

ONTARIO POLICE ARBITRATION AND ADJUDICATION COMMISSION

IN THE MATTER OF an Appeal from the Decision of a Hearing Officer dated January 24, 2024, and an Appeal from the Disposition of a Hearing Officer dated November 14, 2024, pursuant to s. 87 of the *Police Services Act*, RSO 1990, c. P15, and s. 216 of the *Community Safety and Policing Act*, 2019.

Between:

Constable Steven Rampersad

Appellant

and

Toronto Police Service

Respondent

Decision and Order

Adjudicative Panel:

Jeanie Theoharis
Barry Fisher
Emily Cole

Participants:

Myles Anevich, Counsel for the Appellant
Jovana Orabovic, Counsel for the Respondent

Hearing date

January 24, 2026
In person

INTRODUCTION

- [1] In a decision dated January 24, 2024, (“Misconduct Decision”), the Hearing Officer, Al Albano, found Constable Steven Rampersad (the “Appellant”), guilty of discreditable conduct contrary to section 2(1)(a)(xi) of the Code of Conduct contained in the Schedule to Ontario Regulation 268/10 as amended (“Code of Conduct”) under the *Police Services Act*, RSO 1990, as amended, (the “PSA”), and therefore, contrary to section 80(1)(a) of the PSA.
- [2] In the penalty disposition dated November 14, 2024, (“Penalty Decision”), the Hearing Officer imposed that the Appellant resign within seven days or face dismissal from employment with the Toronto Police Service (the “TPS” or “Respondent”), pursuant to section 85(1)(b) of the PSA.
- [3] The Appellant appealed from the Misconduct Decision and the Penalty Decision. The appeals were commenced pursuant to s. 87 of the now repealed PSA. The appeal continued before this panel which was appointed by the Ontario Police Arbitration and Adjudication Commission (the “Commission”) pursuant to s. 216(4) of the *Community Safety and Policing Act*, 2019, S.O. 2019, c. 1, Sched. 1 (the “Act”).
- [4] This panel was appointed to exercise the powers and perform the duties of the Ontario Civilian Police Commission in relation to this appeal. For purposes of this appeal, we refer to ourselves as the Panel.
- [5] This appeal concerns (i) whether the Hearing Officer reasonably found that the Appellant committed discreditable conduct in relation to an assault on his former girlfriend in March 2017, while they were on a Caribbean cruise departing from Florida with his two children from a prior relationship, and (ii) whether the resulting penalty disposition of being ordered to resign or face dismissal from employment with the TPS was reasonable.
- [6] For the reasons below, we confirm the Misconduct Decision and Penalty Decision.

BACKGROUND

- [7] The Appellant has served with the TPS since 2001.

- [8] The Appellant and SRM, who is also an officer, had been in a relationship since 2016. The relationship ended a few months after the cruise ship assault incident noted below.
- [9] The Appellant had been in a prior relationship with BZ, also an officer. The Appellant and BZ had two children born in 2010 and 2013.
- [10] The Appellant, SRM, and the Appellant's two young children from his prior relationship went on a Disney Cruise in the Caribbean.
- [11] On March 17, 2017, the Appellant and SRM were involved in a verbal and physical altercation which resulted in the Appellant assaulting SRM in their Disney Cruise stateroom. The Appellant's children witnessed the assault.
- [12] SRM suffered visible injuries, including a fractured nasal bone, and the area around her left eye was visibly swollen and bruised.
- [13] The cruise returned to Florida on March 19, 2017, and the children were returned to their mother BZ that same evening.
- [14] Upon returning home that evening, the Appellant's then 4 year old son, said to BZ "Mommy, did you see the scratches on Daddy's neck?" The Appellant's son went on to advise BZ that the Appellant and SRM got into a fight.
- [15] On another date, the Appellant's 4 year old son spoke about the fight to BZ again. The Appellant's son indicated that when the Appellant and SRM were fighting he and his sibling were scared and crying. He told BZ that SRM's nose bled when "Daddy hit her." The Appellant's son also placed his hands on BZ's neck stating that this is what the Appellant had done to SRM.
- [16] BZ called the Children's Aid Society ("CAS") the following day after hearing the above noted details about the altercation between the Appellant and SRM.
- [17] The Appellant was charged to have committed misconduct in that he did act 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 he is a member, contrary to section 2(1)(a)(xi) of the Schedule to the Code of Conduct of Ontario Regulation 268/10 and therefore, contrary to section 80(1)(a) of the PSA.
- [18] A three-day hearing was set to commence on March 4-6, 2019. Shortly after commencing the hearing, it was agreed to adjourn the PSA hearing until the

Appellant's criminal matter was heard on April 26, 2019. The hearing was to resume at a later date.

