to his relationship with Const. Rancourt, whom he knew personally.

When asked if he were surprised at Const. Rancourt's reaction to his direction, he replied that he was not because "everyone's been heated through this" and he has been taking the brunt of people's reaction during the pandemic.

When questioned by defence counsel, Mr. Bouwmeester agreed that in his 1.5 years in the job, which he started in the midst of the pandemic, members of the public have been more angry, including angry with facility staff. People take it out on staff when they enforce rules they are struggling with. Now [at the time of the hearing], as restrictions ease, people are more calm and kinder.

On re-examination by the prosecutor, Mr. Bouwmeester said that this occurred during the first week of the restrictions as they were at the time, and it was the first and only time he had to call the police with respect to adherence to the pandemic requirements. He has had to threaten people with the police two or three times, and has had one other heated conversation about the policies.

Evidence of Provincial Constable Sarah Meyers

Const. Meyers has been a member of the OPP since 2015, and a police officer since November 2020. On September 26, 2021, she was working in uniform at the Little Current detachment on the day shift.

She was dispatched at 9:55 a.m. to the recreation complex for a complaint of a COVID violation. Communications informed her that the complainant, Susan Mullen, had reported that three individuals had entered the facility without vaccination proof, which was required under the Reopening Ontario Act. The three individuals, identified as Const. Rancourt, Ms. Rancourt and Ms. Ellin, were believed to be in the hockey rink area.

She arrived at 10:16 a.m. and met with Const. Koehler, who advised that one of the three was a police officer with the Greater Sudbury Police Service (GSPS). They spoke to Ms. Mullen and were directed to the rink, where the three individuals were pointed out to them. The three individuals were seated side-by-side on a bleacher in the rink area.

Const. Koehler took the lead, introducing himself and Const. Meyers and explaining the problem of having no vaccination proof under the Reopening Ontario Act. Const. Rancourt indicated that she understood, but when Const. Koehler asked if they had proof, Const. Rancourt replied, “It’s no one’s business”. When Const. Koehler said that they were breaking the law, Const. Rancourt replied that she was obeying the Constitution.

Const. Rancourt said that she had an exemption and that no proof was needed. She said that she was there for the health and safety of her daughter, whom she would not leave unattended as she did not know the coaches and did not trust them. The two other women were also involved in the conversation about the nature of the law and the regulations, but the officers indicated they would not discuss hypothetical situations. All three women said that due to the health and safety exemption and as they were wearing masks, they did not believe they

were doing anything wrong. Ms. Rancourt said that she was doing nothing wrong and wouldn't leave. She asked the officers if she would be made to leave if she were Black. Again, the officers refused to discuss hypothetical situations.

Const. Koehler asked them for identification, which they refused as they did not recognize that authority under the Reopening Ontario Act. The officers then went back to speak to Ms. Mullen to ask her wishes, and she replied on consultation with her manager that the township wanted the individuals removed. Ms. Mullen also expressed concern that the Rancourts would return as they had another child who played hockey at the facility.

They were joined by Mr. Bouwmeester, who would inform the individuals that they were no longer welcome if they continued to fail to comply.

Const. Meyers called Sgt. Baker to inform him of the occurrence.

The officers re-entered the rink with Mr. Bouwmeester, who explained to the three women that they were no longer welcome and had to leave. Const. Rancourt argued with Mr. Bouwmeester, saying that he could not ask her to leave; he replied that he could. Const. Meyers heard Const. Rancourt ask if she was being told to leave because she was gay, and Mr. Bouwmeester replied that they were being asked to leave because they were trespassing. Const. Meyers explained the charge of failure to leave when directed under the Trespass to Property Act, and Const. Koehler told the individuals that they had to identify themselves or face arrest.

Const. Rancourt and Ms. Rancourt identified themselves verbally, and were told they would receive provincial offence notices (PONs) for failure to leave when directed. At 10:52 a.m., Const. Rancourt said they would not leave until the practice ended at 11:00 a.m., so Consts. Meyers and Koehler went to prepare the provincial offences notices to be served after the practice.

Ms. Ellin, meanwhile, had walked away, and Const. Meyers followed her to explain the Trespass to Property Act. Ms. Ellin replied, “You told me to leave, so I’m leaving”. Const. Meyers said that she could not return if she were not in compliance with the pandemic regulations. Ms. Ellin identified herself verbally to Const. Meyers.

Const. Meyers took a position at the rear of the facility to ensure that the Rancourts did not leave without their notices, and at 11:15 a.m. Const. Koehler called her to say that the notices had been issued without incident. Const. Meyers cleared the call at that time.

Evidence of Provincial Constable Jason Koehler

Const. Koehler has been an OPP officer for 28 years, and is stationed at Little Current on Manitoulin Island. Const. Koehler’s testimony matched that of Const. Meyers closely.

At 9:52 a.m. on September 26, 2021, he received a call to the Espanola Recreation Complex for a COVID-related incident. Three people had attended and not shown vaccination proof as required by the municipality in accordance with provincial mandates. He was given the names of the three.

He arrived at 10:13 a.m. and spoke to Ms. Mullen, who informed him that three people, all known to her, had entered and were asked to provide proof of vaccination, but did not do so before entering the arena portion of the facility. Ms. Mullen told him that one, Melisa Rancourt, was an off-duty police officer.

On the arrival of Const. Meyers, Ms. Bouwmeester pointed out three women on a bench in the stands.

The two officers approached the three. They introduced themselves and said that they were there because the three had not provided the required proof on

entry. Const. Koehler asked if they had exemptions or reasons why they did not need the vaccine. Const. Rancourt said that they did not need an exemption, as they were there for the health and safety of their children. She said that she did not have to disclose her vaccination status.

Const. Koehler told them that they had to provide proof of vaccination due to provincial mandates. Const. Rancourt's status as a police officer came up in conversation, and after that the conversation switched to the legalities of the situation. Const. Rancourt mentioned that her rights were in accord with the Constitution.

Const. Koehler told them that they could be charged under the Reopening Ontario Act or asked to leave, believing that they had already been asked to do so. Const. Koehler continued to try to determine why they were refusing to leave. He tried to obtain IDs from the three to determine who was who among the three, but the women seemed reluctant to give it. Const. Koehler asked Const. Rancourt how she would deal with the situation in Sudbury, and she replied that it was her duty as a police officer to uphold the Constitution.

Const. Koehler said that the conversation lasted 10 or 15 minutes as he tried to be diplomatic, but it fell on deaf ears. He offered to give them a warning if they left, but they replied that they were not breaking the law, whether with respect to trespassing or the Reopening Ontario Act. They said that they felt that they had a health-and-safety reason as they did not know the coaches. They were there for the health and safety of the children.

After some time, the officers left the women in the arena and called Sgt. Baker. In consultation with the sergeant, they determined that it would be best to get the manager of the facility to tell the women, in the presence of the police, that they were unwelcome unless they showed the required proof. Failure to leave would result in their removal and trespassing charges.

They spoke to other employees and then returned to the stands with Mr. Bouwmeester, who told them they had to leave if they would not comply. They replied that, as they are not breaking any laws, they did not feel that they had to leave. Const. Rancourt told Mr. Bouwmeester words to the effect "You're doing this because we're gay".

Const. Koehler told Mr. Bouwmeester that he could leave when he had delivered the message. Const. Koehler told the three that they must leave or be charged with trespassing. Eventually, they struck a compromise; there were ten minutes left in the practice, so he obtained their information and went out to the police car to prepare the offence notices until the kids got off the ice. Ms. Ellin was told that she had to produce ID or be arrested, but she left the arena as required.

Const. Koehler returned to the police car and prepared the notices. When Const. Rancourt and Ms. Rancourt approached the car, he gave them the offence notices without further issue. He informed them that the police would be called if they returned, but they replied that they had another child playing later and would be back. Const. Koehler told them that the police might be called and that a repeat offence might be handled differently, but he testified that this did not seem to faze the women.

The prosecutor showed Const. Koehler a copy of an occurrence report [Exhibit 7], submitted on consent of defence counsel. He identified it as the report that he submitted of the incident. I note that the report reflects the officer's testimony in less detail.

Evidence of Sergeant Lowell Baker, Ontario Provincial Police

Sgt. Baker has been with the OPP for 18 years. He is currently assigned to Espanola as a front-line supervisor. He is acquainted with Const. Rancourt through policing, including when she joined the Espanola Police Service. They

interacted at calls and he used her services as a breathalyzer technician. He would run into her in the community, but they did not socialize beyond that.

Sgt. Baker had knowledge from Const. Koehler and Const. Meyers about the first call, as he had been contacted by the officers at about 10:41 as they sought direction. Sgt. Baker had told the constables to proceed under the Trespass to Property Act if they failed to leave. He informed the detachment inspector because there was concern that the women would reattend, and then placed himself in the area of the recreation complex in case they did so.

He received a radio call at 12:11 p.m. The complainant, Ms. Mullen, said that Const. Rancourt and Ms. Rancourt had returned. He went to the facility and had conversation with Ms. Mullen, who told him that they had returned and, again, not shown vaccination passports. They had walked straight into the arena, and Ms. Mullen wanted them removed as they were trespassing.

He went to the rink area and observed Const. Rancourt leaving the dressing room area with a young child dressed for hockey. As he knew her from working in Espanola, he asked her and Ms. Rancourt to move to a hallway so he could have a more private conversation. His intent was to talk them into leaving without issue. Once there, he told them that they were trespassing, as they had entered the facility when entry was prohibited. They had committed an offence and were arrestable as soon as they came back. He told them that he would give them the opportunity to get their child off the ice, but they would then have to leave the property.

The conversation there was largely with Ms. Rancourt, who told him that the Greater Sudbury Police Service (GSPS) was not enforcing the vaccine mandate. He replied that this was not a COVID-compliance situation, but rather one of trespassing. They disagreed on whether the facility had the authority to "trespass" her. As he was aware that Const. Koehler had issued provincial offence notices under the Trespass to Property Act, he believed that they both were well aware that they were trespassing.

He testified that he acted calmly but authoritatively as he tried to reason with them, but told them several times that they had to get their child and leave or face arrest. Both failed to leave, and used words like “No, I’m not leaving”.

Sgt. Baker arrested Ms. Rancourt and placed a handcuff on her left wrist. Const. Rancourt tried to ask him not to do that, saying “Mike, stop; don’t”. Const. Rancourt grabbed Ms. Rancourt’s right arm, which Sgt. Baker interpreted as the criminal offence of obstructing a police officer. He ordered her to back off, and she did. Sgt. Baker handcuffed Ms. Rancourt.

Sgt. Baker then told Const. Rancourt that she was under arrest. Const. Rancourt tried to walk past the sergeant, but he took her right arm and said, “You’re under arrest. It’s too late”. Const. Rancourt pushed off against the sergeant’s upper body and grabbed the sergeant’s vest, which Sgt. Baker interpreted as an assault. He took her to the ground by sweeping her leg, giving commands to comply. Const. Rancourt went down on her left side with her back to a dressing room door as Ms. Rancourt encouraged her to stop: “That’s enough”.

Sgt. Baker helped Const. Rancourt to her feet and completed the handcuffing procedure.

They walked toward the lobby area, and Const. Rancourt opened the door between the areas with her foot. They passed through the lobby area in which people were moving around. Const. Rancourt started yelling, calling people “Nazis”, and they continued out to the police car without further incident.

Other officers showed up when the women were in the back of the marked police car, where the sergeant read the post-arrest rights and caution. At 12:54, Sgt. Baker released Ms. Rancourt on a provincial offences notice for entering premises when entry was prohibited. He asked her if she was coming back, and she replied, “No”.

During this time, a friend was minding the Rancourts' child.

Const. Rancourt was arrested both for the trespassing offence and also for resisting the sergeant. At 12:55, Sgt. Baker transported Const. Rancourt to the Espanola Highway Detachment, accompanied by another officer, Const. Claveau. His intent was to release her on an undertaking with conditions not to return to the rink, but instead he released her on an appearance notice without conditions so she could return to the rink if she decided to comply with the vaccine requirements. He knew that the rink was a big part of her life. He had her fingerprinted immediately to save her the embarrassment of having to return for that purpose, and released her at 2:20 p.m. on the criminal appearance notice and the provincial trespass notice. Sgt. Baker and Const. Claveau transported Const. Rancourt to her residence a few minutes later. Const. Rancourt apologized to Sgt. Baker at that point, and he replied that there were no hard feelings, as "stuff happens".

At this point in the sergeant's testimony, the prosecutor asked for his impression about the sincerity of the apology, and defence counsel objected to the witness giving opinion evidence, as this line of questioning was the preserve of the hearing officer. Defence counsel also objected when the prosecutor asked if anything had happened since September 26, 2021, that would be inconsistent with the apology. The witness was excused for a short time as this was discussed.

I was told that an OIPRD complaint against Sgt. Baker had been filed by Ms. Rancourt. The complaint was found to be unfounded or unsubstantiated. The prosecutor submitted that he should be able to offer evidence of subsequent events to determine the sincerity of the apology, and defence counsel submitted that it would be prejudicial to introduce evidence on a collateral matter that was not initiated by Const. Rancourt. I found for defence counsel; I have evidence of the apology, and tensions created by later events could be prejudicial to the respondent, and involved a completely separate set of events. It is entirely separate from the sincerity of the apology offered at the time.

Sgt. Baker returned to the hearing room.

The prosecutor asked Sgt. Baker to clarify his meaning when he referred to her "calling them Nazis". He replied that he assumed it was the staff and the people at the vaccination table as she was shouting it in a room full of people. He was also asked if he ever called for backup or made other calls; he replied that he asked for assistance when he put Const. Rancourt to the ground.

The prosecutor showed Sgt. Baker an occurrence report [Exhibit 8] and asked if it was the report he submitted at the time. He replied that it was, but was only the cover sheet and did not contain the whole occurrence report. I know that the content of the report is brief, but reflects the sergeant's evidence.

The prosecutor then returned to the videos of the facility showing different perspectives of the incident [using Exhibits 9, 10, 11 and 12]. He had Sgt. Baker narrate the videos, which were time-stamped and in which non-involved people were distorted by intentional pixelation. The videos had no sound.

Two videos were shown to the sergeant. The first was in the hallway to the dressing rooms, where the sergeant took Const. Rancourt and Ms. Rancourt for a more private conversation. In response to questions from the prosecutor, Sgt. Baker indicated the points at which certain things happened.

- At 12:20, the parties enter the hallway. Ms. Rancourt and Const. Rancourt were on the left, and Sgt. Baker on the right.
- Sgt. Baker indicates this time as when he told the two that they were trespassing and would have to take the child and leave.
- He indicated that the other people who passed through the field of view were just people using the rink, not members of the police service.
- At 12:23, the sergeant was having a conversation with Ms. Rancourt, who gestured and pointed a finger at Sgt. Baker. The sergeant indicated that they were debating about the mask mandate, and Ms. Rancourt disputed

the authority with respect to trespassing. The sergeant explained the trespass law and indicated that the two would have to leave. Ms. Rancourt underscored that the Greater Sudbury Police were not enforcing the vaccine mandate, that they would not lay charges against people not showing private medical records.

At this point, defence counsel objected to evidence being repeated. I asked the prosecutor to avoid repetitive evidence where possible.

- At 12:24, the sergeant arrested both women for trespassing and asked Ms. Rancourt to turn around.
- At 12:25, Sgt. Baker had the first cuff on Ms. Rancourt. Const. Rancourt took Ms. Rancourt's arm out of the way, but the sergeant was able to finish handcuffing Ms. Rancourt.
- Sgt. Baker indicated that Const. Rancourt was saying, "No, Mike. No, Mike", and Sgt. Baker took physical control of her to prevent her from leaving. He explained that both were going to be handcuffed.
- Const. Rancourt pushed Sgt. Baker, and apparently tried to walk away. Sgt. Baker pushed Const. Rancourt against the wall, and Const. Rancourt pushed back. She seemed to grab the sergeant's body armour and push against his chest. Sgt. Baker described this as an assault.

Defence counsel objected that it was inappropriate to use that legal language as the criminal charges were dealt with without a finding. He asked that Sgt. Baker describe the actions but not use legal terminology. I directed the sergeant to comply with that.

- At 12:26, Const. Rancourt goes to the ground. With some difficulty apparently due to Const. Rancourt's mobility being limited as she was up against a door, asks her if she will comply, and helps her to her feet. He completes the action of handcuffing Const. Rancourt.

- The second video was started at timestamp 12:27. It showed the same scene as had been viewed with Mr. Sokoloski during his evidence, and showed the lobby area.