Motion to Exclude Hearsay Evidence

[19] On November 28, 2019, the Appellant filed a motion to request an order excluding the evidence of BZ at the hearing of this matter (exclusion of hearsay evidence). The Appellant objected to having BZ testify as a witness.

[20] The motion to exclude the hearsay evidence of BZ was heard on April 19, 2020. By decision dated June 19, 2020, the Hearing Officer, ruled that BZ could testify and as such permitted the hearsay evidence to be presented.

Motion for the Production of Third-Party records

[21] On August 20, 2021, the Appellant filed a motion for the production of third-party records. The motion was heard on January 7, 2022. The Appellant brought a motion for production /disclosure of the Durham Investigative Brief in relation to Constable BZ's involvement in a criminal court matter. Following the motion hearing, by decision dated January 25, 2022, the Hearing Officer denied the motion and did not order the production of the documents.

[22] The hearing continued on September 1-2, 2021. The Appellant requested the hearing be adjourned pending the motion for production to be decided. The Hearing Officer ordered that the hearing would continue, and the motion would be addressed with prior to the testimony of BZ, and also noted that should any new information be gleaned from the production of disclosure (if the motion is successful), the Appellant would be able to re-call the witness SRM to address the new information, if any.

[23] The police discipline hearing completed July 10, 2023. By decision dated January 24, 2024, the Hearing Officer found, based on clear and convincing evidence, that the Appellant's actions amounted to misconduct in violation of section 2(1)(a)(xi) of the Schedule, Code of Conduct, Ontario Regulation 268/10, of the PSA. The Hearing Officer found the Appellant guilty of discreditable conduct.

ISSUES ON APPEAL

[24] The Appellant appeals both the Hearing Officer's finding of misconduct and their determination of the penalty imposed.

[25] The issues to be considered in the appeal are:

- a. Did the Hearing Officer commit a reviewable error in finding the Appellant guilty of discreditable conduct?
 - i. Did the Hearing Officer deny the Appellant procedural fairness in the course of the hearing?
- b. Did the Hearing Officer commit a reviewable error by imposing a penalty of dismissal?

DISPOSITION

[26] For the reasons that follow we confirm the Hearing Officer's finding of discreditable conduct and the imposition of a penalty of dismissal.

STANDARD OF REVIEW

[27] The standard of review to be applied by the Panel when considering an appeal from a decision of a hearing officer is reasonableness on questions of fact and correctness on questions of law. *Ottawa Police Service v. Diafwila*, 2016 ONCA 627.

[28] Questions as to whether facts satisfy a legal test are questions of mixed fact and law and are to be reviewed on the standard of reasonableness unless there is an extricable question of law involved. *Cst Ioan Floria v. Toronto Police Service*, 2020 ONCPC 6 (CanLII); *Dunsmuir v. New Brunswick*, 2008 SCC 9, at para. 53.

[29] Findings of fact and credibility assessments made by a hearing officer are owed particular deference. *Toronto Police Service v. Blowes-Aybar*, 2004 CanLII 34451 (Ont. Div. Ct.).

[30] On a penalty appeal, deference is owed to the Hearing Officer's weighing of dispositional factors and findings of fact. Unless there has been a clear error in principle or relevant material factors ignored, the Panel will not interfere with the penalty even if it would have come to a different conclusion. Our task is to assess whether or not the Hearing Officer fairly and impartially applied the relevant dispositional principles to the case before them and determine whether the Hearing Officer's decision was reasonable in the circumstances. *Karklins v. Toronto (City) Police Service*, 2010 ONSC 747 at para 10; *Kobayashi and Waterloo Regional Police Service*, 2015 ONCPC 12 at para 33; *Gould v. Toronto Police*, 2018 ONSC 4074 (CanLII) (Div. Ct.) at para. 6.