Defence counsel again objected to the repetition. The prosecutor asked if he was being restrained from adducing evidence, and I told him that he certainly was not, and invited him to continue.

- Sgt. Baker clarified that Const. Rancourt had used her foot to open the door between the scenes, and that action was not captured on video.
- The prosecutor asked Sgt. Baker to identify when Const. Rancourt made the utterance about Nazis, but he was unable to do so with precision.

Defence counsel cross-examined the sergeant, asking if he had described all that he did, leaving nothing out. The sergeant replied that it was impossible to say, but that all the major steps were covered, and nothing of substance was left out.

Defence counsel asked if the sergeant knew that the Rancourts had a five-year-old child and what arrangements he made for the child's welfare. The sergeant replied that the child was still on the ice when Dana was released, and that the Rancourts had had multiple opportunities to remove the child. He disagreed that he had arrested the women without making arrangements for the child's welfare, and that Ms. Rancourt told him that her friend would remove the child from the rink, so arrangements had been made.

This concluded the testimony of the seven witnesses. The prosecutor then submitted a quantity of documentary exhibits and the videos were assigned exhibit numbers:

- *Exhibit 9:* Video labelled "003 Hallway"
- *Exhibit 10:* Video labelled "First Entry Lobby Rear Exit"

- *Exhibit 11:* Video entitled “Second Entry Lobby Rear Exit”
- *Exhibit 12:* Video entitled “Second Exit Lobby Rear Exit”
- *Exhibit 13:* Copy of trespass notice to Melisa Rancourt from the Town of Espanola, dated September 28, 2021
- *Exhibit 14:* Duty notes of Sgt. Neil McNamara, dated September 14, 2021, with respect to Facebook posts by Const. Rancourt and including a related e-mail exchange between Sgt. McNamara and then-Insp. Sara Cunningham
- *Exhibit 15:* One-page printout of Facebook posts by Const. Rancourt with illustration of the Canadian Charter of Rights and Freedoms, among other text
- *Exhibit 16:* Printout of Const. Rancourt’s GoFundMe page as of October 13, 2021
- *Exhibit 17:* Printout of five Facebook pages of posts by Angie Bernard, which contain comments by Const. Rancourt. They were labelled as posted November 24, December 4 and December 13, 2021, and January 5 and January 19, 2022
- *Exhibit 18:* Anonymous email dated January 21, 2022, sent to Greater Sudbury Police, with attachments
- *Exhibit 19:* News release from the OPP dated September 28, 2021, entitled “OPP Investigates Trespassing – Criminal Charges Laid”, detailing the arrest of the respondent
- *Exhibit 20:* Media article from Sudbury.com, dated September 28, 2021, entitled “OPP arrest Sudbury police constable on charges of resisting a police officer, trespassing”
- *Exhibit 21:* Media article from CTV Northern News, dated September 29, 2021, entitled “Greater Sudbury police officer charged with trespassing in Espanola”, including public comments (names redacted)
- *Exhibit 22:* Media article from Sunmedia.ca, September 30, 2021, entitled “Sudbury police officer facing further discipline”
- *Exhibit 23:* Greater Sudbury Police Service procedure COR002, entitled “Social Media”, revised June 3, 2020
- *Exhibit 24:* Affirmation of Secrecy and Office of Const. Rancourt, October 14, 2018

- *Exhibit 25:* Transcript of compelled interview of Const. Rancourt, October 28, 2021
- *Exhibit 26:* Transcript of compelled interview of Const. Rancourt, February 1, 2022
- *Exhibit 27:* Facebook posts by Const. Rancourt with comments from individuals (names redacted)
- *Exhibit 28:* Printout of social media posts entitled “Greater Sudbury MEMES”, October 8-10, 2021

The prosecutor indicated that Exhibit 28 relates to Exhibit 16 (Const. Rancourt’s GoFundMe page) and asked that it be admitted with the understanding that Const. Rancourt had nothing to do with the rally it mentions. Defence counsel submitted that the exhibit has no utility as social media is unreliable and the fact that the rally occurred has nothing to do with the allegations on the Notice of Hearing. He submitted that the potential for it to have weight is limited, and it is therefore not helpful. The prosecutor replied that the article is not being introduced, only public comments made about matters that are properly before the Tribunal, and invited me to determine the weight to give to it. The second count the respondent faces includes the GoFundMe page, which is part of the charge of discreditable conduct. I admitted the exhibit as information I potentially need to consider with respect to penalty. I agreed with the prosecutor that I can assign appropriate value to it.

Mr. Butt told me that his documentary evidence and submissions will follow electronically. They were received before the third hearing date and pertain to submissions to penalty. They [Exhibits 30, 31, 32, 33, 34 and 35] are included in the list of exhibits in the appendix.

Counsel told me that other than Exhibit 28, all exhibits, including ones I had not yet received electronically from defence counsel, are submitted on consent, but both counsel reserved the right to make submissions on each other’s exhibits.

I noted that some of the prosecutor’s exhibits pertain to the counts to which Const. Rancourt pled guilty, and in some cases are relevant to both the facts in issue and

submissions to penalty even if they were not covered in the prosecutor's submissions on the facts. Referring to the exhibits described on the previous two pages, I considered Exhibits 13, 14, 15, 16, 17, 23, 25, 26 and 27 in this way, as they supported the substantiation of the allegations of misconduct.

There was a twelve-day period between the above events and submissions to penalty.

Defence Counsel Submissions to Penalty

Defence counsel began by underscoring that the facts of this case are not in dispute. The respondent, Const. Rancourt, attended the recreation complex and was charged with trespassing for failure to show proof of vaccination. She reattended without abiding by the requirements to do so, and was arrested and charged. The arrest was captured on video, and as the respondent was on her way out in handcuffs, she said inappropriate things. She later posted on social media in a similar vein, which he admitted was inappropriate. He invited me to find her guilty, which I did.

He submitted that it is critically important that I consider that the media sometimes get the facts wrong, and if what the media say in their articles differs from what I have been given in evidence, then the articles aren't worth the paper they are printed on.

He also submitted that Const. Rancourt will be returning to work at the Greater Sudbury Police Service, and that I must keep that front of mind before imposing any discipline measures. As well as accountability for wrongdoing, there must be compassion and a full-bodied consideration of the big picture in order to provide the successful components of reintegration to the workplace. Focusing exclusively on punishment is not warranted, he submitted, and would be destructive to the respondent's continued productive service and the creation of a better workplace for everyone, including Const. Rancourt. He also reminded me that there had been no suspension in this case.

He submitted that our goal is to foster a spirit of moving on together, and that ensuring that respondents who feel that they were held accountable but also listened to and

treated with respect and compassion can move on from discipline not resenting the organization, but fully committed to it.

Counsel said that he would discuss several relevant sentencing factors identified by Paul Ceyssens and elsewhere. He made three points to "contextualize" the misconduct:

- First, the events in question took place in the middle of a pandemic, which was an unprecedented disruption in the lives of everyone. During the pandemic, people found it difficult to cope. He reminded me that we heard from Mr. Bouwmeester about how the clientele at the complex were angrier and more aggressive during the height of the pandemic, which had a real impact on real people. He reminded me that during that time, schools were shut, recreational facilities were limited, there were document and masking requirements, and the fact that the requirements were reasonable, fair and necessary didn't mean that they did not compound pre-existing stressors. Const. Rancourt's behaviour was inextricably intertwined with the stressors of the pandemic, and while this does not excuse the behaviour, it was a contextual factor as people were dealing with the pandemic, and the impact on mental health was profound.
- Second, with respect to the social-media activity, the respondent's posts were inappropriate, offensive and insulting, but it is the mode of expression that is at the core of the finding of discreditable conduct, as it is not discreditable to hold minority views about the wisdom of the pandemic mandates. In fact, the social-media posts show a rally in support of Const. Rancourt. Different people felt differently about the mandates, and in a vibrant democracy we have the right and the freedom to be wrong and to express wrong-headed views. That said, Const. Rancourt does not have the freedom to express views in ways that bring discredit to the Service, but we cannot punish her for her positions on policy, and must rather deliver fair, respectful and compassionate punishment for discreditable methods of expression. One can hold views, but not express them in ways that bring discredit to the Service. The punishment must not amount to insidious punishment for her thoughts.

- Third, counsel submitted that the pandemic impacted moms of young kids juggling jobs and family most heavily. Things get even "harrier" when school and recreation are disrupted but children still have the same boundless energy and needs and two-career households must juggle the pandemic on top of everything else. The hockey-related incident was enmeshed in the pandemic, but also in parenthood; the respondent's five-year-old son just wanted to play hockey, and she wanted to be there to make that happen. While he allowed that this is not a defence, he said that it is important to understand how a busy, harried mother who is coping with a lot can "just lose it" around her kids.

In support of these contextual submissions, counsel submitted that the prosecution's position is heavy-handed, and that there is an implicit and insidious element of misogyny as it discounts the struggles of a mom with young kids during a pandemic. He said that to suggest the kind of penalty the prosecution suggests sends a misogynistic message. A full understanding of this context goes to both the public interest and the seriousness of the misconduct; this is not a case where the respondent got into a minor dust-up with the officer because she was drunk and carrying on in a bar, and the context should be mitigating to penalty.

Counsel submitted that while the conduct led to an arrest, it did not result in a conviction. There was a $750 fine, but the Crown withdrew the criminal charges, so despite Sgt. Baker's use of criminal terms – for which he was called to account – this is not criminal misconduct. He submitted that the respondent is legally and factually innocent of criminal misconduct.

Defence counsel referred to several of the accepted sentencing criteria that he felt were relevant to this matter.

Recognition of the Seriousness of the Misconduct:

Defence counsel began this section of his submissions by suggesting that it is necessary to assume a degree of compassion and humility because everyone

makes mistakes, and because mistakes are inevitable, we should judge people by what they do to atone. He underscored that Const. Rancourt had a difficult time emotionally during the pandemic, and that it is “really hard to be a good person when your life is in the tank”.

Counsel submitted that Const. Rancourt pled guilty and admitted all of the facts with respect to the two counts with which she was charged. Counsel said that he did not challenge any of the facts at the direction of Const. Rancourt.

Counsel went through the apologies offered by Const. Rancourt after the incident on September 26, 2021. She apologized verbally to the arresting officer, Sgt. Baker (with whom she was acquainted), on the day of the arrest. In October 2021, she sent a letter of apology to the Espanola Minor Hockey Association [Exhibit 30, Tab A3] and its volunteers, parents and children for her behaviour, which he said was a recognition of her wrongdoing and the character to admit the wrong. He said that she did that “immediately and persistently”.

He said that Const. Rancourt cooperated with her investigative interview [Exhibit 30, Tab A4] even though her criminal charges were still before the court. She did not ask for any “right to remain silent” but cooperated willingly.

When directed, she took down the inappropriate Facebook pages (I note that, in her compelled investigative interview, she told investigators that she took the pages down the same day as she was directed to do so by then-Insp. Sara Cunningham). Counsel said that she has not posted anything problematic since (but I will deal with this statement in my analysis).

She entered the Direct Accountability Program through the courts in Sudbury to deal with the criminal charges, making a $750 donation to a Sudbury charity, and counsel underscored that a condition of the program is to accept responsibility, which she did [Exhibit 30, Tab A6].

In May 2022, she apologized to the Town of Espanola [Exhibit 30, Tab A7], with the result that her trespass notice to the recreation complex was lifted [Exhibit 30, Tab

A7A]. Before the notice was lifted, she pled guilty to the Trespass to Property Act charges and paid a fine.

While counsel did not mention this, his materials in Exhibit 30 also include an account of Const. Rancourt's apology to Ms. Mullen on September 18, 2022 [Tab 8A], and attached to that is the letter to which Ms. Mullen's testimony referred, recommending Const. Rancourt for police employment following the dissolution of the Espanola Police Service [Tab 8B].

While more information on Const. Rancourt's career appears in the next section, counsel suggested that her career demonstrates the highest standards of ethics, but despite this she undertook a Canadian Police Knowledge Network (CPKN) course on police ethics and accountability [Exhibit 30, Tabs A10 and A10A], and also a course from the University of Toronto entitled "Mind Control – Managing Your Mental Health Through COVID-19" [Tabs 11 and 11A] as she recognized that the pandemic had had a problematic effect on her. Counsel referred to undertaking these programs as taking "those hard steps".

He presented work done by Const. Rancourt with the Friends of the Simon Wiesenthal Centre as one of the most significant steps bearing on inappropriate antisemitic comments and references [Exhibit 30, Tabs A12 and A12A]. The reports from the Centre indicate that she was remorseful and shamed by her actions, and counsel read in one paragraph from that report:

> *Constable Rancourt's remorse for her misuse of Holocaust terminology and imagery was expressed both verbally and in writing. In our final virtual session, she expressed how she felt "ashamed" of her actions. Her final reflection essay uses the word "ashamed" again in several different paragraphs, one in particular where she accepts responsibility for her "misusing and misappropriating the words and symbols of this horrible tragedy to express my personal dissatisfaction and frustration with our current state of governance in Canada" (see Appendix II for the full essay). Later in the essay, Constable Rancourt references her new understanding of the harm that the misuse of these words and symbols causes*

today. Her emotional reactions that I have witnessed to the content of the different modules indicates to me the sincerity behind her verbal and written words. I feel that she has felt – and continues to carry – the weight of her choices not because of the punitive actions that she is facing, but rather a result of her personal character and the values that she holds.

Counsel pointed out that Const. Rancourt's reflection papers from the Wiesenthal Centre program use the word "ashamed" repeatedly.

Employment History:

Defence counsel referred to Const. Rancourt's employment history as "exemplary". She has been a constable for about 24 years, and was an "integral and valued" member of the GSPS Traffic Management Unit from 2016-2021, where her work included investigating fatal collisions and conducting training and requalification processes in Lidar and Radar [speed detection equipment] for other officers as well as Intoxilyzer training. She is a qualified reconstructionist (which I know to be the highest level of police collision investigator in the province). She also created a table [Exhibit 21, Tab E8] entitled *Suspension, Charge and Impoundment Guide* to assist fellow officers. I see from Exhibit 31 that she made suggestions for process improvements, and sent information to her colleagues on the law around two-wheeled powered vehicles.

I note that in Exhibit 30, there is an evaluation of Const. Rancourt dated either April 5 or May 4, 2022, and while her counsel made more detailed mention of the free-text elements of the form below, the assessment indicates that her supervisor scored her at the same level or, in one case, higher than she assessed herself. Within Exhibit 31, there is a table summarizing her performance evaluations [Tabs D21 to D31] from both the former Espanola Police Service and the GSPS. The summary indicates that Const. Rancourt meets or exceeds all performance requirements, and contains universally positive comments with respect to her work habits, her personal

qualities including ethics, communication skills, empathy and community work, among others, including while on administrative duties following September 2021.

Within Exhibit 31, there is a “Designated Actor Assessment” from June 2019 that identifies performance and areas for improvement at the acting rank of sergeant. While it identifies areas for enhancement, it also recommends that Const. Rancourt be placed on the list of officers eligible to act in the sergeant rank. It is approved by Insp. Marc Brunette, Const. Rancourt’s unit commander.

Defence counsel focused in on her activities while she was assigned to administrative duties, on which she was placed after the September 26, 2022, incident. During that time, working within Integrated Operations, she continued to assist with investigations of serious matters. These duties included (up to March 31, 2022, when counsel’s written submissions suggest she was removed from this type of work) preparing search warrants and production orders, which counsel pointed out is work that is typically done by officers who are not facing discipline. Her value to the organization, he said, was recognized, valued and sought out in this complex field. He said that she was not “just biding her time” while on administrative duties.

Also during this time she completed several training courses herself and kept up with her requalifications. She also took several (written submissions name nine) CPKN courses on obstructing police, balanced life and emotional survival for police officers, as well as courses designed to expand her skillset, including a policing guide to human trafficking and child exploitation. She took a course for social media in policing and a course entitled “When Trauma Does Not Bleed”, which, he submitted, had two “vectors” for Const. Rancourt – inward and outward focused – to better serve traumatized people in the community, and to understand the stressors within herself that had led to the incidents with which she was charged.

He summed up by stating that Const. Rancourt did not have a chip on her shoulder or try to push blame elsewhere, but remained productive while under a cloud.

I note that Exhibits 31 and 32 are specific to employment history, though defence counsel referred to their contents in several sections of his submissions. Many of the entries in the exhibits support counsel’s verbal submissions. In Exhibit 31, There

is also a list of training Const. Rancourt received in her four police agencies (OPP, Barrie Police Service, Espanola Police Service and GSPS).