- [31] In *Husseini v. York Regional Police Service*, 2018 ONSC 283, the Divisional Court confirmed that our role is not to second-guess the decision of a hearing officer on penalty and to give deference to the assessment and weight given by a hearing officer to the disposition factors.
- [32] Our role is not to hold the decision up to scrutiny for a standard of perfection. In assessing reasonableness, we consider whether the decision is justified, transparent, and intelligible, and whether it is based on an internally coherent and rational chain of analysis considering the factual and legal constraints bearing on the decision. *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 (CanLII) at para. 85.
- [33] Reasonableness review finds its starting point in judicial restraint and respect for the distinct role of administrative decision-makers. A reviewing court (or tribunal) must pay “respectful attention” to the reasons offered for an administrative decision. This means focusing on the decision actually made by the administrative decision-maker and starting the analysis by developing an understanding of the decision-maker’s reasoning process to determine whether the decision as a whole is reasonable. In applying the reasonableness standard, the focus is “on the decision actually made by the decision-maker, including both the decision maker’s reasoning and the outcome.” In addition, the reviewing court (or tribunal) is not to hold the reasons up to a standard of perfection or conduct a “line-by-line treasure hunt for error.” *Imperial Oil Limited v. Haseeb*, 2023 ONCA 364 (CanLII).

ANALYSIS

A. Misconduct Appeal

- [34] The Appellant submits that the Hearing Officer erred in finding the Appellant guilty of discreditable conduct alleging that it was not established on clear and convincing evidence. The Appellant indicates that the Hearing Officer misapprehended the evidence when he found that SRM being provided a new stateroom was corroborative of the assault occurring.
- [35] The Respondent submits that the Hearing Officer conducted a thorough credibility and reliability assessment of SRM and BZ. The Respondent asserts the Hearing Officer properly applied the test for assessing a witness’ credibility in PSA hearings noting that the trial judge “ought to go further and say that evidence of the witness he believes in accordance with the preponderance of probabilities in the case and, if his

view is to command confidence, also state his reasons for that conclusion.” *Faryna v. Chorney*, [1952] 2 DLR at page 357.

[36] Section 2(1)(a)(xi) of the Code of Conduct states that:

Any chief of police or other police officer commits misconduct if he or she engages in,
(a) Discreditable Conduct, in that he or she, ...
(xi) 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,

[37] In this case, the Hearing Officer found the Appellant’s actions in assaulting SRM amounted to a finding of discreditable conduct.

[38] The question on appeal is not whether this Panel would have reached the same conclusion at first instance, but whether the Hearing Officer’s conclusion was reasonable in light of the facts, evidence, and applicable law.

[39] Matters relating to the credibility of witnesses are those within the Hearing Officer’s authority. It is not the role of the Panel to reweigh and reassess the evidence and credibility. The Hearing Officer is in the best position to make findings of fact and credibility. They have had the opportunity to directly hear the evidence, assess the demeanor of the witnesses and determine the weight to be applied to the evidence.

[40] The hearing took place over many days spanning years. There were many contentious issues, including multiple motions. There were 15 exhibits and extensive cross-examination of witnesses. SRM and BZ provided testimony and both were extensively cross-examined.

[41] The Hearing Officer conducted a careful and detailed assessment of the oral evidence and documentary evidence, including photos, reports, and statements, to come to their conclusion. The Hearing Officer conducted a thorough assessment related to the credibility and reliability of the evidence presented by the two witnesses.

[42] The Hearing Officer provided detailed reasons for accepting SRM’s testimony, including consistency with contemporaneous medical evidence confirming her injuries, photographs taken before and after the incident, and surrounding circumstances, including her conduct in seeking assistance by contacting security.

- [43] He explained why, despite her initial denial of having been assaulted, he believed her now that she testified to being assaulted on the cruise ship. The Hearing Officer acknowledged that SRM initially denied being assaulted noting that it “makes sense that SRM was still in her relationship ... and wanted to protect him. Persons lying to protect each other has occurred in many courts and tribunals in the past ... It is logical for persons who care for each other to want to protect each other ... The trier of fact must take the relationship at the time of the statements into account and assess the statements based not only on that single aspect, but, along with all of the other evidence and manner in which the witness testified.”
- [44] SRM relayed her testimony about the assault on the cruise ship. The Hearing Officer noted that “her account was forthright considering the situation. Her responses did not appear to be tailored and the event as described was plausible. It was a serious event where the major points would be remembered, and it was supported by the actions she took immediately after the event.” He then went on to address those actions.
- [45] The Hearing Officer accepted that after the Appellant left the room, she contacted security, went to the medical center, was seen by a doctor, and had x-rays taken. The Hearing Officer found that the x-rays and medical services bill, which were both introduced as exhibits, corroborated SRM’s version of events. Moreover, the Hearing Officer noted that SRM’s evidence of the cruise providing a separate stateroom for the duration of the cruise at no additional cost was supported by a photo of SRM in another room on the evening of March 17. The Hearing Officer noted that there “is no evidence to refute the claim that SRM was provided a separate room. This seems like a reasonable precaution for the cruise ship to take and would corroborate that there was an assault between SRM” and the Appellant.
- [46] The Hearing Officer also relied on an incident supplement report written by a Broward County Sheriff representative, which, the Hearing Officer notes, further corroborates SRM’s version of events “that there was a physical confrontation between SRM and” the Appellant, “that she was provided a separate room for the duration of the cruise and that they made up afterwards. This is an official police report, and its contents have not been refuted by defence.”
- [47] The contemporaneous medical evidence, corroborative documentation, and testimonial evidence form a coherent evidentiary record that reasonably supports the Hearing Officer’s conclusions.

(i) Procedural Fairness Issues

- [48] Procedural fairness is a principle that applies to these proceedings. There is a requirement to act in accordance with the requirements of natural justice and to act reasonably. *Law Society of Upper Canada v. Savone*, 2016 ONSC 3378 (Ont. Div. Ct) at para 69; *Howe v. Institute of Chartered Accountants of Ontario*, 1994 CanLII 3360 (ONCA).
- [49] However, PSA proceedings are not bound by the same strict rules of evidence that apply in criminal proceedings nor are they bound by the same disclosure obligations. PSA proceedings are bound by the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22 (“SPPA”).
- [50] Portions of the SPPA are noted below as they apply to the Appellant’s claims of procedural fairness issues.
- [51] Section 25.0.1 of the SPPA gives a tribunal the power to determine its own procedures and practices and may make orders with respect to the procedures and practices that apply to a proceeding.
- [52] Section 23(1) of the SPPA states that a tribunal may make such orders or give such directions that it considers proper to prevent an abuse of its processes.
- [53] Moreover, section 23(2) of the SPPA states that a tribunal may reasonably limit further examination and cross-examination of a witness where it is satisfied that the examination or cross-examination has been sufficient to disclose fully and fairly all matters relevant to the issues in the proceeding.
- [54] Section 15(1) of the *SPPA* indicates that a tribunal may admit as evidence at a hearing, whether or not given or proven under oath or affirmation or admissible as evidence in a court, (a) any oral testimony; and (b) any document or other thing, relevant to the subject-matter of the proceeding and not unduly repetitious.
- [55] The Appellant submits that the Hearing Officer denied the Appellant procedural fairness by (i) failing to exclude hearsay evidence, namely BZ’s evidence; (ii) failing to order the production and disclosure of third-party documentary evidence, namely an investigative brief written by the Office of the Independent Police Review Director (“OIPRD”); and (iii) limiting the cross-examination of a witness.

(ii) Admission of Hearsay Evidence

[56] The Appellant submits that the Hearing Officer was required to exclude hearsay evidence noting in their submissions that “[h]earsay evidence is presumptively inadmissible” because of the difficulty in testing its reliability. The Appellant asserts that the Hearing Officer did not address the principles of substantive and procedural reliability, did not conduct an analysis of whether BZ’s statement had any indicia of inherent trustworthiness or the circumstances it was made.

[57] The Panel respectfully disagrees with the requirement to exclude hearsay evidence. Section 15 of the SPPA permits hearsay evidence to be introduced so long as it is relevant and not unduly repetitious. There was no error in permitting the introduction of this evidence at the hearing.