Exhibit 32 contains about 50 positive community letters and internal e-mails as well as media articles that support and illustrate the work of Const. Rancourt across her four police services. These were dealt with below, through Exhibit 33, which duplicates some of the material in Exhibit 32.

Specific and General Deterrence:

Defence counsel pointed to the employment records and related documents outlined above, and suggested that the best determiner of future behaviour is past behaviour. He said that her incidents of misconduct are in no way typical of, or foretold by, her 24-year work record, and that the incidents were completely out of character.

Counsel drew my attention to Exhibit 33, which contains summary tables and supporting documents, starting with character letters [Tabs D1 to D20]. I reviewed all of the letters, but counsel highlighted three of them as representative of all the letters.

- *Letter from OPP Sergeant Willie Lamour [Exhibit 32, Tab D1]:* Sgt. Lamour worked with, and later supervised, Const. Rancourt at the Espanola Police Service until 2018. Sgt. Lamour says that while he neither understands nor condones Const. Rancourt's conduct, "my opinion of Constable Rancourt in terms of her dedication, work ethic, and ability to perform the duties of a police officer have not changed". He talks about her passion for policing and her skills and knowledge in the area of traffic safety. He was very satisfied with her role as an acting sergeant in Espanola, and predicts that she will go on to have a long and fruitful career. He says he would not hesitate to work with her again.

- *Letter from GSPS Sergeant Ryan Johnson [Exhibit 32, Tab D2]:* Sgt. Johnson has known Const. Rancourt since they joined the OPP together in 1998, and supervised her in 2020 and 2021 in Sudbury. He refers to Const.

Rancourt's behaviour as "out of character". He characterizes her integrity as "unimpeachable", and gives as an example her arrest of two co-workers for impaired driving, even though she "took no joy in being placed in such a position". He also describes her continued pursuit of road safety even when she was the target of a homophobic slur due to her zero-tolerance approach to it. Like Sgt. Lamour, Sgt. Johnson says that he "would have no apprehension or hesitation in working along side her", and concludes, "I am proud to call her my teammate".

- *Letter from GSPS Staff Sergeant (Ret'd) Daryl Adams [Exhibit 32, Tab D3]:* Retired S/Sgt. Adams supervised Const. Rancourt for two years, and sees her as a "highly competent, measured, reliable and honest person". His assessment of her leadership qualities led him to appoint her acting sergeant, a role she performed well. Like his former colleagues above, he considers that "her actions were inconsistent with her personality, disposition or behaviour", and says that he would work with her "anytime".

Counsel said that the letters were not "cherry-picked" or purpose-written, as they are consistent with other letters and her employment evaluations. I reviewed the other letters and summaries of letters in Exhibit 32, some from police colleagues and others from community members, and found them to be consistent with the three examples.

Exhibit 33 also contains personnel evaluations of Const. Rancourt as a member of the Espanola and Greater Sudbury Police Services [Tabs D21 to D30]. D27 through D30 are specific to the GSPS, and include the acting-sergeant appraisal mentioned above. I reviewed the evaluation summaries and forms and found that she was graded at or above standard in every aspect of every evaluation, and that the comments were almost universally positive. (Negative comments were relatively minor, including a comment about a missed court appearance and the remedial action Const. Rancourt was taking to avoid recurrence as well as that she was occasionally late submitting certain reports.)

In his verbal submissions, counsel drew my attention to Const. Rancourt's latest evaluation, dated May 4, 2022 [Exhibit 33, Tab D29], when, as counsel put it, she was "going through the slow, grinding process of discipline". Despite this challenge, the evaluator calls her work ethic second to none. He notes that she produces a regular high volume of work, and even when reassigned she continues to assist Traffic Management Unit members in the office during collision investigations. She not only completes assigned work but also suggests project ideas to work on in her spare time, going the extra mile. She consistently shares her knowledge with respect to traffic and impairment investigations, helping new members and working to create a team environment where all colleagues are included. Counsel submitted that it is easy to have a chip on one's shoulder when facing discipline, but Const. Rancourt did the opposite. He submitted that while she made a mistake, it is difficult to imagine a better path forward.

Turning to Exhibit 33, Tab D33, an email dated March 18, 2022, from Assistant Crown Attorney Mathieu Ansell, Const. Rancourt is praised for giving excellent evidence in criminal court leading to the conviction of a person charged with Over 80. This praise was reflected in a reply by S/Sgt. Guy Renaud [Exhibit 33, Tab D34]. Mr. Ansell wrote a second email praising her following another conviction for Over 80 on August 17, 2022. In his written submissions, at Tab D37, counsel repeated positive comments from years of emails and evaluations praising Const. Rancourt's court preparation. There is also an email from Chief Paul Pedersen praising other officers for a fail-to-remain investigation in which Const. Rancourt had obtained a search warrant and two production orders, but she was left out of the email of praise from the chief. One of the other involved officers passed along the praise, saying it belonged to the whole team, and the written submissions contain media accounts of the incident.

Reaching back to November 2020, before the misconduct incidents, a series of emails from Chief Pedersen followed Const. Rancourt's arrest, in quick succession, of two colleagues for impaired driving [Exhibit 33, Tabs D38 and D39]. In these, the chief offers praise and support for her work and dedication under difficult circumstances.

Later in his verbal submissions, counsel said that specific deterrence does not play a part in this. Const. Rancourt didn't just take courses and get nice reports, but started on a path of volunteer work with the Friends of Simon Wiesenthal Centre, and continues to be engaged, thoughtful and genuinely interested in ensuring that the lessons of the Holocaust are being taught to students. The Centre offers "Lessons in Humanity", working to create links with law-enforcement officials and integrates notions of the Holocaust from historical perspectives and includes modern-day antisemitism and related concerns such as hate crimes. Const. Rancourt has volunteered to bring the program to more police services.

Reconciliation:

Counsel submitted that reconciliation in this case is all about making amends to the people most affected by Const. Rancourt's misconduct. These are the local hockey community, of which she had been a part, and the Jewish community, for which her remarks were hurtful. He set out to demonstrate how Const. Rancourt is reconciling with both.

Counsel reminded me of the apologies made by Const. Rancourt under "Recognition of the Seriousness of the Offence", above, and of the revocation of the trespass notice barring her from the recreation complex. He went on to say that the greater challenge was to rebuild personal relationships so that they are functional again.

Turning to Exhibit 33 at Tab D44, counsel showed me that Const. Rancourt is vice-president of the Espanola Minor Hockey Association, the president of which is Krystal Bouwmeester, from whom the tribunal heard. She reminded me that Const. Rancourt is Ms. Bouwmeester's right hand, and also serves as assistant coach to three minor hockey teams [Exhibit 30 – addendum to Tab 44]. All of this takes place at the rink where the incident on September 26, 2021, took place, and counsel submitted that she has built bridges with the association and its members, including Mr. Bouwmeester, on weekends and weeknights and also early in the morning. He referred to his client as having moved from being led out in handcuffs to sitting on

the board and coaching, and has thus successfully reconciled with people who have every reason to be done with her, but instead value her.

With respect to the Jewish community, counsel reminded me that Const. Rancourt turned to the Friends of the Simon Wiesenthal Centre. He reiterated earlier submissions about the positive terms in which the Centre described Const. Rancourt's work with them, and also pointed out her final reflection for the program she took, in which she said that her overall perception of terms such as "Nazi" had changed; it is a word that can be used flippantly in society, but it is hurtful, as it was when she was called a "Traffic Nazi". Counsel submitted that through her ongoing work with the Centre, she has sat down with the people she insulted and built bridges with them.

Publicity:

Defence counsel acknowledged that publicity is an aggravating factor in this matter. He said that there has been very limited publicity since March 2022, but acknowledged that a member of the media was in attendance at the hearing for submissions to penalty. He encouraged me to ignore the media accounts when they get it wrong, and to rely instead on the evidence I'd been given during this three-day hearing process.

He reminded me that professional and mainstream media are very different from social media, as there are no significant filters or codes of ethical conduct on contributors to social media as there are for journalists. He referred to social media as a "deeply flawed institution", a haven for angry nonsense. He submitted that discreditable conduct means that the conduct would bring discredit in the eyes of reasonable, fully informed and dispassionate members of society, which is a fair test. It does not include the "lunatic fringe" form either side of an issue, and opined that what people say on social media, for good or ill, for or against Const. Rancourt, is not worth consideration. Something that appears online is not the equivalent of something that appears in the Globe and Mail.

He referred to one recent case, Buchanan and OPP, which was decided in July 2022 [Exhibit 34, Tab H08]. Const. Buchanan pushed a 12-year-old boy whom he was investigating under the legislation that became the Reopening Ontario Act, causing him to lose his balance. Video of the incident was posted on social media. It was viewed in excess of 270,000 times and generated more than 1,500 negative comments. For what counsel called shameful, COVID-related misconduct, Const. Buchanan was assessed a penalty of 36 hours on a joint submission.

Personal Circumstances:

Counsel made reference to quotes from the Centre for Addiction and Mental Health (CAMH) to the effect that Canadians' mental health is even more precarious than it was before the pandemic; in fact, half of Canadians report that their mental health has worsened "a lot". Counsel submitted again that Const. Rancourt, who is a woman juggling child-care issues as well as the pandemic, is not immune to these effects, and that I should consider her behaviour in the context of the pandemic and its enormous effects. Employers should be doing their best to take care of employees' mental health and showing compassionate leadership, and, in that context, there is no need to demote Const. Rancourt to fourth-class.

He submitted that Const. Rancourt has done what she can do to seek reconciliation, and asks that the tribunal recognize the importance of balancing reasonable discipline with the compassion that the pandemic environment requires.

He also pointed out that even an imposition of a penalty of time would cost thousands of dollars, and pointed out that, with a 160-Km round-trip commute each day, being on administrative duties and therefore working more shifts also has a financial impact in the thousands of dollars.

Management Approach to Misconduct

Defence counsel was sharply critical of the prosecutor calling seven witnesses even though all of their evidence was admitted by the defence, and even though the

respondent has been deeply ashamed of her errors from immediately after committing them until the present. He referred to this as “twisting the knife” as the respondent bent her head and wept.

He pointed out that one of the witnesses, with whom Const. Rancourt has reconciled, was also reduced to tears unnecessarily, and expressed concern that the healed relationship between Const. Rancourt and the Bouwmeester family would be damaged again.

He attributed this to the employer’s failure to understand the stellar officer they’re dealing with, and to an absence of compassion.

Consistency of Disposition:

Saying that parity and consistency are paramount in discussions of penalty, defence counsel turned to several cases that are both repeated and summarized in Exhibit 34, which is labelled “Consistency of Disposition”.

Note that abbreviated case names are used here. Full references are in the appendix.

He turned first to three cases and an appeal involving a York Regional Police officer. Jackson and York Regional Police [Exhibit 34, Tab H00] is an unreported case from March 2009 in which the respondent loses 40 hours for neglect of duty, leaving his force options and notebook in his car after an incident at a bar. A second case from 2011 [Exhibit 34, Tab H01] involved the same respondent who, having attended a family baseball tournament, was drunk, abusive and profane to OPP officers who attended the hotel late at night to investigate a criminal allegation. The respondent was charged with causing a disturbance but the charge was withdrawn in exchange for a donation. He was assessed a penalty of 160 hours, which was reduced to 80 on appeal.

Several years later, in 2017 [Exhibit 34, Tab H02], the same respondent was in Michigan at a youth hockey tournament. Again, he consumed alcohol and was uncivil and profane in his dealings with hotel staff and members of another police

service. He also damaged property at the hotel at which he was staying. The penalty in this case, in accordance with the principle of progressive discipline, was a forfeiture of 100 hours following a guilty plea and joint penalty submission. No demotion or dismissal was sought.

Counsel turned to Pacitto v. Toronto Police Service [Exhibit 34, Tab H03]. In this 2004 case, the respondent became unruly when a retail store would not take his $100 bill. When confronted by security and ordered to leave, he swung out and hit a woman in the head and pushed the security officer into a display stand. He was assessed a forfeiture of five days [40 hours] off, and lost an appeal of his conviction and penalty. Counsel pointed out in written submissions that the case is similar to Const. Rancourt's as he used profane language, refused to leave, and returned to the scene after being ordered to leave. The hearing officer wrote that he considered it an isolated incident.

Returning to Buchanan and the OPP [Exhibit 34, Tab H08], in which the respondent pushed a 12-year-old boy during a COVID-related investigation in an incident that garnered substantial publicity, defence counsel pointed out that the penalty was a forfeiture of 36 hours on a joint submission. This finding is from 2022.

In Bromfield v. Hamilton Police Service [Exhibit 34, Tab H09], the respondent pled guilty in 2008 to causing a disturbance by fighting (a criminal charge) at a sporting event and was convicted, but given an absolute discharge and made a $200 donation to charity. The hearing officer rejected the joint submission of demotion to second class for six months and demoted her to third class for six months. The penalty was reduced to demotion to second class for six months on appeal. In written submissions, defence counsel underscored that there was a criminal conviction in the Bromfield matter, and that the fight was with a member of the public, and the incident garnered media attention (which I read in the written submissions).

In Keating and the Sault Ste Marie Police [Exhibit 34, Tab H10] from 2020, the respondent was belligerent and overly aggressive, using more force than necessary, and did not read the complainant his Charter rights. Criminal charges against the

subject of the arrest were dismissed. Significant media coverage (which appears in the written submissions and which underscored that the respondent's activities caused substantial injuries, though the SIU did not lay charges, finding that "the force [a single strike during the arrest] was both reasonable and necessary in the circumstances" and subsequent medical problems were an unfortunate result of justified force) and significant civil action followed. The respondent was contrite and the behaviour was assessed as out of character for an officer with an excellent record, and he was assessed 12 hours for each of his charges (discreditable conduct and neglect of duty). Defence counsel called this a classic case of police abusing powers that comes to public attention.

Hearden and the OPP is a 2021 case [Exhibit 34, Tab 13] in which an officer forcibly removed a driver from a vehicle without lawful authority in 2015. There were injuries, and the officer was convicted of assault and received a conditional discharge. Despite inappropriate behaviour in public, the penalty was a forfeiture of 30 hours and a requirement to undergo training.

The final case to come up in verbal submissions was Steudle and the Thunder Bay Police [Exhibit 34, Tab H16]. In this case, the respondent officer made comments on his personal Facebook page. He did not identify himself as a police officer, but the comments were harsh and inappropriate with respect to the Indigenous community. Defence counsel submitted that Const. Steudle's comments were more egregious than those of Const. Rancourt, but he was assessed a penalty of 40 hours on a joint submission.

Defence counsel submitted that these cases provide an appropriate range of penalties in the current matter, as the cases above are similar, though not identical, to the behaviour of Const. Rancourt.

Defence counsel admitted that there is no case that is exactly on point, but recommended that, in the light of previous similar cases of similar seriousness and with similar aggravating and mitigating factors, a high number of hours is the appropriate penalty for Const. Rancourt.

> I reviewed the cases in written defence submissions, and found that the others, as listed in the appendix, were not as close to Const. Rancourt's situation as the ones brought up in oral submissions except that they were similar in seriousness and involved disorderly and discreditable conduct by respondent officers. Some had similar aggravating and mitigating factors. Three involved demotion or dismissal.

Defence counsel concluded by submitting that the appropriate penalty for Const. Rancourt is 24 to 40 hours for each of the two counts, and, in addition, there should be an order for 40-60 hours of volunteer work at the Friends of Simon Wiesenthal Centre for Holocaust Studies. He suggested that the two penalties should run concurrently because of the requirement for volunteer work, which will raise the total to between 60-100 hours. He submitted that the time spent in volunteer work for the Centre is unpaid and will be time away from her family, which he called a significant penalty in this context. He also referred to the volunteer work as an opportunity to add a positive impact on the community to the positive impact Const. Rancourt will continue to have through policing, and will lead directly to further reconciliation for her antisemitic comments.

At the end of the initial submissions by the defence, Const. Rancourt, at the request of the defence, stood in the tribunal and read a letter [Exhibit 30, Tab A1], in which (to paraphrase) she apologized to the members of the GSPS and the OPP officer involved, as well as the staff at the recreation centre and the Espanola Minor Hockey Association, including the volunteers, parents and children associated with the Association. She indicated pride in her 24 years of policing, and said that she sets herself to a high standard and therefore is ashamed that she allowed emotions to get the better of her and that she behaved as she did. She said that the behaviour is not reflective of her character or integrity as a person or a police officer. She mentioned the context of lockdowns and restrictions and their impact on the mental health of many people, and said that had also taken a toll on her. On reflection, she understands that her attendance at the complex was an error, and she should have approached the situation differently. She indicated regret at the impact of her behaviour on her image and her relationship with children, including her own, and committed to continue to be a role

model for children and to encourage them to make good choices She committed to restore her reputation in both her professional and personal life and to return to work with integrity and at a level consistent with her prior service. She accepted responsibility for her actions.