[58] The evidence at question here is BZ’s evidence that she obtained from her young child who witnessed the assault by the Appellant to SRM. The child told BZ about it and demonstrated the actions of choking to BZ.

[59] The Hearing Officer allowed the evidence and found that BZ was able to clearly describe the statements and demonstration her child relayed to her. BZ’s evidence was subject to cross-examination. The Hearing Officer did not find BZ to be evasive. On the contrary, the Hearing Officer found that BZ’s actions were reasonable and supported her credibility and reliability as a witness.

(iii) Production of Third-Party Records

[60] The Appellant submits that the Hearing Officer erred by failing to order the production and disclosure of an Investigative brief in relation to BZ’s involvement in an unrelated criminal court matter.

[61] The Respondent submits the Hearing Officer’s decision to deny the motion was reasonable. The Respondent asserts that the Hearing Officer thoroughly analyzed the relevance of the records and determined that they were not relevant.

[62] Administrative law proceedings are governed by the principles of procedural fairness and natural justice. Criminal law disclosure principles do not apply to administrative tribunal proceedings. *Mulligan (No. 2) v. Ontario Provincial Police*, 2018 ONCPC 5 at para 21.

[63] The Hearing Officer reviewed the relevance of the brief that was being requested. The Hearing Officer indicated that there was “no information which may lead one to

believe that the file contains material to challenge” BZ’s credibility and reasonably found that the information being sought would not add any more detail than what was already in the possession of the Appellant. The Hearing Officer also found that the “[d]eleterious effects of disclosure far outweigh the salutary effects. Routine disclosure of these OIPRD files would undermine confidence in the OIPRD” and “would significantly undermine the mandate of the OIPRD.” The Hearing Officer also found that as the Appellant was not able to point to a specific piece of information and instead seeks to obtain the entire file, it is in the hopes of locating anything which may possibly be useful.

[64] The Hearing Officer took a reasonable approach in finding that the test for the production of documents was not met and denied the motion for the production of documents. The Hearing Officer has the ability to control its own processes. We find the Hearing Officer’s determinations were reasonable and are not satisfied that they erred with respect to the conclusion to not order the production of the document.

(iv) Limiting the Cross-Examination of BZ

[65] The Appellant submits that the Hearing Officer erred by limiting the cross-examination of BZ. The Hearing Officer permitted BZ to be cross-examined on a July 11, 2017 statement, but not on a May 9, 2017 statement. The Appellant submits that this made the hearing procedurally unfair.

[66] Section 10.1 of the SPPA allows a party to a proceeding to call and examine witnesses and conduct cross-examinations of witnesses at the hearing reasonably required for a full and fair disclosure of all matters relevant to the issues in the proceeding.

[67] The Appellant notes that limiting cross-examination does not, in and of itself, amount to a denial of procedural fairness, however a limitation may lead to a procedurally unfair hearing.

[68] The Appellant noted that the May statement related to communication between the Appellant and BZ, concerned the CAS investigation as well as the acrimony between BZ and the Appellant. The Appellant submitted that it was directly relevant to BZ’s motive to fabricate and directly relevant to her credibility.

[69] The Hearing Officer’s decision to limit cross-examination on the May 9, 2017 statement was reasonable. The statement was a document from another prosecution and was contrary to the deemed undertaking rule and the PSA. The Hearing Officer has discretion to control its process. In making their ruling, the Appellant was not denied procedural fairness, in that they were still able to cross-examine the witness to

assess their credibility and their motive to fabricate. The Hearing Officer's decision was reasonable.

(v) Conclusion on Misconduct

[70] We find that, considering the reasons as a whole and the record that was presented to the Hearing Officer, we find no reviewable error in the conclusion that the Appellant, based on clear and convincing evidence, committed discreditable conduct under s. 2(1)(a)(xi) of the Code of Conduct. The Appellant was afforded procedural fairness, and the Hearing Officer did not commit a material misapprehension of the evidence and arrived at a conclusion that was reasonably open on the evidence presented.