Prosecution Submissions to Penalty

The prosecutor began his submissions by acknowledging the respondent's guilty plea, but suggested that defence counsel had glossed over certain details that are important to an understanding of the seriousness of these specific acts of discreditable conduct.

He also disputed defence counsel's assertion that there was no need to call witnesses. He took the position that he had to call witnesses and acknowledged that it was difficult for the respondent to listen to those witnesses, but he said that the absence of an agreed statement of facts that necessitated the calling of witnesses was the result of the decisions of the defence.

He said that he would be offering document-heavy evidence about social media in order to ensure that the tribunal understands the position of the prosecutor fully.

He also stated at the outset that, while the Service was not seeking dismissal, it would have been within the available range of penalties for the respondent. The prosecution was seeking a reduction in rank from 1st class to 4th class constable for a minimum of 12 months at each level.

The prosecutor began his submissions with the first count. He reviewed the evidence from the recreation complex, and used documentary submissions to support his verbal ones. While the events at the complex occurred on September 26, 2021, her Facebook post from the previous day [Exhibit 6] states what she will be doing the next day. I note that the quote from Melly Ran (one of the respondent's on-line names) says, "I will be going to the complex tomorrow, and walking in to take my kids to their practice. My

private medical info will not be disclosed. If anyone wants to join me, pm me". Krista Ellin asks what time, and Const. Rancourt replies, "Probably 945ish".

While the defence presents the incident as a momentary lapse (and many of the cases presented by the defence relate to singular momentary lapses in judgement), the prosecutor took the position that in this case, the respondent officer wanted to make a statement, and was "deliberate and premeditated" in doing so. This intent was brought to the attention of staff at the complex, where, under the Reopening Ontario Act, people entering had to show proof of vaccination. The prosecutor submitted that Const. Rancourt was aware of those requirements and that they were posted at the complex, as she admits in the compelled interview [Exhibit 25, at pages 12, 20 and 53].

The prosecutor pointed out that Const. Rancourt said that she just wanted to be heard [Exhibit 25, at page 79], but if that were the case, she would have engaged in dialogue with the screener, rather than ignoring the public-health regulations by walking by him.

The prosecutor pointed to Const. Rancourt's statement in her compelled interview [Exhibit 25, at page 80] that the vaccine mandate made her feel like a second-class citizen, and suggested that this is consistent with a motivation to prove a point by creating a "scene", and that this is not consistent with making a last-minute error in judgement.

He pointed out that Const. Rancourt said that she believed that she had a bona fide exemption to the COVID requirements, but asked me to consider that if that were her true belief, would she not have engaged in dialogue with the staff on entry? He also reminded the tribunal that Const. Rancourt made a second entry to the complex after Const. Koehler told her that if she returned, the police would be called again. If her motivation were to have a dialogue about the regulations and believed that she was in the right, would she have behaved that way?

The prosecutor then went through the events that led to the first discreditable conduct charge; that is, the events on and around September 26, 2021.

- *First attendance at the Espanola Regional Recreational Complex:* During the first attendance, when she attended with her spouse, her friend and her elder child, Constables Koehler and Meyers tried to defuse the situation and get Const. Rancourt and the people with her to leave.
    - Const. Rancourt refused to identify herself until she was told that she would be charged with trespassing if she did not. She was asked repeatedly to leave without consequences and refused to do so, despite that, as a police officer, she understands the law around trespassing.
    - Because she persistently refused to leave [when directed by Mr. Bouwmeester], she was issued a provincial offence notice (PON) for refusing to leave when directed under the Trespass to Property Act (TPA).
    - He referred to a statement that she allegedly made that she was being asked to leave because she is gay, though I notice that this comment, in some form, seems to have been made to Sgt. Baker later, and that Const. Rancourt characterizes it differently [Exhibit 25, p. 57], when she asked if the TPA could be used for "somebody [to] tell us to leave because we're gay and they don't like that".
    - The prosecutor took the position, referring to the Facebook post in Exhibit 6, that Const. Rancourt's goal was to make a point by creating a situation. He pointed out that all of these events took place in a public area and in the public eye and in a small community, where anonymity was unlikely.
    - When asked what the two officers told her about returning, she admitted in her compelled interview [Exhibit 25, p. 38-39] that they told her police would likely be called if she returned. When she was issued the PON for trespassing, she said that her intent was to fight it because she did not think it was lawful.
- *Second attendance at the Espanola Regional Recreation Complex:* Const. Rancourt returned to the complex in the afternoon, accompanied by her spouse and her younger child.
    - She did not engage with the vaccine checker even after the being served with the PON under the Trespass to Property Act and being told that she was not welcome if she did not prove validation or exemption.

- She acknowledged [Exhibit 25, pages 53-54] that she knew the restrictions were still in place for the second visit (e.g., the notices on the door were still in place).
- The OPP was called again, and Sgt. Baker attended and clearly told the Rancourts that they were not allowed to be there, and that they should get their child off the ice and leave [Exhibit 25, pages 55 and 57-59].
- In her compelled interview, the prosecutor submitted that Const. Rancourt takes no responsibility for the interaction with Sgt. Baker, saying that he was angry and out to get her [I found references to words to this effect in Exhibit 25, pages 43-4].
- After multiple warnings and refusal to leave and being cautioned with arrest, Sgt. Baker arrested both Const. Rancourt and Ms. Rancourt. This is visible on the video, though without sound.
    - [I see in the video that Ms. Rancourt walks through a door for some time, despite being handcuffed, and I assume this was when she made arrangements for the care of their child.]
- The video shows the arrest and the physical altercation between Sgt. Baker and Const. Rancourt. Const. Rancourt admits in the compelled interview [Exhibit 25, at page 67-68] that Sgt. Baker told her he would take her to the ground.
- The prosecutor says that Const. Rancourt grabbed Sgt. Baker's vest and that she admits to it [Exhibit 25, p. 68], but a review of the transcript shows that she said, "I mean I don't think I'm grabbing his vest. I think I'm just like, I mean he's throwing me around, so … I – All I know is I was, I was begging him please just let me go … I don't remember what's happening at this point".
- The prosecutor underscored that other parents and children were in the hallway during the interaction with Sgt. Baker [which is confirmed by watching the video].
- As Const. Rancourt and Ms. Rancourt were led to the exit in handcuffs, a member of the public had to move out of the way, and other members of the public had to make way as the two were led out.

- As confirmed in Ms. Mullen's incident report [Exhibit 5] and by the witnesses, Const. Rancourt uttered racist, antisemitic statements as she was led from the facility.
    - There are various descriptions of the words said, but the witnesses and the report both refer to the reference to Nazis and words about being proud of themselves for involving the Nazis.
    - Mr. Sokoloski, Ms. Mullen and Mr. Bouwmeester all described themselves as "shocked" at this behaviour. Ms. Mullen and Mr. Bouwmeester knew that Const. Rancourt was a police officer and a member of the GSPS.
- Const. Rancourt was charged with resisting a peace officer and issued a Part III summons under the Provincial Offences Act for her second trespassing event.
- On September 27, 2021, a date confirmed in Exhibit 25, page 94, Const. Rancourt made a social-media post [Exhibit 15] in which she changed her profile picture to a graphic of the Canadian Charter of Rights and Freedoms, and included the text, "…that document used to mean something, now I might as well wipe my ass with it". The prosecutor underscored the discreditable nature of this post, and that a police officer's duty is to uphold the law, of which the Charter is a fundamental part that protects the rights of minorities across the country. He referred to the post and the statement as "astonishing".
- Following these incidents, on September 28, 2021, the Town of Espanola issued a trespass letter to Ms. Rancourt [Exhibit 13]. I note that the letter specifies that she is "no longer welcome or permitted on the Espanola Regional Recreation Complex property".

The prosecutor referred to the respondent's Affirmation of Office [Exhibit 24], which affirms that she will "uphold the Constitution of Canada and … preserve the peace, prevent offences and discharge my other duties as a Police Officer with the Greater Sudbury Police Service faithfully, impartially and according to law". He moved from this point to list a series of specific events, all of which, he submitted, constitute discreditable conduct with respect to the first count:

- Planning and attending the facility
- Not speaking to Mr. Sokoloski
- Not following the facility's rules
- Interactions with Const. Koehler and Const. Meyers (refusing to identify herself and refusing to leave when directed)
- Creating a situation in which the local law-enforcement agency had to threaten her with arrest
- Her interaction with Mr. Bouwmeester (with a reference to asking if she is being asked to leave because she is gay), and refusing to leave when he asks her to do so
- Her interaction with Sgt. Baker, including her physical handling of him
    - Her refusal to leave and to heed Sgt. Baker's warnings
- Calling the staff Nazis or making reference to the police officers as being Nazis (though exactly what was said and to whom is not clear)
- Being arrested and charged
- Being issued a PON

The prosecutor submitted that all these things, exacerbated by media articles that are reproduced in the exhibits, are discreditable, and that the officer's reputation with the OPP, the reputation of the GSPS with the OPP, and the reputation of the respondent and the GSPS with the town of Espanola and the recreation complex also amount to discreditable conduct.

The prosecutor then moved to the second charge of discreditable conduct.

He turned first to the duty notes of Sgt. Neil McNamara on September 14, 2021 [Exhibit 14]. This exhibit (and attached e-mail between the sergeant and then-Insp. Sara Cunningham) articulate that an anonymous complaint was sent to the GSPS about a post made by Const. Rancourt (using a pseudonym, but admitted to be the respondent) on social media. The sergeant counselled the respondent about bringing disrepute onto

the Service, especially as the complainant knew she was a GSPS officer. Const. Rancourt apologized and agreed to delete the post immediately.

The prosecutor submitted that this demonstrates that Const. Rancourt was aware of the requirements about social-media posts by police officers, and that the sergeant was justified by the GSPS procedure on social media, COR002 [Exhibit 23], and in particular section 8(11)(b), which says that members shall not "post any information that may compromise the integrity or reputation of the Service or any of its members".

Following the incident at the recreation complex, Const. Rancourt published a GoFundMe page, entitled "Legal defense fund", that featured a picture of the respondent and her son and tells of the events at the local hockey arena. The prosecutor submitted that this post was clearly not from someone who was apologetic or taking responsibility for her actions. Const. Rancourt shared this post on Facebook [Exhibit 25, pages 104-116], and heard from as far away as Oshawa about it, which, the prosecutor submitted, made this whole issue a provincial, rather than a local, one. Although she did not identify herself as a police officer in the post, the media coverage did. The prosecutor submitted that this was tantamount to begging publicly for money for events that were entirely of her own doing, which brings discredit to the police service. He also referred to Exhibit 28, dated October 8-10, 2021, which includes a media article about a rally in favour of Const. Rancourt followed by a number of comments, mostly negative to Const. Rancourt, and indicating a substantial number of comments, views and shares (re-posts).

The prosecutor mentioned in two parts of his oral submissions instances in which the respondent made posts late in 2021 and early in 2022, well after the incidents at the recreation complex and while she was already under investigation for allegedly discreditable use of social media (after having been cautioned earlier for social media use).

This, the prosecutor submitted, made the second set of posts particularly egregious, and demonstrates again that this behaviour is not a short-term lack of judgement, but a long period of misconduct. He presented this as aggravating to penalty. Exhibit 17

shows a set of posts that run from November 24, 2021, to January 19, 2022, in which the respondent comments on other people's posts with respect to the pandemic and its countermeasures. This led to a second compelled interview on February 1, 2022 [Exhibit 26], in which Const. Rancourt admits to being "Melly Romeo" (who posted the comments). The comments are supportive of the "anti-vaxxer" movement and critical of the countermeasures and restrictions to deal with the coronavirus pandemic.

The prosecutor made the following specific comments about Exhibit 17:

- The respondent may have individual opinions, but she is an office-holder sworn to uphold the law. Police officers are held to a higher standard, and it is problematic when actions undermine and erode public confidence in the police.
- Const. Rancourt's comments undermine public confidence in the public-health work being done by repeating and supporting false claims that are harmful to the public. In particular, she makes a comment about "this Kool-Aid [being] very potent]" in a comment critical of parents having their children vaccinated. While the respondent is entitled to that opinion, it is problematic when verbalizing it causes harm to the reputation of the police service. The prosecutor also submitted that the readers of these comments would know that Const. Rancourt is a police officer.
- In another post, Const. Rancourt posts an image of media articles on the vaccination policy of the Winnipeg Police Service, saying "the forced vax in Winnipeg didn't help". She attacks the policies of another police service using media articles she found on a Google search.
- Finally, in a post dated January 19, 2022, Const. Rancourt made critical comments about the law against a picture of Anne Frank that says, "The people who hid Anne Frank were breaking the law. The people who killed Anne Frank were following the law. The law is not a moral compass". The prosecutor compared this with hate speech (admitting that he was not using the Criminal Code definition of such), and reminded me that defence counsel had acknowledged that Const. Rancourt's comments with respect to the Holocaust and Nazis are antisemitic. The prosecutor submitted that to compare public-

health restrictions with individuals who lost their lives in the Holocaust is the utmost of discreditable conduct.

The prosecutor went on to comment on the level of regret and contrition that can be attributed to the respondent during this period.

- In her compelled interview [Exhibit 25, at pages 60-62], Const. Rancourt denied making the reference to Nazis (and shouting and kicking doors), attributing this to "stories" that have been told. The prosecutor reminded me that several witnesses confirmed this behaviour.
- Exhibit 18 shows a complaint dated January 21, 2022, about the Anne Frank post. The complainant specifically says that s/he knows "Melly Romeo" is a police officer, and names her correctly. This led to a second compelled interview, leading to the post being included in the second count of discreditable conduct.
- He reminded me of Exhibit 28, with respect to reactions to the GoFundMe post and the events that led to it, which extended from October 8 to 11, after the GoFundMe page was posted on October 7, 2021 (well over a week after the event in Espanola).
- He also referred to social media posts by "Melly Ran" in Exhibit 27 which, while undated, outlined part of the incident, referred to "robots [who] are 'just following orders', asking for our papers to sit in an arena, and calling POLICE if we don't is just plain WRONG…". Later, "I really do think we do need to get a group of us to go there, what they're doing is absolutely DISGUSTING. Meanwhile, Dana is in a sudbury [sic] arena, no issues at all. Espanola is fucked". While the dates are not known, the prosecutor said, these comments relate to Count One, and do not reflect someone who is apologetic or contrite about the events.

The prosecutor then made submissions with respect to those of the accepted penalty factors that he considered to be relevant to Const. Rancourt's situation. Thirteen of these factors are listed in Husseini and the York Regional Police [Exhibit 35, Tab 14]. He commented that the Ontario Civilian Police Commission in a case called Krug has

taken the position that no one factor is more important than the seriousness of the offence alone, which, by itself, can lead to dismissal.

Public Interest:

The prosecutor reminded the tribunal that the events leading to the two counts faced by the respondent occurred in the public domain, which has a negative impact on the reputation of the officer and the Service. He referred to Chief John Gauthier and the Timmins Police [Exhibit 35, Tab 5], an OCPC hearing on its own motion with respect to an allegation that Chief Gauthier cancelled two POTs laid against a city councillor. The Chief lost five days or 40 hours of pay on the Commission's order. While admitting that there is a difference in a case involving a chief of police, he drew my attention to paragraphs 56 to 58, which say that policing is at risk if public trust is undermined, and the importance of the police ensuring fair treatment and justice for all. Paragraphs 40-42 refer to this case as one in which a police officer undermined the rule of law, and the negative consequences that flow from that.

Seriousness of the Misconduct:

The prosecutor submitted that this matter is at the high end of seriousness, as it involves a series of events that were essentially misconduct after misconduct. Starting with ignoring Mr. Sokoloski and the OPP officers, including the interaction with Sgt. Baker, making antisemitic statements and multiple social-media posts, all after many warnings that should have prevented the misconduct. The prosecutor submitted that this is aggravating to penalty, especially as it flies in the face of a police officer's duties in section 42 of the Police Services Act and the responsibilities outlined in the affirmation of office.

He also referred to Constable David Packer and the Metropolitan Toronto Police [Exhibit 35, Tab 21], an OCPC appeal decided in December 1989, in which a police officer refused an order to guard an abortion clinic due to his personal beliefs. Referring to paragraph 38:

> *One's conscience may dictate that certain human conduct ought to be made illegal or that certain prohibited human conduct ought to be lawful. But a constable's duty is owed to the law and must be performed without regard to conscience. This is what is meant by "professionalism" in the police service and is characterized by impartiality and objectivity.*

Const. Packer was originally dismissed from service, but the OCPC substituted a penalty of gradation in rank to fourth class.