B. Penalty Appeal

[71] The Hearing Officer began his disposition analysis by presenting relevant considerations in assessing an appropriate penalty disposition. In particular, the Hearing Officer, noting the parties both referenced several of these principles, identified the five governing foundation principles that govern the process of determining an appropriate disposition:

1. Compliance with the purposes of the police complaint and discipline process
2. Corrective dispositions should prevail, where appropriate
3. Presumption of the lowest disposition
4. Proportionality
5. Higher standard applicable to the constabulary

[72] The Hearing Officer recognized that "dismissal is the most severe penalty, attracting negative consequences which include financial and reputational issues for the officer." He was also aware "of the public's expectation, and that an employer must protect and maintain the confidence in its police service." He "carefully considered and balanced the need for corrective measures against those of dismissal," and understood that proportionality requires that he "identify all applicable disposition factors which are relevant in the matter, determine whether the relevant factors are mitigating, aggravating or neutral and then weigh those application considerations appropriately."

[73] He considered the following 11 disposition factors that he found were relevant:

1. Public interest
2. Employment history
3. Potential to reform or rehabilitate.
4. Seriousness of the misconduct
5. Damage to the reputation of the police force

6. Specific and general deterrence
7. Effect on police officer and police officer's family
8. Procedural fairness
9. Disability and other relevant personal circumstances
10. Recognition of the seriousness of the misconduct
11. Consistency of disposition

[74] The Appellant submits that the Hearing Officer made the following errors in deciding to impose a penalty of dismissal. The Appellant indicates that the Hearing Officer made the following errors when deciding that dismissal was the appropriate penalty:

1. that the penalty was harsh and excessive in the circumstances
2. erred in finding that the need for deterrence was an aggravating factor.
3. applied the wrong standard of proof to a mitigating factor.

[75] The Respondent submits that the Hearing Officer appropriately considered the relevant disposition factors and did not err in imposing a penalty of dismissal.

[76] In reviewing the Hearing Officer's reasons and the alleged errors in his analysis we are to bear in mind that our role is not to second-guess the Hearing Officer, whose assessment of and weight given to the factors is entitled to deference. Also, none of the disposition factors are paramount over the others and the factors are intended to be "flexible, contextual and may evolve over time": see *Husseini v. York Regional Police Service*, [2018 ONSC 283](#) (Div. Ct.).

[77] We find no error in the disposition imposed and no basis upon which to interfere. The Hearing Officer identified and applied the relevant dispositional principles, appropriately considered the aggravating and mitigating factors, addressed parity, and imposed a penalty that was within the range of reasonable outcomes based on the facts of this case. Our role is not to reweigh those factors.

(i) Was the penalty imposed harsh and excessive?

[78] Consistency in penalty dispositions is an important factor for a hearing officer to consider. However, it is just one of the factors to be considered, and none should be given greater priority over others. *Krug and Ottawa Police Service*, 2003 CanLII 75460 (ON CPC). It is incumbent on a hearing officer to consider and weight the disposition factors that were relevant.

[79] The mere fact that there were cases that offered lesser penalties is not necessarily determinative of a resulting penalty. The Hearing Officer must consider the appropriate penalties as related to the specific facts of the case. The penalties

themselves may shift over time. Consistency in penalty should not be applied in a way that results in penalties being frozen in time. Responses to misconduct should bear some connection to societal norms.

- [80] Given the specific facts of this case, including for instance, the factors considered by the Hearing Officer, and the penalties imposed in similar circumstances a sanction of dismissal was within the reasonable range of outcomes. It was neither harsh, excessive, or out of proportion regarding the unique facts of this case.
- [81] The Hearing Officer recognized that “the penalty of dismissal is the ultimate penalty. It should be reserved for the most serious offences committed by a police officer,” and that a single act of egregious misconduct can lead to a penalty of dismissal.
- [82] The Hearing Officer reviewed the caselaw related to acts of assault and related dispositions. The Hearing Officer reasonably reviewed the case law that imposed demotion and distinguished them due to the nature of offence, the impact, and various other distinguishing elements.
- [83] In contrast, the Hearing Officer noted that the facts of this case were different which he concluded warranted a penalty of dismissal. In reviewing the specific facts of this case, the Hearing Officer considered elements including the gravity of the offence, the resulting injuries to the victim, and the impact to the children who observed their father engage in this act against his domestic partner. The seriousness of intimate partner violence was a significant factor and the impact to the police service by continuing to employ the Appellant was considered when determining the penalty of dismissal.
- [84] The Hearing Officer found that the seriousness of the Appellant’s misconduct, “specifically the viciousness of the assault, the bodily harm caused and committing the act in the presence of two children are so significant that they alone would suffice grounds for dismissal.”
- [85] The Hearing Officer went on to also consider the Appellant’s progress and his “potential for reform with participation in AA and evidence that he is currently trying to address his mental health issues. Both issues are serious and require constant attention to prevent a relapse or a further breakdown of one’s mental state.”
- [86] The Hearing Officer acknowledged the Appellant’s corrective measures but noted that he was “not entirely convinced that the results in this relatively short period of time ensure that [the Appellant] is an ideal candidate for rehabilitation.” The Hearing