Turning to Constable Alec Moraru and the Ottawa Police Service, also an OCPC appeal from 2008 in a case where an officer, caught shoplifting, identified himself as a police officer, struck out at the loss-prevention officer, faked a weapon and fled in a motor vehicle. On page 17, the hearing officer is quoted as saying, "It is simply unacceptable to society at large, and incompatible with the rule of law itself, for police to break the very laws they are sworn to uphold". This, the prosecutor submitted, is indicative of the higher standard to which police officers are held.

He linked the comment of the hearing officer in Moraru to the entirety of events in this case, including encouraging people not to obey the law and making antisemitic statements in a series of events, and submitted that this is an aggravating factor to penalty.

He referred to Constable David Deviney and Toronto Police Service [Exhibit 35, Tab 12]:

> *There is no doubt that the use of insulting language directed at abusing any person's race, colour or ethnic origin is conduct that is highly offensive, unacceptable and has no place in the Province of Ontario. This is particularly the case of a uniformed police constable holding public office and acting in the course of his or her official duties. It is a serious matter.*

Constable Deviney appealed his conviction for using racist comments and depictions to a colleague and his penalty of a forfeiture of 15 days (120 hours) off. The OCPC denied the appeal.

To support this point, the prosecutor also referred to O'Farrell, Wlodarek v. Metropolitan Toronto Police Force (an OCPC matter from 1976) [Exhibit 35, Tab 19], at paragraph 8, and Constable Ryan Venables and the York Regional Police [Exhibit 35, Tab 29], an OCCPS appeal from 2008, which made similar comments. He also submitted that these cases, which relate to the protection of human rights and minorities and police officers not engaging in racist or discriminatory behaviour, are consistent with the Declaration of Principles in the first section of the Ontario Police Services Act which say that police services in Ontario will be provided in accordance with (among other things) "The importance of safeguarding the fundamental rights guaranteed by the *Canadian Charter of Rights and Freedoms* and the *Human Rights Code*", and "The need for sensitivity to the pluralistic, multiracial and multicultural character of Ontario society". Antisemitic statements are contrary to both of these principles, and this is aggravating to penalty.

Recognition of the Seriousness of the Misconduct:

The prosecutor acknowledged that the respondent changed her early denials to a guilty plea, but cautioned that the tribunal must consider that while Const. Rancourt may be taking responsibility now, the tribunal needs to consider the evidence and whether there is true recognition and remorse on her part.

The prosecutor submitted that, in her two compelled interviews [Exhibits 25 and 26], she did not take responsibility for her actions, blaming others, calling herself a "second-class citizen" and making statements like "I have no more rights". Balanced against the guilty plea is the need for a three-day hearing on the matter.

The prosecutor also called Const. Rancourt's letter of apology into question, referring to Constable Christy Clough and the Peel Regional Police, in which the OCPC upheld a hearing officer's assessment that the apology rang hollow, and found that the existence of a letter of apology does not translate into automatic mitigation. He invited me to weigh the letter of apology (on which he did not have the opportunity to cross-examine the respondent) lightly. He also pointed out to Constable Sarah Welfare and the Peel

Reginal Police [Exhibit 35, Tab 30], in which the OCPC quotes another of its cases as follows:

> *The Hearing Officer is entitled to consider the circumstances surrounding the guilty plea and apology when determining the level of mitigation, if any, to attribute to them. Surrounding circumstances include the timing of the apology and the strength of the case against the accused. A guilty plea or apology does not result in automatic unqualified mitigation…*

Employment History:

The prosecutor submitted that, according to Paul Ceyssens in Legal Aspects of Policing at page 5-365 [Exhibit 35, Tab 31], a hearing officer should consider service with his or her current organization, not previous police services. He submitted that we should be considering three, not 24, years of service for Const. Rancourt, and that this does not attract the level of mitigation 24 years of service would. Ceyssens and the prosecutor cite Constable Ahmed Ali Hassan and the Peel Regional Police [Exhibit 35, Tab 13] as the authority for this. (On reading Hassan at pages 9 and 10, I see that the Commission makes reference to a short career of 16 months, which did not include service with another organization, but see no statement of prohibition or rationale with respect to not considering service prior to joining the current organization. I also note Ceyssens' wording in Exhibit 36 – "'Employment history', at least on Ontario, appears to include only the respondent's service with the current police force, and not cumulative police service". His footnote refers to Hassan. This is an opinion from a respected lawyer that I am well-advised to consider, but, in my opinion, does not have the force of law.)

The prosecutor also referred to Cst. James Ebdon and Durham Regional Police, [Exhibit 35, Tab 9], an OCPC decision from June 2020. This decision says at paragraph 33 that a hearing officer is not required to apply the principle of progressive discipline in every case by starting at the bottom of the severity scale, but "even a single act of misconduct may be sufficient to warrant dismissal in an extreme situation".

The prosecutor concluded this section by saying that, though the length of service with the GSPS is short, there is some mitigation in a clear previous discipline record, but that it is a relatively neutral factor in this case.

Potential to Reform or Rehabilitate the Police Officer:

The prosecutor took the position that he has already taken into account the potential to reform or rehabilitate the officer by not seeking dismissal. He submitted that the officer can be rehabilitated, but that this is already taken into account by the proposal to retain her but reduce her to fourth class.

He also cautioned me not to give too much weight to character references [Exhibit 30 – the defence's "Binder 1"], which are admissible but hearsay, and also not subject to cross-examination, which reduces their evidentiary value, particularly as we do not know how much the writers knew about the facts of the case when they wrote their letters.

In support of this, he referred to Constable Lawrence Stevenson and the York Regional Police [Exhibit 35, Tab 25]. At paragraph 135, the OCPC states that while adjudicators may admit hearsay evidence, they should assign less weight to it than first-hand evidence. Constable Craig Markham and the Waterloo Regional Police [Exhibit 35, Tab 16] also contains a statement from OCPC at paragraph 33 to the effect that because a statement made by the respondent to the tribunal was not under oath, its veracity could not be tested. Again, in Constable Arthur Byron Sterling and the Hamilton-Wentworth Regional Police [Exhibit 35, Tab 24], the OCPC writes that if evidence is not tested by cross-examination, this must be taken into account when assessing the weight given to that evidence.

As both the respondent's apology letter and the letters of reference and support are not under oath or subject to cross-examination, I should consider the cases above when deciding how much weight to assign to them. He reminded me that it is up to the Tribunal to assign the necessary weight to the character evidence, though allowing that character evidence can be relevant to the potential for rehabilitation. He pointed to Constable Shawn Nelles and the Cobourg Police Service [Exhibit 35, Tab 18], in which

the OCPC decided that the officer's conduct was sufficiently egregious that even a guilty plea and positive character evidence could not mitigate against the officer's dismissal. In Constable William Barlow and the Ottawa Police Service [Exhibit 35, Tab 1], the OCPC makes a similar finding, saying that character evidence is only one among many factors to consider. The Ontario Court of Appeal also found that character reference letters must be assessed in the context of other evidence (for police officers as well as lawyers), as in The Law Society of Upper Canada and John Paul Abbott [Exhibit 35, Tab 27, at paragraph 72]. The OCPC also commented that a person giving character evidence may not know all of the facts in issue in Ahmed Ali Hassan and the Peel Regional Police [Exhibit 35, Tab 13, at page 10].

The prosecutor encouraged me to consider these legal principles when assessing the evidence in Exhibit 30.

Damage to the Reputation of the Police Service:

The prosecutor reminded the tribunal that defence counsel had admitted that damage to the reputation of the GSPS was a relevant factor in this case, which has received considerable media scrutiny. He pointed out that a member of the media was present at the third day of this hearing. He pointed to several exhibits to demonstrate the aggravating nature of this factor:

- He started with Exhibit 16, the printout of Const. Rancourt's GoFundMe post
- Exhibit 19, which is an OPP News Release dated September 28, 2021, that reports on the arrest and charges without naming Const. Rancourt as a police officer
- Exhibit 20, a Sudbury.com article from September 28, 2021, reporting on the arrest and charges, that names Const. Rancourt as a police officer and includes quotes from Chief Paul Pedersen, who called the allegations, if true, "dishonourable and discouraging"

- Exhibit 21, a CTV Northern News article dated September 29, 2021, covering the arrest of a GSPS police officer and including quotes from a GSPS spokesperson as well as three comments from members of the public

- Exhibit 22, an article from Sun Media dated September 30, 2021, with content similar to the other mainstream media articles as well as information on the pandemic regulations and how they had been communicated, including on the Town of Espanola's web page

- Exhibit 28, with public comments from the Facebook group "Greater Sudbury Memes" and articles and comments from Sudbury.com and The Sudbury Star, dated October 8-10, 2021

- Exhibit 29, a Sudbury.com article on the matter dated September 29, 2021, with a more detailed account supplemented by eyewitness accounts of the incidents of September 26, 2021

The prosecutor reiterated that these exhibits constitute aggravating factors.

General and Specific Deterrence:

The prosecutor submitted that the three-day hearing itself has an impact on specific deterrence. He also said that general deterrence is also important, as other members of the GSPS must understanding that misconduct will not be taken lightly and that it is important to uphold the oath of office and the duties of police officers.

Consistency of Disposition:

The prosecutor began his submissions on the consistency of disposition by recognizing that consistency is the hallmark of fairness, but also that the Commission has recognized that perfect consistency is not possible because every case is weighted on its own weighting factors. Consistency is not an absolute principle, he said, as it is unlikely that any past cases are identical to this one.

He told the tribunal that the presence of lesser penalties is not determinative, and the case law evolves as time passes. He pointed to Paul Ceyssens' comments [Exhibit 35, Tab 31] from page 5-393 of Legal Aspects of Policing, which points out four factors as to why parity is not perfectly achievable, and lists cases to justify each point:

- Weighing disposition factors is a balancing act and hearing officers, like judges, may have reasonable differences in the weight to be given to each factor.
- There may be consideration of issues of concern to a particular police service as police services may have problems that are of particular concern to them, resulting in proper local variations in penalties. Province-wide uniformity, in fact, is not always appropriate.
- Public tolerance for particular behaviour may shift over time.
- Employers may change their views regarding the appropriate penalty for particular misconduct for what Ceyssens calls "bona fide business reasons".

He turned, and in some cases returned, to various cases to illustrate his perspective on the appropriate penalty in this matter.

In Constable James Orser and the Ontario Provincial Police [Exhibit 35, Tab 20], a March 2018 OCPC appeal finding, the Commission found at paragraph 57 that the presence of cases involving lesser penalties is not determinative and may shift over time. "Responses to misconduct should bear some connection to societal norms." In this case, the respondent recorded a sex video of his former girlfriend and showed it to colleagues after they broke up. The Commission upheld the hearing officer's penalty of resignation within seven days or dismissal from the OPP.

Cst. Wesley Reeves and the London Police Service [Exhibit 35, Tab 22] involves an officer who was ordered to resign or be dismissed on four counts to which he had pled guilty, including CPIC misuse, consuming drugs and requesting that a PON be voided to assist a person known to the respondent. In dismissing the appeal and upholding the penalty, the Commission wrote at paragraph 53 that consistency of penalty is not an absolute principle, and identical cases that establish a penalty in a certain case are rare.

A “hearing officer usually decides on an appropriate range of penalties then tailors the penalty to the situation before her or him. Hearing officers often consider some or all of the 13 factors set out in *Ceyssens* and apply different weight depending on the officer’s personal circumstances and the nature of the misconduct”.

Detective Constable James Buckle and the Ontario Provincial Police [Exhibit 35, Tab 4] is a 2005 OCCPS appeal of the dismissal of an officer on four allegations of discreditable conduct involving misuse of the Service’s credit accounts. Another officer was charged in the matter and received a lesser penalty. The Commission found that the hearing officer had properly considered the differences in the situations of the two officers, and upheld the dismissal of the respondent.

In Cst. Caitlyn van Straalen and the Ontario Provincial Police [Exhibit 35, Tab 28], the Commission noted in 2017 that cases involving joint submissions may not be fully developed; that is, all of the factors of the matter may not be on the record [paragraph 32]. The prosecutor submitted that this means that their precedential value or usefulness in determining penalty is not fully explored. He encouraged the tribunal not to fall into the error of giving too much weight to cases involving joint submissions. Also in van Straalen, the Commission wrote [at paragraph 37] that it is legitimate that penalties assessed in one police service do not have to mirror those in other police services, as they are “different based on the needs and realities of each police service”. The prosecutor also commented that since none of the defence cases come from the GSPS, the tribunal should follow the principles established by the Commission rather than individual hearing officers with respect to the appropriate comparator penalty.

The prosecutor pointed out that this case, as was the case with all of defence counsel’s cases, pertain to police services other than the GSPS, and that there is no absolute standard for hearing officers as each organization is entitled to establish ranges of penalty. In support of this position, he referred to Constable Robert Gibson and the Waterloo Regional Police from the OCPC in 1985 [Exhibit 35, Tab 9] and Constable Bryan Galloway and the Innisfil Township Police from the OCPC in 1981 [Exhibit 35, Tab 7], which make similar points.

In Constable Thomas Brown and the Chatham-Kent Police Service, an OCPC appeal matter from 2012 [Exhibit 35, Tab 3], the prosecutor pointed out that while the facts are different (Brown involves an officer who forced his way into a neighbour's home while intoxicated, resisted arrest, continued to behave boisterously and inappropriately, and had a history of discipline), the Commission upheld a penalty of dismissal despite mitigating circumstances regarding documented medical issues.

In Constable Alec Moraru and the Ottawa Police [Exhibit 35, Tab 17], a 2008 OCCPS appeal, the Commission varied the hearing officer's penalty of dismissal to gradation in rank to third-class constable. The incident involved theft by the respondent, an altercation with a security guard, flight, threatening and assault. The prosecutor pointed out that the Commission supported the hearing officer's statement that "it is simply unacceptable to society at large, and incompatible with the rule of law itself, for police to break the very laws they are sworn to uphold", but varied the penalty in the face of substantial medical evidence. Again, the circumstances of the matter are different, but the prosecutor invited me to draw parallels with respect to Const. Rancourt not following the law with respect to the incident at the recreation complex and the social-media posts.

Constable David Dempsey and the Waterloo Regional Police [Exhibit 35, Tab 11] is an OCPC appeal from 1991. The respondent in this case, a 19-year veteran, was originally ordered dismissed. His son had been arrested by another service, and the intoxicated respondent went to the police station, was abusive to officers and pushed a sergeant. The Commission altered the penalty to reduction to third class, saying that insufficient weight had been given to the respondent's level of remorse and career history.

Constable David Packer and the Toronto Police [Exhibit 35, Tab 21] is another OCPC appeal in which a dismissal is overturned in favour of a gradation in rank to fourth class. A 1990 decision, it involved (as mentioned earlier) a respondent who refused to guard an abortion clinic as he believed that doing so violated his religious beliefs. The Commission found that insufficient weight had been given to Const. Packer's rehabilitative potential and his record of service. The prosecutor pointed out that in Packer the officer had personal views that interfered with his duties as a police officer,

which was considered to be serious misconduct. The prosecutor noted similarities to Const. Rancourt's behaviour, but emphasized that in cases like these, discipline is appropriate and needed.

The prosecutor then turned to comments on some of defence counsel's submissions.

In the Jackson case, the prosecutor submitted that the respondent had a long service history that does not apply to Const. Rancourt. He also submitted that the Bromfield matter involved only a single incident, and was complicated by the hearing officer not following a joint submission.

The prosecutor also took issue with defence counsel's position that Const. Rancourt's actions were impacted by the pandemic and to the fact that she is a female and a mother. He noted that Const. Rancourt is not the only member of the police service who is a mother, and invited me to consider if the respondent's status as a female or a mother is being used as an excuse or explanation.

The prosecutor also reminded me that Mr. Bouwmeester had testified that, while tensions were heightened during the pandemic, this was the first time the police had to be called – and twice, for the same individual.

He also took issue with the position of the defence that Const. Rancourt did not have to submit to a compelled interview in the face of criminal charges, saying that officers often appear for compelled interviews in such situations.

He reminded me that the only information I have about Const. Rancourt's criminal charges is that they were withdrawn for a diversion program. He also reminded me that the standard of evidence differs between criminal and PSA prosecutions, and that I have to consider the current facts on a standard of clear and convincing evidence rather than the criminal standard.

He also pointed out that the supportive e-mails from Chief Pedersen to the respondent [Exhibit 33, Tabs D38 and D40] predate the events in question in this matter.

Defence Counsel Reply

Defence counsel responded to some of the points made above by the prosecutor.

He clarified that he did not suggest that Const. Rancourt's actions represented a momentary lapse in judgement; rather, it was an episode of behaviour sitting in a long and exemplary timeline. In the context of the respondent's whole career, these are short episodes in decades of police work, and that happened to a mother in the context of a pandemic.

He returned to the Jackson matter to submit that police attended in that case at 1:00 a.m. and returned at 6:00 a.m., when matters escalated – similarly to what happened with Const. Rancourt.

To illustrate his perception of the impact on the police community, he pointed out that eleven of the 20 letters in support of Const. Rancourt are from police officers, former police officers and members of the policing community, and all of them said that the respondent's conduct is out of character and that they would happily work with her again in the future. A few also credited the behaviours to the COVID burnout about which everyone was hearing.

With respect to the comment about being excluded from a place for being gay, he asked me to review Mr. Bouwmeester's evidence. I did so, and found that he testified that when he was asked about whether she could be asked to leave because she was gay, he replied that the reason was rather that it was because her presence posed a danger to everybody.

Defence counsel said that he had never previously encountered a prosecutor who made no submissions in the respondent's favour, and referred to his submissions as wrong-headed, as he was trying to "freeze [Const. Rancourt] in time", portraying a character by crating a one-dimensional picture based on selected events in the past, rather than portraying the insight, reflection, growth and hard work that has led to a successful reconciliation. He submitted that this is central to the evidentiary picture; all of that

insight, reflection, reconciliation and growth refute conclusively the prosecution's picture of an intransigent, unrepentant officer.

He encouraged me to read the case connected with the Ceyssens comments carefully [Hassan, at Exhibit 35, Tab 13], as this was a passing comment on someone who had served previously in another organization, and the dismissal in that case resulted from an officer who brought drugs into Pearson Airport. He disputed the submission that I cannot consider service with another police organization, and referred to a report that was submitted on the third day of hearings, Report to Royal Canadian Mounted Police: "Phase One" Final Report Concerning Conduct Measures, and the Application of Conduct Measures to Sex-Related Misconduct Under Part IV of the *Royal Canadian Mounted Police Act*, February 24, 2022 [Exhibit 37]. On page 37 of that report, Ceyssens writes,

> 1. *Presence of misconduct or lack of misconduct over long service is not the only source of guidance: employment history means a respondent police officer's "entire employment record". In other words, the tribunal should consider the "totality of conduct", including performance assessments, awards, letters of commendation or appreciation, community service and warnings.*

Counsel submitted that "employment history" means a respondent police officer's entire record of service.

The prosecutor resisted the introduction of this new document, and I ordered a brief recess to allow the parties to review it as, on its face, it could be relevant and impactful to my finding. Defence counsel submitted that this report shows that the totality of an officer's conduct should be considered and not artificially truncated, because people can move from one organization to another for many reasons, and that this movement is natural and organic in an officer's career. It would be harmful to both the prosecution and defence in discipline cases if the parties were "handcuffed" by some firm rule that one cannot consider conduct at a previous organization, such as if a "problem child" moved to another service to get a fresh start and then got involved in discipline again. It

would be disingenuous if an officer could claim to be “clean” because he or she was “clean” in his or her current service. He also reminded me that I may hear all kinds of evidence if it is relevant and helpful, and that Const. Rancourt left a distinguished career in Espanola because the Service disappeared, an event for which she was not responsible. He also posited that more information is better information. I allowed the introduction of this document as an exhibit.

Defence counsel also took issue with the prosecution’s position that I should give character reference letters diminished weight as they were not subjected to cross-examination. He told the tribunal that he would have produced those witnesses if he had been asked, but he was not, and said that the lack of opportunity to cross-examine was entirely the prosecution’s creation.

He acknowledged that I may procedurally give the letters diminished weight, but that does not address whether I should give them weight in this case, specifically. The persuasive value of each letter lies in its content. How well does the writer know the respondent? How insightful is the view into her character? Is the writer an apologist for her conduct? How does the letter compare to the other evidence before me? Are the letters consistent with other sources? He also submitted that this is why the reports from the Friends of Simon Wiesenthal Centre are important, as are the evidence of reconciliation and employment records. They are all independent sources of information that I should take together.

As to the prosecution’s statement that he could not cross-examine Const. Rancourt on her own statement [which she read in at the end of her counsel’s initial submission to penalty], he said that such cross-examination would not have impacted my decision but would rather have “twisted the knife”.

Counsel took issue with media reports being strong evidence of discredit, saying that they are based on no evidence at all. They, he said, are worse than hearsay, legal fiction that we have to take as a presumption, but that represent “walking on clouds”.

He also took issue with the prosecution's position that joint submissions should be given diminished weight. The OCPC acknowledges that it is the duty of a hearing officer to ensure that a joint submission is within an appropriate range. The credit to a joint submission is not whether two lawyers agree, but rather whether the hearing officer thinks the penalty is within the appropriate range. He allowed that one has to be careful with joint submissions because they have less detail and can be less instructive, but to categorically reject them is unprincipled because of the hearing officer's duty to ensure an appropriate penalty. Joint submissions, he said, should be given weight in order to encourage joint submissions, as everyone recognizes that they are entrenched in the professional obligations of lawyers and in the jurisprudence to encourage them. To say they are useless as precedents is to undermine the policy of the law in this area; the body of case law builds to demonstrate the appropriate range of penalties.

Prosecution Reply

The prosecutor concluded by taking issue with Exhibit 37 (the Ceyssens report to the RCMP), taking the position that it does not refute Ceyssens' other comments and does not condone considering the entire employment record from the first time a member is sworn. He said that the case in the footnote to the paragraph on page 37 of Exhibit 37, Karklins, does not say what defence counsel purports it to say. Karklins is not included in the submissions to this matter, but I note that Ceyssens' footnote says, "*Karklins v Toronto Police* Service 2010 ONSC 747 at para 12 (DivCt), is an example (critical comments over a series of performance assessments aggravated disposition").

Analysis

Despite the absence of an agreed statement of facts, repeated comments by defence counsel show that the behaviour that led to Const. Rancourt's charges is not disputed. The *viva voce* and documentary evidence that were provided to me during the three days of hearings constitute clear and compelling evidence of what happened on September 26, 2021 (the first count), and also between September 2021 and January 2022 (the second count).

The seven witnesses who testified at this hearing gave credible evidence, and despite minor differences, were consistent with each other. Minor differences included the volume, tone and precise wording of the respondent's comments as she was led from the recreation complex, though the reference to Nazis was acknowledged by all of them.

The submissions of both parties to this matter also demonstrate that the seriousness of this matter is not in dispute. Both parties seem to agree that the misconduct we are examining here is serious misconduct.

The parties are far apart in terms of their proposed penalties. My task now is to determine, following the guilty plea but in the absence of a joint submission on the matter, the appropriate penalty to apply.

I have read and considered the testimony of the seven witnesses and the submissions of both parties in the context of the recognized categories below, and have considered the cases, letters, policies, personnel appraisal forms and other supporting documentation contained in the exhibits that support the parties' submissions. I will not necessarily repeat all of the references in my analysis in order to avoid lengthening this finding unnecessarily.

My analysis will follow the categories that are widely recognized as crucial to fair and appropriate penalties, giving greater or lesser weight to each as is appropriate to this matter.

Public Interest

The public interest is an important consideration in this matter. In our society, the police require the trust and support of the community to function. That trust, if eroded, makes the police less effective in their crucial societal role which, in turn, impacts the safety and wellbeing of the community.

I agree with the prosecutor that the events leading to this hearing occurred in the public domain, as opposed to behind closed doors. This is dealt with in more detail below.

I find this to be aggravating to penalty.

Seriousness of the Misconduct

The impact on the public interest, discussed above, is only one element that contributes to the seriousness of this misconduct.

I accept the position of defence counsel that this matter does not amount to criminal misconduct. While criminal charges were laid, they were dealt with through alternate means, and, as the prosecutor pointed out, that is the only information I have with respect to it. I supported counsel when he asked Sgt. Baker not to use "legal language" such as the word "assault" in reference to the respondent's actions, but I also note from the video that she was physically resistant.

The incident, or rather series of incidents, at the Espanola Regional Recreation Complex that led to the first count of discreditable conduct have aspects that I find to be particularly egregious. On September 14, 2021 [Exhibit 14], she was cautioned in some detail by Sgt. Neil McNamara after an anonymous complaint was made by a member of the community who objected to a social-media post and clearly knew that she was a police officer. Sgt. McNamara's dialogue with Const. Rancourt included a discussion of discreditable conduct, only a couple of weeks before the incidents at the recreation complex. While she agreed to take down the offending post, other posts followed that constituted discreditable conduct.

On September 25, 2021 [Exhibit 6], eleven days after her caution from the sergeant, Const. Rancourt posted that she would be attending "the complex" on September 26, and wrote "My private medical info will not be disclosed. If anyone wants to join me, pm me". Not only did she state her intention to defy the pandemic regulations, she issued

an invitation for others to do so with her. This is not even remotely acceptable for one who has a duty as a police officer not only to obey the law, but to uphold it.

On September 26, 2021, she attended the recreation complex in the morning with a child and two companions, refused a request to show her vaccine passport, entered the facility unlawfully (though she did undertake the secondary COVID screening at the hockey registration desk), refused to identify herself initially to responding OPP officers, and declined to leave when directed by the senior employee of the complex, Mr. Bouwmeester. She was given a PON for trespassing, and told that police would likely be called again if she returned. This was reported officially on an OPP form [Exhibit 7].

I am compelled by the prosecutor's submission that, though Const. Rancourt claimed to believe that she was exempt from the requirements as she was there for the "health and safety" of her children, she did not engage with staff on entry to the complex to explain that exemption, but rather defied the requirement to show evidence of having been vaccinated.

Despite the PON and her earlier contact with police and recreation complex supervisor, she returned later the same day with another child despite knowing that the regulations around attendance had not changed, and not only did she refuse to leave a second time, but she was uncooperative and resistant to efforts by an OPP sergeant to convince her to leave, resulting in her arrest and being led out of the facility in handcuffs in the presence of several community members. I accept the defence position that reports of her kicking doors and some reports of her behaviour may have been exaggerated, but the behaviour that led to her arrest seems clear. This was also recorded on an official OPP report [Exhibit 8], as well as a Town of Espanola internal report [Exhibit 5].

Two days later, the Town of Espanola issued a trespass letter forbidding her to return to the recreation complex [Exhibit 13]. This prohibition remained in place for almost eight months.

The activities undertaken by Const. Rancourt that led to the second count of discreditable conduct spanned a period of months, from her early social-media posts that were dealt with by Sgt. McNamara and then-Inspector Cunningham on September 14, 2021 [Exhibit 14], through to her second compelled interview on February 1, 2022 [Exhibit 26], which she finished with “so we won’t have any further issues like this” [page 20].

For a period of about five months, Const. Rancourt, against direction by superior officers, continued to make posts on social media that were critical of the efforts of authorities to control the spread of the coronavirus, and of the people who administered and enforced those efforts and requirements. Particularly disturbing was a post that included a graphic of the Canadian Charter of Rights and Freedoms, accompanied by a comment that “that document used to mean something, now I might as well wipe my ass with it” [Exhibit 15]. Again, this is from an office-holder who had, about three years earlier, affirmed that she would uphold the Constitution. The prosecutor referred to this as “astonishing”, and I agree.

In October, she created a GoFundMe page asking for help in defending herself and her spouse from the charges that resulted from her actions [Exhibit 16].

Through November, December and January, she made posts that were critical and dismissive of public health officials, law enforcement, and even the policies of the Winnipeg Police Service [Exhibits 17 and 18]. These posts were in contravention of the GSPS policy on social media, which states, among other things, that the GSPS will not tolerate aggressive and abusive comments, content or images directed towards individuals, groups, organizations or the Service, including posts that are racist, hateful or insulting, as well as personal attacks and/or defamatory statements or posts that encourage or suggest illegal activities [Exhibit 23, subsection 7(3)].

I agree with the prosecutor that this behaviour is not consistent with the declaration of principles in Section 1 of the Police Services Act, in terms of its requirement that police services must safeguard the fundamental rights guaranteed by the Charter, and also the

need to be sensitive to the pluralistic, multiracial and multicultural character of Ontario society.

I accept the position of the prosecution that these activities constitute not a short-term lack of judgement, but rather a long period of premeditated misconduct.

This factor is substantially aggravating to penalty.

Recognition of the Seriousness of the Misconduct

I give Const. Rancourt credit for her attempts, after her statement on February 1, 2022, to remediate the situation in which she found herself, and her commitment at the end of her compelled statement on that date [Exhibit 26] that there would be no more issues. I am very aware of the range of activities that she undertook, as articulated by defence counsel, to educate and improve herself, to understand the psychological impacts of the pandemic on herself and others, to expand her competencies as a police officer, and to understand and make amends to the Jewish community through the Friends of Simon Wiesenthal Centre. I am impressed by the positive account of her work and her demeanour by the Director of Education at the Centre in her reports, which were written by a credible and neutral party in August and October of this year.

I also give Const. Rancourt credit for her efforts, particularly after February 1 of this year, to re-build bridges with her colleagues at the Espanola Minor Hockey Association and the recreation complex, and with the police service (even though I note that the apology to Ms. Mullen did not come until September 2022). I give her credit for continuing to perform at a high level even though she was facing discipline, and I agree with defence counsel that this is does not happen in every case. I also give her credit for her guilty plea, by which she accepted responsibility for her actions, however belatedly.

I find that her efforts after February 1, 2022, were an honest attempt to acknowledge the seriousness of her actions, to take responsibility for them, and to make amends. Her

efforts were relevant and on point, and I find their effect to be sufficiently mitigating to penalty that I am dissuaded from imposing the level of gradation in rank suggested by the prosecution.

However, her activities, demeanour, and substantial denial of what she had done and the seriousness of her activities between September 2021 and January 2022 must also be considered, and given as much or more weight than her subsequent positive efforts.

I find that Const. Rancourt's continuation of a series of discreditable social-media posts, whether as primary posts or comments on others' posts, strongly indicative of her lack of recognition of the seriousness of what she was doing, at least for the period between her unlawful attendance at the recreation centre and her second compelled interview. Had she recognized the seriousness of what she was doing, she would have ceased the activities that violated GSPS procedures.

I find that during the period of September 25, 2021 and February 1, 2022, a period of more than 18 weeks, Const. Rancourt provided ongoing evidence that she did not recognize the seriousness of her actions. In addition, her defensive tone and denial of both wrongdoing and of significant facts in her compelled interviews are indicative of a lack of recognition of the seriousness of what she was doing, and what she had done. In particular, I note the denial that she made references to Nazis [Exhibit 25, pages 61-62], which was contradicted by several credible witnesses, and her assertion that the conflict with Sgt. Baker was the sergeant's fault and that he seemed to be out to get her. I watched the videos and heard the evidence of Sgt. Baker, and accept his version of events.

I note the submissions of defence counsel that Const. Rancourt apologized verbally to Sgt. Baker on the day of her arrest and that she apologized in writing to the Espanola Minor Hockey Association on October 1, 2021, which defence counsel portrayed as a recognition of her wrongdoing and of her character. I disagree. I note that in her letter to the EMHA, the respondent said that she was sorry that the ESPA had been "collaterally involved", rather than apologizing for her behaviour. She does not

apologize for her behaviour in the October 1 letter, other than acknowledging that she has the Parents' Code of Conduct and the Parents' Pledge.

This detracts substantially from her remedial attempts after February 1, and I find that her lack of recognition of the seriousness of the matter over more than four months to be substantially aggravating to penalty.

Disability and other Relevant Personal Circumstances

I understand the position of defence counsel that the pressures of the pandemic, especially combined with the responsibilities and pressures of parenthood, have had an effect on Const. Rancourt, and may have played a role in her misconduct.

It is perhaps a truism that the pandemic and the restrictions and obligations that have accompanied it have had an effect on most people; I am in sympathy with the evidence of Mr. Bouwmeester when he told the tribunal that members of the public seemed more angry and willing to take frustrations out on staff at the recreational facility when the restrictions were in force, whereas now the facility's users are kinder and more calm. That said, Mr. Bouwmeester also testified that he only had to call the police twice, both times in response to Const. Rancourt's misconduct and both on the same day.