Officer reasonably noted that “an officer’s capacity to reform is only one facet of the usefulness test.”

- [87] Moreover, in considering the Appellant’s health related matters and ability to rehabilitate, the Hearing Officer reasonably noted that there were two incidents involving two separate intimate partners with increased severity, within two years of each other, and that this called into question the Appellant’s ability to rehabilitate.
- [88] It is not contested that intimate partner violence is not tolerated. The Hearing Officer reviewed caselaw, analyzed the particulars of this intimate partner violence, the specific aspects of the Appellant, and all factors considered relevant to the particular case. The Hearing Officer noted that based on the aggravating factors, which he found significantly outweighed any mitigation, together with the public’s condemnation of intimate partner violence that a disposition other than dismissal would place the public confidence in the TPS in jeopardy. The Hearing Officer noted that the Appellant’s usefulness to the TPS had been annulled. Having regard to all factors, the Hearing Officer found that dismissal was a proper disposition.
- (ii) Whether the Hearing Officer erred in finding that the need for deterrence was an aggravating factor?
- [89] The Hearing Officer did not err in their characterization of whether factors were considered aggravating or mitigating. It is up to the Hearing Officer to make those determinations based on their findings of fact.
- [90] The Hearing Officer agreed that with the prolonged process and the Appellant’s understanding of the seriousness of their misconduct, that the effect of specific deterrence was accomplished. The Hearing Officer noted that specific deterrence in this case was an aggravating factor but at the very low end due to the passage of time. He noted that the “misconduct occurred in 2017, with another PSA conviction for an intimate partner related incident in 2015. Although those two incidents were relatively close in time, there have been no other intimate partner related occurrences since 2017 ... The officer is attending AA and ... is also looking to address his mental illness. The case before this Tribunal has gone on for seven years from the occurrence ... coupled with the fact that there have been no further incidents, permits me to agree that this entire process has had somewhat of a deterrent effect on the officer.”
- [91] The Hearing Officer found that “general deterrence in this case should be considered an aggravating factor at the higher end of the spectrum.” In considering the general deterrence aspect of the misconduct, the Hearing Officer understood that general

deterrence is important so that other officers know that intimate partner violence is not tolerated.

[92] The Panel finds the Hearing Officer's finding of deterrence being aggravating was reasonable. In determining the general deterrence factor, the Hearing Officer reasonably noted that:

Our police officers are to enforce the laws related to intimate partner violence and protect the victims. Being accused and found guilty of misconduct related to intimate partner violence flies in the face of the duty our police have. Many officers have been accused and found guilty of intimate partner violence in the past, yet we continue to have new cases across Ontario each year. This Tribunal has a role in recognizing the unacceptability of intimate partner violence and deterrence is a legitimate objective for other sworn officers. Conduct of this nature must be denounced by significant sanctions to discourage other officers from repeating it.

[93] The Hearing Officer understood and considered the relevant factors that are to be considered in determining an appropriate disposition in discipline matters. The factors were summarized in the decision, and such factors may either be mitigating or aggravating.

[94] The Hearing Officer understood that there is no requirement that any one factor be given more weight than another. The seriousness of the offence alone may justify dismissal. Aggravating factors can serve to diminish the weight of any mitigating factors, and factors within each sector can be determined to be more or less aggravating or mitigating, as the case may be.

[95] Our role is to assess whether or not the Hearing Officer fairly and impartially applied the relevant factors or sentencing principles to the case before them. Where there is a manifest error in principle or the proper factors are not considered, we may vary a disposition. However, this is not and should not be lightly done. *Krug v. Ottawa Police Service*, 2003 ONCPC 1 (CanLII).

(iii) Whether the Hearing Officer applied the wrong standard of proof to a mitigating factor?

[96] The Hearing Officer applied a reasonable standard of proof to a mitigating factor.

- [97] In addressing the Appellant’s disability and other relevant personal circumstances, the Hearing Officer reviewed the evidence in its entirety to determine that this factor was neutral.
- [98] The Hearing Officer noted that the alcoholism appeared to have been addressed through AA started in 2022. In relation to the Appellant’s diagnosis of PTSD, the Hearing Officer noted that the Appellant was diagnosed by a psychologist who stated that the Appellant “was not under his care in 2017, but that it was probable he was suffering from PTSD at that time.” The Hearing Officer acknowledged the diagnosis, looked at the totality of the event to assess whether a dismissal was warranted. The Hearing Officer noted that the Appellant has been in AA since 2022, and that he had consumed alcohol prior to the incident, and clearly noted that alcohol was not the cause, but that “alcohol consumption may have aggravated the situation.”
- [99] The Hearing Officer was guided by the words in *Guilick v. Ottawa (City) Police Service*, where the Ontario Divisional Court stated, “it is not sufficient that medical issues exist, there must be a clear nexus between the disorder and the misconduct that occurred.” Moreover, the Hearing Officer noted that the court in *Guilick* concluded, “there was some evidence that the applicant was addicted to alcohol and some medically prescribed drugs. There was also some evidence that the applicant was suffering from post traumatic stress disorder. However, there was no evidence that any of those conditions rendered him unable to perform any aspect of his job description.”
- [100] Considering the principles noted in *Guilick*, the Hearing Officer considered the facts of the case noting particularly that there was no evidence to absolutely substantiate or corroborate the alcohol and PTSD symptoms in 2017, and that even if one would accept he suffered from alcohol abuse and/or PTSD at the time of the incident, a clear nexus lacked between the illnesses and the misconduct.
- [101] The Hearing Officer reasonably considered the evidence presented to assess how the evidence would be applied to *the respective factors being considered*. In relation to the Appellant’s alcoholism and PTSD diagnosis, the Hearing Officer found that despite the evidence presented by the Appellant, the “misconduct was not the result of immediate provocation or a crisis. The officer and victim, picked up the two children, walked back to their room and once there for several minutes, the officer commenced the attack on the victim.” The Hearing Officer explained why they found the Appellant’s disability and other relevant personal circumstances factor to be neutral. The Hearing Officer noted that he required “some expert evidence or material to establish a clear nexus between the disability or personal circumstances, and the

mitigation called to question. It is well settled that disability can offer an explanation but not an excuse for the misconduct. Absent this excuse, mitigation cannot apply.”

[102] The Hearing Officer considered the factors in a reasonable manner. Reading the decision as a whole, the reasoning reflects a rational and proportionate approach to parity. The penalty order that the Appellant “resign within seven days or face dismissal from employment” as set out pursuant to section 85(1)(b) of the *Police Services Act*, was within the range of reasonable outcomes available to the Hearing Officer. We find that the Hearing Officer did not make such errors in principle that would justify our interfering with the penalty imposed.

C. CONCLUSION

[103] The Panel finds no reviewable error in either the Misconduct Decision or the Penalty Disposition. The Hearing Officer applied the proper legal framework, conducted a hearing that was procedurally fair, reached findings that were reasonably open on the record, and imposed a penalty that was within the range of reasonable outcomes.

[104] It is not open to the Panel to now reweigh the evidence or the disposition factors to achieve a different result.

D. ORDER

[105] Pursuant to s. 87(8)(a) of the PSA we confirm the finding of misconduct and the disposition made by the Hearing Officer.

[106] The appeals are dismissed.

Released: May 1, 2026

Jeanie Theoharis
Adjudicator

Barry Fisher

Adjudicator

**Emily Cole
Adjudicator**