While feelings of frustration may be understandable in difficult times, this tribunal has been given no specific medical evidence of Const. Rancourt's state of mind. The combined pressures of motherhood and the pandemic may be understandable, but even if they are somewhat explanatory of the behaviour, they do not excuse it. This factor is minimally mitigating, at best.

Provocation

In her first compelled statement [Exhibit 25], Const. Rancourt describes Sgt. Baker's demeanour as "agitated" [page 42], "abrupt" [page 43] and "pissed off" [page 44].

However, I accept the sergeant's evidence that he acted calmly but authoritatively and tried to reason with the Rancourts. Despite the lack of an audio track on the video, this is what the body language suggests, and the demeanour of a police officer when counselling offenders prior to arrest may legitimately tend to be authoritative.

I do not accept that any part of Sgt. Baker's behaviour justified any of Const. Rancourt's activities, and have been given no other specific evidence that Const. Rancourt faced provocation from any other person. This factor is neutral to penalty.

Procedural Fairness Considerations

I have been given no reason to think that Const. Rancourt has suffered any lack of procedural fairness. She was represented by her association and its very experienced counsel, and the tribunal process was appropriately expeditious.

Defence counsel was critical of the prosecution for calling witnesses, referring to this as "twisting the knife" with respect to the respondent. I have not been given details of the reason there is no agreed statement of facts other than that there was no agreement, but without those witnesses I would not have had the clear and convincing evidence I needed to make a finding. None of this is the respondent's fault, and while I agree it was unfortunate, it was necessary in the absence of an ASF.

This factor is neutral to penalty.

Employment History

The prosecutor provided me with a page from Legal Aspects of Policing by Paul Ceyssens [Exhibit 35, Tab 31]. That page (5-365) includes the paragraph:

> *"Employment history", at least in Ontario, appears to include only the respondent's service with the current police force, and not cumulative police service."*

Mr. Ceyssens appears to rely on Hassan and Peel Regional Police, which is also in Exhibit 35 at Tab 13. I read that case in its entirety, and while I understand Mr. Ceyssens comment in the footnote "('short' service of sixteen months; four years of service with previous police force not considered)", I have difficulty understanding how this can be extrapolated to mean that years of service with other organizations cannot be considered. The hearing officer in Hassan appears not to have considered previous police service, but the paragraph in the OCCPS finding does not seem to me to be directive:

> *In his decision the Hearing Officer reviewed Constable Hassan's employment history. He acknowledged both his positive work history and comments of his immediate supervisor, Sergeant Willets. However, the Hearing Officer noted the relatively short nature of his employment with the Service (16 months).*

Whether I accept the prosecutor's interpretation of Hassan and Mr. Ceyssens' comments, the personnel appraisals Const. Rancourt received while a member of the GSPS after 2018 are consistent with those I have been given from the Espanola Police Service, one of the three other services in which Const. Rancourt served. I therefore relied primarily on her appraisals from 2019 and later, but I can see that they were consistent with those from Espanola.

I have been given no evidence of any earlier discipline measures faced by Const. Rancourt, and the eleven letters of support from current and former police practitioners convey opinions of confidence and trust in her professional capabilities and competencies, and her character, during her policing career. She is conveyed in all of the documentation as a competent, confident, dedicated (even passionate) police officer.

I also note that there are about 50 positive community letters and internal e-mails as well as media articles that illustrate the work of the respondent over four police services [Exhibit 32]. While strictly speaking these are not employment records, they provide evidence of a positive and constructive career prior to the incidents presently at hand.

I disagree with the prosecutor that employment history is "a relatively neutral factor" in this case. I find that Const. Rancourt's employment history is mitigating to penalty.

Potential to Reform or Rehabilitate the Police Officer

In her letter of apology (and reinforced in the reports from the Friends of Simon Wiesenthal Centre), Const. Rancourt states that she is ashamed of the activities that led to the two counts of discreditable conduct to which she has pled guilty. I am aware of the concerns of the prosecutor at not being able to cross-examine the respondent on this letter, but I find it to be specific and apparently heartfelt, so I do give it some weight. In the letter, she acknowledges that the incidents have impacted her reputation and commits to repairing this damage. She finishes her letter with two sentences that speak directly to her reformation or rehabilitation: "…I am eager to continue working hard and performing at a high level, consistent with my prior service. I am confident that I will prove to once again be a valuable member of the Service."

I encourage Const. Rancourt to follow through on this commitment. Despite the incidents under review here, her career is by no means over.

The prosecutor, citing Clough and the Peel Regional Police and Welfare and the Peel Regional Police, suggested that I do not have to grant automatic mitigation because of the existence of an apology. I choose to consider the letter to have mitigation value. I read the letter and watched the respondent read it, and I have no reason to doubt its sincerity, or hers, however late it came in the process.

I also consider the activities she has undertaken since February 1, articulated in *Recognition of the Seriousness of the Offence*, above, when I deliberate on the potential for her to reform herself. The record of her career described in *Employment History*,

above, also illustrate the quality and level of work of which the respondent is capable. The reports of the officer's performance while under the cloud of discipline are also encouraging.

I have read all of the letters of support in Exhibit 33 and considered the points made by the cases the prosecutor cited in this context. I kept in mind the prosecutor's concerns that they might be written by apologists for the behaviour (but found that they were not). I understand his points that they are hearsay, not given under oath and not subject to cross-examination and therefore of less weight than oral evidence. I am also cognizant of the questions defence counsel helpfully suggested that I ask with respect to each letter, and considered those guiding questions as I read the letters.

That said, I have no reason to believe the letters are not in good faith, and find that they are consistent with other evidence, particularly the respondent's employment record. This has a mitigating effect as they support the idea that the officer can be rehabilitated.

I also accept the position of defence counsel that, while this was more than a momentary lapse of judgement, it was an episode within a long and exemplary timeline.

I am also encouraged by Const. Rancourt's resumption of volunteer service with minor hockey in Espanola – the very environment in which much of her misconduct occurred. I find that to be evidence of her ability to rebuild relationships and trust within the community, which, while not specific to the duties of a police officer, reflects well on her ability to reintegrate, and on her commitment to public service.

The potential to reform or rehabilitate the respondent is mitigating to penalty.

Effect on the Police Officer and Police Officer's Family

This discipline process will result in some loss of income for Const. Rancourt for a defined period of time, which will likely impact her family as well. That said, these

impacts are a direct result of her own actions, which she has acknowledged through her guilty plea. This factor is neutral to penalty.

Consistency of Disposition

I understand the points the prosecutor made with respect to perfect consistency not being possible as every case is weighted on its own factors and that the presence of lower penalties is not determinative. I also understand his points, citing Ceyssens and Orser and the OPP, that different hearing officers assign different weights to each factor, that each police service has its own concerns with respect to misconduct, that public tolerance for misconduct shifts, and that employers may change their views about appropriate penalties over time. As the prosecutor, unlike in the criminal or provincial-offences courts, represents the police service rather than the Crown, I consider that his recommendation of a reduction to fourth class is evidence of the seriousness with which the GSPS takes this misconduct. That said, it is my responsibility to consider previous penalties and assign a penalty in this matter that I find fits the evidence I have been given and the submissions I have heard.

In the same vein, the prosecutor quoted Reeves and the London Police, and I agree with the prosecutor (and the OCPC) that a "hearing officer decides on an appropriate range of penalties and then tailors the penalty to the situation before her or him. Hearing officers often consider some or all of the 13 factors set out in *Ceyssens* and apply different weight depending on the officer's personal circumstances and the nature of the misconduct". That is what I have striven to accomplish here.

Counsel for both parties in this matter offered previous cases to illustrate the appropriate penalty in this matter. Many of those cases did not mirror Const. Rancourt's behaviour specifically, and there is no particular case that is completely on point.

All of the cases presented by the prosecutor were from the OCPC or its predecessor, the OCCPS (and in one case from the courts), while about half of the cases presented by defence counsel were unreported findings of hearing officers. I accept the position of

the prosecutor that unreported cases should be given less weight as they have not been tested by a review or appeal. That said, while unreported cases may not be determinative, they can be instructive, and I considered them even while giving more weight to the cases from the OCPC and the courts.

I considered all of the submitted cases (as listed in the appendix) and the oral and written submissions connected with them, where they exist. I considered the similarities, differences and penalties for each.

Defence counsel mentioned Buchanan and OPP [Exhibit 34, Tab H08] (unreported), in which the respondent was assessed 36 hours on a joint submission for pushing a 12-year-old during a COVID-related investigation. I note that this was a single event on a single day involving a single act, which is substantially different from our current matter.

He also mentioned three incidents plus an appeal in Jackson and the York Regional Police [Exhibit 34, Tab H00, H01 and H02], where the respondent was assessed 40 hours for neglect of duty, 160 hours (lowered to 80 hours on appeal) for abusive conduct toward fellow officers while intoxicated for which he was ultimately arrested and charged, and 100 hours several years later for disorderly conduct in a hotel while intoxicated. I note that the latter two penalties are substantial, though I also note that, while the misconduct was serious and involved other police agencies, the incidents of misconduct were limited to single occurrences and were not planned in advance.

Pacitto v. Toronto Police Service [Exhibit 34, Tab H03] is similar to the present case as the respondent was unruly and abusive (profane language and calling names), struck a bystander and pushed a security officer and returned to the scene after being ordered to leave. In written submissions, defence counsel said that the fact that he felt his rights were being violated because a retailer would not accept his $100 bill, there is a link to the present case. He was assessed five days or 40 hours off, which was upheld on appeal. I note that this was, however, an isolated incident that happened more than 20 years ago, which may account for the leniency of the penalty.

In Bromfield v. Hamilton Police Service [Exhibit 34, Tab H09] (OCPC), the respondent was charged with causing a disturbance by fighting (for which she received an absolute discharge and made a donation) and demoted to third class for six months (changed to a demotion to second class for six months on appeal). The fight was at a sporting event with a member of the public, a criminal conviction was registered and there was media attention. Defence counsel submitted that the Bromfield case is exacerbated by the criminal conviction. While there are similarities between these two serious cases, Bromfield involves an unpremeditated, isolated act. The prosecutor later made the point about the single incident, and also noted that this case was complicated by the hearing officer not following a joint submission.

A case (that received substantial media attention) involving unnecessary force and neglect of duty (failing to read rights to an arrested person) as well as disrespectful and unprofessional conduct, Keating and the Sault Ste Marie Police [Exhibit 34, Tab H10] (unreported), resulted in an assessment of 12 hours on each charge. While this seems lenient in light of the medical issues suffered by the person arrested, I note that in this case, also a single unpremeditated event, the SIU deemed the force to be "reasonable and necessary".

In Hearden and the OPP [Exhibit 34, Tab H13] (unreported), the respondent forcibly removed a driver from a vehicle without justification, causing injury, and was convicted criminally of assault (for which he was assessed a year on probation and 120 hours of community service on a conditional discharge). The penalty was 30 hours and a requirement to undergo training. Again, this was a single incident without premeditation.

The final case in defence counsel's oral submissions was Steudle and the Thunder Bay Police [Exhibit 34, Tab H16] (unreported). In this matter, the respondent made harsh and inappropriate comments on social media over three days about the Indigenous community. Defence counsel's written submission on this was that Const. Steudle's comments were more serious than Const. Rancourt's. He was assessed a penalty of 40 hours on a joint submission. While I understand that this behaviour was serious and went on for three days, the officer was not identified as a police officer, I saw no

information about having been directed by management about appropriate posts as Const. Rancourt was, and none of the other behaviours shown or activities undertaken by Const. Rancourt were present. I also read in the finding that he was immediately cooperative with the Thunder Bay Police Service and the Office of the Independent Review Director (OIPRD), and offered to sit down with the complainant and explain himself.

The prosecution also offered cases for my consideration, all of which came from the OCPC/OCCPS or, in one case, the courts. Again, I respond to the ones that were given in oral submissions.

Moraru and the Ottawa Police Service [Exhibit 35, Tab 17] is the case in which an officer, caught shoplifting, identified himself as police, struck out at the security officer, faked a weapon and fled. The prosecutor linked Moraru to this case, saying that the quote by the hearing officer is relevant: "It is simply unacceptable to society at large, and incompatible with the rule of law itself, for police to break the very laws they are sworn to uphold". Const. Moraru was ordered to resign by the hearing officer, but the appeal amended the penalty to reduction to third class.

The prosecutor referred to Deviney and Toronto Police Service [Exhibit 35, Tab 12], where the respondent made racist comments and depictions to his colleague and was assessed 15 days or 120 hours off, which is a substantial penalty. An appeal of this penalty was denied. I note that this was, however unacceptable, a single incident.

In Buckle and the OPP [Exhibit 35, Tab 28], the OCCPS upheld the dismissal of an officer who misused corporate credit cards and who faced four counts of discreditable conduct. While the matter involves substantially the same charge under the Code of Conduct, the facts in issue, a substantial breach of trust, differ substantially from this case.

In Brown and the Chatham-Kent Police [Exhibit 35, Tab 3], the OCPC upheld a penalty of dismissal for an officer who, intoxicated, forced his way into a home, resisted an arrest that led to criminal charges, and otherwise behaved inappropriately. I note,

however, that this officer had a substantial discipline record and that the hearing officer considered that rehabilitation was unlikely.

While I recognize that the prosecutor used Moraru and the Ottawa Police [Exhibit 35, Tab 17] primarily to make the point that officers must follow the laws they swore to uphold, he also suggested that I consider this very different case in the context of Const. Rancourt not following the law with respect to her activities. This case, initially dismissal but altered to reduction to third class on appeal, is substantially different than our current matter in terms of the offence and the circumstances, including the criminal conviction in Moraru and the medical evidence supplied to the tribunal and the Commission.

Dempsey and the Waterloo Regional Police [Exhibit 35, Tab 11] is the case in which an intoxicated off-duty officer was abusive and assaultive at the police station of another service after the arrest of his son. Originally a dismissal, the penalty was reduced to reduction to third class because of considerations of the officer's remorse and career history. The case bears some similarity to the present one in that the respondent's behaviour was aimed at policing colleagues and was assaultive to a police sergeant. There was evidence of quick remorse (the officer informed his staff inspector the following day), though there was a substantial difference in that long-term alcohol problems were a factor.

Packer and the Toronto Police [Exhibit 35, Tab 21] is the case in which an officer refused to guard an abortion clinic as doing so violated his belief system. This is another case in which a dismissal was varied by the Commission to a reduction in rank level, in this case to fourth class. The reason for the variation was Const. Packer's positive employment record and his rehabilitative potential. Similarities to this case include the premeditation of Const. Packer's acts and his violation of orders, and the conflict between personal conscience and duty [as articulated at paragraph 38]. The commission wrote that "a constable's duty is owed to the law and must be performed without regard to conscience". There are similarities to the current matter, even without assaultive or unprofessional behaviour other than Const. Packer's simple violation of

the order. I agree with the prosecutor's submission on both cases that discipline is appropriate and needed.

While other cases were provided for my consideration, I found that in most cases they bore too little similarity to this current matter to be relevant, or were offered by counsel to make points other than comparative penalty.

Specific and General Deterrence

Defence counsel took the position that specific deterrence is not a factor in this matter, citing the steps she has taken since February 1, 2022. I do not share this opinion. However commendable these activities may be, they do not compensate for the misconduct itself or the period of months during which the respondent seems to have been unrepentant. The prosecutor submitted that the three-day hearing itself will have an effect on specific deterrence, and while I agree with him, a substantial penalty, one that reflects the seriousness of the respondent's misconduct, must also be imposed to underscore to Const. Rancourt that this type of behaviour is not, and will not be, tolerated.

General deterrence is also important. I agree with the prosecutor that other GSPS officers, as well as police officers across the province, must see that despite everyone's right to hold opinions, including opinions that do not reflect the mainstream or official positions, one must not act on those opinions in ways that bring policing into disrepute. The substantial penalty faced by Const. Rancourt is necessary to dissuade similar behaviour by other officers, and the damage that would bring to policing in Ontario.

Systemic Failure and Organizational/Institutional Context

I have been given no reason to believe that workplace factors or any other GSPS-related failures or influence contributed to Const. Rancourt's misconduct or impugned

the fairness or validity of the discipline process. This factor is neutral in the consideration of penalty.

Damage to the Reputation of the Police Service

Const. Rancourt's activities caused the staff at the recreation centre to (very legitimately) invoke several members of the Ontario Provincial Police to enforce the law with respect to the actions of Const. Rancourt and the people who accompanied her. The members of the OPP knew that Const. Rancourt was a police officer and a member of the GSPS, and I find that this must necessarily impact the reputation of the GSPS negatively among its OPP colleagues. Cooperation among police services is important in all areas of the province, making this loss of reputation unfortunate.

The mainstream media articles about Const. Rancourt's misconduct and her arrest drew substantial interest, as shown by the comments attached to some of the articles. I find that the reputation of the GSPS among the people it serves must have been damaged, at least to an extent, by the reports of Const. Rancourt's misconduct. The mainstream media articles, despite some enhancement through rhetoric, reflected the testimony of the witnesses in this matter, and while I heed the caution of defence counsel that I should treat media articles with care, he did not give me any specific examples of where he took issue with mainstream media articles. As mentioned in *Public Interest*, above, trust is crucial to Canadian policing, and damaging the reputation of a police service in the eyes of the people it serves can damage that trust.

This factor is aggravating to penalty.

Effect of Publicity

I accept the position of defence counsel that social media posts, which are not subject to rules and codes of ethics as are articles in the mainstream media, are less reliable than mainstream journalism. I therefore gave the social-media posts and comments

(other than those by Const. Rancourt herself) less weight than the publications of the several mainstream outlets that carried the story of Const. Rancourt's misconduct, which would have made that misconduct widely known among community members who read the numerous articles about it.

Although less weight is given to social-media commentary on the incidents, the volume of people who saw the articles and posts and who commented on them, whether in an informed way or not, is indicative of the extent of public interest generated by Const. Rancourt's activities.

This factor is aggravating to penalty, especially as much of the social-media publicity, such as the GoFundMe page, were of Const. Rancourt's own creation.

Finding

After carefully reviewing and considering the mitigating and aggravating factors and reflecting upon the submissions of defence counsel and the Service prosecutor, as well as their supporting materials, I have determined the penalty in this matter.

The prosecutor's position was that a gradation to fourth-class constable was an appropriate penalty, but I am mindful of the substantial remedial steps Const. Rancourt has taken after her unfortunate behaviour in the last 14 weeks or so of 2021 and early in 2022. In addition to considering the submissions above, I had the opportunity to observe her demeanour during the three days of the hearing and to listen to her as she read her apology letter to the Tribunal, and those observations suggest contrition on her part.

I find that gradation in rank to fourth class is unduly harsh, considering mitigating factors such as the respondent's attempts at remediation since February 1, 2022. I also find that a penalty of a forfeiture of 24-40 hours is unduly lenient considering the incidents of serious misconduct over a period of months.

The penalty in this matter, imposed under s. 85(1)(c) of the *Police Services Act*, will be a gradation in rank from first-class constable to third-class constable for a period of one year, followed by one year in the rank of second-class constable, conditional on satisfactory performance of duty by the officer and the concurrence of her unit commander. The respondent officer will also be required to perform 40 hours of volunteer work through the Friends of Simon Wiesenthal Centre for Holocaust Studies, and this is imposed under s. 85(7)(c) of the *Police Services Act*.

Peter Lennox
Superintendent (retired)
Hearing Officer

Dated and released (electronically) on
Friday, November 18, 2022

APPENDIX

LIST OF EXHIBITS

Police Constable Melisa Rancourt, 30091

1. Letter of Delegation – Hearing Officer (Retired Superintendent Peter Lennox)
2. Letter of Designation – Prosecutor (Mr. David Migicovsky)
3. Notice of Hearing – Two counts of discreditable conduct
4. Letter of Designation – Prosecutor (Mr. Joël Dubois)
5. Incident Report Form from the Espanola Municipal Recreation Program, signed by Susan Mullin and dated September 26, 2021
6. Printout of Facebook posts (undated) by “Melly Ran”
7. Printout entitled “Occurrence details” – GSPS Occurrence E210718248, dated 2021/09/27, detailing Trespass to Property Act charges of three parties, including the respondent, on 2021/09/26
8. Printout entitled “Occurrence details” – GSPS Occurrence E210718820, dated 2021/09/27, detailing charges and/or arrests of three parties, including the respondent, on 2021/09/26
9. Video on memory key entitled “003 Hallway”
10. Video on memory key entitled “First Entry Lobby Rear Exit”
11. Video on memory key entitled “Second Entry Lobby Rear Exit”
12. Video on memory key entitled “Second Exit Lobby Rear Exit”
13. Copy of trespass notice to Melisa Rancourt from The Corporation of the Town of Espanola dated September 28, 2021
14. Three pages of redacted duty notes of Sgt. Neil McNamara, dated “14 Tues Sep 2021” with respect to Facebook posts by Const. Rancourt. The exhibit also contains an e-mail exchange between Sgt. McNamara and Insp. Sara Cunningham on the same matter
15. Printout of social-media post containing a graphic of the Canadian Charter of Rights and Freedoms and a brief exchange of comments (undated)

16. Two-page printout of a GoFundMe page, dated October 7, 2021, entitled “Legal Defense Fund”, and containing “Created by Mel Rancourt”
17. Printout of social-media posts by Angie Bernard, and containing comments from redacted individuals and “Melly Romeo”
18. Printout of anonymous e-mail, “Subject: Melisa Rancourt” with a letter complaining about attached Facebook posts
19. News release dated 2021.09.28 entitled “OPP Investigates Trespassing – Criminal Charge Laid”, detailing the arrest of the respondent
20. Printout of media article from Sudbury.com dated Sep 28, 2021, and entitled “OPP arrest Sudbury police constable on charges of resisting a police officer, trespassing”
21. Printout of article from CTV Northern Ontario entitled “Greater Sudbury police officer charged with trespassing in Espanola” dated Sept. 29, 2021, along with comments from citizens (names redacted)
22. Printout of article from sunmedia.ca entitled “Sudbury police officer facing further discipline” dated Sep 30, 2021 and October 14, 2021
23. Greater Sudbury Police Service Procedure COR002, entitled “Social Media”, revised date June 3, 2020
24. Affirmation of Secrecy and Office of Melisa Rancourt, dated 15 October 2018
25. Audio transcription of compelled interview of Const. Melisa Rancourt, dated 28Oct21 (127 pages)
26. Audio transcription of compelled interview of Const. Melisa Rancourt, dated 01Feb22 (20 pages)
27. Social media printout of exchanges between “Melly Ran” and redacted individuals (undated)
28. Printout of social media posts entitled “Greater Sudbury MEMES (FACEBOOK GROUP) October 8-10th 2021
29. Printout of media article from Sudbury.com entitled “Sudbury police officer kicked doors, screamed “nazis” [sic] after her arrest at a children’s hockey game
30. Electronic defence exhibit – Binder 1 – “Recognition of Seriousness”
    - Includes supplementary in hard copy – List of coaching staff for Espanola Minor Hockey teams
    - Also includes:

- Exhibit A-1 – Written Apology from Cst. Rancourt (read to the tribunal on the record by the respondent)
- Exhibit A-2 - Apology from Constable Rancourt to OPP Sgt. Baker (Arresting Officer)
- Exhibit A-3 - Letter of Apology to Espanola MHA Volunteers, Parents, Children – Oct. 1, 2021
- Exhibit A-4 - Cst. Rancourt's Full Cooperation with the GSPS during its investigation (Transcript)
- Exhibit A-5 - Written Order from GSPS D/Chief Cunningham - Removal - Social Media Posts
- Exhibit A-6 - (DAP) Rancourt Signed Direct Accountability Program Form
- Exhibit A-7 - LETTER OF Acknowledgement of Behaviour – Cst Rancourt dated May 11, 2022
- Exhibit A-7A - Waiver (lifting) of the Trespass Notice – Allan Hewitt (Email) – May 11, 2022
- Exhibit A-8 – EMHA 2022-2023 Executive, Mel Rancourt, VP), Job Description, June 12, 2022
- Exhibit A-8A - Apology from Cst Rancourt to Susan Mullen - Sep 18, 2022
- Exhibit A-8B - Susan Mullen Reference Letter - June 19, 2018 (Rancourt application to GSPS)
- Exhibit A-9 - 2022 GSPS – Rancourt - Performance Management Appraisal (Sgt. Ramsay)
- Exhibit A-9A - GSPS Sgt. Blair Ramsay - Narrative Comments re Evaluation of Cst Rancourt
- Exhibit A-10 - CPKN - Police Ethics and Accountability Certificate - 2022 July 18
- Exhibit A-10A - CPKN COURSE DESCRIPTION - POLICE ETHICS AND ACCOUNTABILITY
- Exhibit A-11 - Mind Control - Managing Mental Health COVID-19 Cert - July 6, 2022
- Exhibit A-11A - Mind Control – Managing Your Mental Health During COVID-19 - Description

- Exhibit A-12 – Report of Melissa Mikel, Director of Education, Friends of Simon Wiesenthal Centre for
- Holocaust Studies
- Exhibit A-12A – Supplementary Report of Melissa Mikel, Director of Education, Friends of Simon Wiesenthal Centre for Holocaust Studies, dated October 7, 2022.

31. Electronic defence exhibit – Binder 2 – “Employment History”
    - Includes a variety of documents related to the respondent’s employment history, including appraisals and job descriptions
32. Electronic defence exhibit – Binder 2a – “Employment History”
    - Includes correspondence and other documentation related to the respondent’s employment history
33. Electronic defence exhibit – Binder 3 – “Potential to Reform / Rehabilitate”
    - Includes a variety of documents related to the respondent’s potential, categorized by defence counsel as:
        - 01 - Table - Character References – Letters (D-1 – D- 20) – Cst. Melisa Rancourt, GSPS
        - 02 - Table – Performance Evaluations (D-21 – 31) – Cst Melisa Rancourt, GSPS & former Espanola PS
        - 03 - Table – Credibility – Testifying (D-32 – D37) - Cst Melisa Rancourt, GSPS
        - 04 - Table – Integrity (D- 38 – D-40A) – Cst Melisa Rancourt, GSPS
        - 05 - Table – Trespassing Documents (D-41 – D-45) - EMHA – Cst Melisa Rancourt, GSPS
        - 06 - Table – Courses of Study (D-46 – 50B) - Cst Melisa Rancourt, GSPS
34. Electronic defence exhibit – Binder 4 – “Consistency of Disposition”
    - Includes the following case law summaries:
        i. Jackson and York Regional Police, unreported decision of YRP Supt. Finn, 2009.03.10
        ii. Jackson and York Regional Police, unreported decision of YRP Supt. P. Pedersen, 2011.01.12
        iii. Jackson and York Regional Police, 2011 OCPC 12 (CanLII) (Appeal)

iv. Jackson and York Regional Police, unreported decision of YRP Supt. Crabtree, 2017.06.09

v. Pacitto v. Toronto Police Service, 2004 CanLII 85035

vi. Ciotka and the Ontario Provincial Police, 1994 CanLII 16017

vii. Walker and Toronto Police Service, unreported decision of TPS Supt. R. Strathdee

viii. Susan Mancini and Cst. Courage of the Niagara Regional Police, 2004 CanLII 76811

ix. Drennan and Hamilton-Wentworth Regional Police, 1996 CanLII 17298

x. Buchanan and OPP, unreported decision of OPP Supt. Melissa Baron, 2022.06.21

xi. Bromfield v. Hamilton Police Service, 2009 ONCPC 9 (CanLII) (includes media releases on the matter)

xii. Keating and Sault Ste Marie Police Service, (OIPRD) Decision by YRP D/Chief (ret) T. Kelly (includes media releases and an SIU press release on why no criminal charges)

xiii. Dugan and Toronto Police Service, unreported decision of Supt. Margo Boyd, 2001.03.07

xiv. Siriska and OPP, (OIPRD) Disposition by Supt. K. M. Bickerton, 2021.09.09

xv. Hearden and OPP, (OIPRD) Disposition by Supt. Lisa Taylor, 2021.08.13

xvi. Kokot and OPP, (OIPRD) Disposition by Supt. R. McElary-Downer, 2011.08.17

xvii. Yakimishyn v. Peel Regional Police, 2008 ONCPC 5 (CanLII)

xviii. Steudle and Thunder Bay Police, unreported decision of Supt. (ret) M. Elbers, 2018.03.13 (includes media coverage)

xix. Bowes and OPP. Unreported penalty decision of Supt. R. Fitches, 2008.01.05

xx. Hrnchiar and Ottawa Police, unreported decision of YRP D/Chief (ret) T. Kelly, 2016.12.07 (includes media articles)

xxi. Media article: *Ottawa police officer pleads guilty to misconduct for Freedom Convoy donation*, 2022.10.06

xxii. Brownlee and Toronto Police Service, unreported disposition of Supt. T. Kelly, 1996.11.28

- This exhibit also contains the full case reports of the above, with two additions:
  i. Schofield and the Metropolitan Toronto Police Force, 1984 CanLII 3101 (on CPC)
  ii. Schlarbaum and Chatham-Kent, OCPC 13-04, 2016.03.22

35. Book of Authorities of the Service Prosecutor – Disposition Hearing, which contains:
  i. Barlow v Ottawa Police Service, 2011 ONCPC 9 (CanLII)
  ii. Blackburn v. Niagara Police Service, 2003 CanLII 85798 (ON CPC)
  iii. Brown v. Chatham-Kent Police Service, 2012 ONCPC 1
  iv. Buckle v. Ontario Provincial Police, 2005 ONCPC 2 (CanLII)
  v. Chief John Gauthier v. Timmins Police Service, 2015 ONCPC 19 (CanLII)
  vi. Christian v. Grbich, 2002 CanLII 63872 (ON CPC)
  vii. Constable Bryan Galloway and the Innisfil Township Police Force, 1987 CanLII 6348 (ON CPC)
  viii. Constable Robert Gibson and the Waterloo Regional Police Force, 1986 CanLII 4297 (ON CPC)
  ix. Cst. James Ebdon v. Durham Regional Police Service, 2020 ONCPC 5 (CanLII)
  x. Clough v. Peel Regional Police Service, 2014 ONCPC 12 (CanLII)
  xi. Dempsey and the Waterloo Region [sic] Police Service, 1991 CanLII 11278 ON CPC)
  xii. Deviney v. Toronto Police Service, 1999 CanLII 31612 (ON CPC)
  xiii. Hassan v. Peel Regional Police Service, 2006 ONCPC 7 (CanLII)
  xiv. Husseini v. York Regional Police Service, 2017 CanLII 4791 (ON CPC); affirmed, Husseini v. York Regional Police Service, 2018 ONSC 283 (CanLII)
  xv. Mancini v. (Courage) Niagara Regional Police Service, OCPC 2004
  xvi. Markham and Waterloo Regional Police Service, 2015 ONCPC 4 (CanLII)
  xvii. Moraru v. Ottawa Police Service, 2008 ONCPC 1
  xviii. Nelles v. Cobourg Police Service, 2007 ONCPC 4 (CanLII)
  xix. O'Farrell, Wlodarek v. Metropolitan Toronto Police Force, 1976 ONCPC 3 (CanLII)
  xx. Orser v. Ontario Provincial Police, 2018 ONCPC 7 (CanLII)

xxi. Packer and the Metropolitan Toronto Police Service [sic], 1990 CanLII 15014 (ON CPC)

xxii. Reeves v. London Police Service, 2021 ONCPC 3 (CanLII)

xxiii. Seamons v. Durham Regional Police, 2006 ONCPC 8 (CanLII)

xxiv. Sterling and Hamilton-Wentworth Regional Police Service, 1999 CanLII 31606 (ON CPC)

xxv. Stevenson v. York Regional Police Service, 2013 ONCPC 12 (CanLII)

xxvi. Tapp v. Ontario Provincial Police, ONCPC, November 28, 2018

xxvii. The Law Society of Upper Canada v. Abbott, 2017 ONCA 525; leave to appeal dismissed 2018 CanLII 49698 (SCC)

xxviii. Van Straalen v. Ontario Provincial Police Service [sic], 2017 ONCPC 17 (CanLII)

xxix. Venables v. York Regional Police Service, 2008 ONCPC 8 (CanLII)

xxx. Welfare v. Peel Regional Police Service, 2018 ONCPC 15 (CanLII)

xxxi. Paul Ceyssens, Legal Aspects of Policing. Looseleaf (Saltspring Island: Earlscourt, 1994), page 5-393

36. Paul Ceyssens, Legal Aspects of Policing. Looseleaf (Saltspring Island: Earlscourt, 1994), page 5-365

37. Ceyssens, Paul and Childs, Scott, Report to the Royal Canadian Mounted Police: "Phase One" Final Report Concerning Conduct Measures, and the Application of Conduct Measures to Sex-Related Misconduct under Part IV of the *Royal Canadian Mounted Police Act*, February 14, 2022, especially p. 37, paragraph 1

38. Constable Kristina Neilson and the Ottawa Police Service, unreported finding by Supt. C. Renwick, November 4, 2022