

**THUNDER BAY POLICE SERVICE DISCIPLINE HEARING
IN THE MATTER OF ONTARIO REGULATION 268/10**

**MADE UNDER THE *POLICE SERVICES ACT*, RSO 1990,
AND AMENDMENTS THERETO;**

IN THE MATTER OF

THUNDER BAY POLICE SERVICE

AND

STAFF SERGEANT SHAWN HARRISON #601

**NEGLECT OF DUTY &
DISCREDITABLE CONDUCT**

DISPOSITION

Before: Superintendent (Ret.) Greg Walton

Counsel for the Prosecution: Mr. Joel Dubois
Ms. Veronica Blanco Sanchez

Counsel for the Defence: Mr. David Butt

Public Complainant: Mr. Brad DeBungee
Mr. James Leonard

Represented by: Ms. Asha James
Ms. Amanda Micallef

Hearing Dates: November 29, 30, 2022

BACKGROUND

At the time of this misconduct, Staff Sergeant Harrison held the rank of sergeant. He was later promoted to the rank of staff sergeant and is referenced accordingly throughout this disposition decision for ease of reference.

Staff Sergeant Harrison was charged with two counts of misconduct. Following an eight-day hearing, I found Staff Sergeant Harrison guilty of neglect of duty and discreditable conduct in a decision dated July 19, 2022. I need not repeat my findings in full at this time, they are summarized under the heading of Nature and Seriousness of the Misconduct to follow. In brief, I concluded Staff Sergeant Harrison held a duty and failed to perform that duty without lawful excuse. I also determined Staff Sergeant Harrison was affected by an unconscious bias, which resulted in him failing to treat the Stacey DeBungee sudden death investigation equally, without discrimination with respect to police services because of Stacey DeBungee's Indigenous status. The resulting negligent investigation was so deficient, that Staff Sergeant Harrison should have been aware that his conduct was adversely affected by his unconscious bias.

Of note, this disposition decision refers to the Broken Trust report and the Sinclair report. The Broken Trust report was drafted by the Office of the Independent Review Director in 2018 because of the complaint filed by Brad DeBungee and James Leonard. It can be found at tab 64 of Exhibit #7A. The Broken Trust report documented a systemic review of the Thunder Bay Police Service addressing the issue of racism. The Sinclair report was also released in 2018 and can be found at tab 65 of Exhibit #7A. Senator Murray Sinclair led and directed an investigation examining the relationship between the Thunder Bay Police Service Board's relationship with the Indigenous community.

The two-day disposition hearing was held in-person in Thunder Bay while being live streamed on You Tube.

Positions on Penalty

Mr. Joel Dubois and Ms. Veronica Blanco Sanchez represented the Thunder Bay Police Service as prosecutors. The Prosecution submitted the appropriate sanction was a two-year demotion as follows: that Staff Sergeant Harrison be demoted from the rank of staff sergeant to constable for a period of one year, then elevated to sergeant for another year and ultimately, returned to the rank of staff sergeant.

Ms. Asha James and Ms. Amanda Micallef represented the public complainants, Mr. Brad DeBungee and Mr. James Leonard. They took the position that Staff Sergeant Harrison's

usefulness to the Thunder Bay Police Service has been nullified and his employment ought to be terminated.

Staff Sergeant Harrison was represented by Mr. David Butt. Mr. Butt submitted the dismissal of Staff Sergeant Harrison is not at all warranted, nor is demotion to the rank of constable. Mr. Butt submitted that a more fitting sanction is a demotion in one rank, from staff sergeant, to sergeant, for a term of three to six months. Mr. Butt and the Prosecution agreed that a training component ought to accompany the sanction regardless of the term of demotion imposed.

Decision

The evidence was clear and convincing and as such, I found Staff Sergeant Harrison guilty of neglect of duty and discreditable conduct. The purpose of this disposition hearing is to determine the appropriate penalty. The sanction imposed must strike a balance between community expectations, fairness to Staff Sergeant Harrison, and the needs of the Thunder Bay Police Service.

I find that Staff Sergeant Harrison's usefulness to the Thunder Bay Police Service has not been annulled, nor do I find it necessary that Staff Sergeant Harrison be demoted to the rank of constable. A fitting sanction is a demotion in rank from staff sergeant to sergeant for a term of 18 months. At the conclusion of that term, he is to be returned to the rank of staff sergeant provided his disciplinary record remains unblemished. Additionally, Staff Sergeant Harrison is to receive Indigenous Cultural Competency Training, to be completed within three months of the release of this decision.

REASONS

Prosecution Witnesses

The Prosecution called three witnesses. I wish to thank all counsel for the manner in which they managed the testimony of the individuals who were called to provide victim impact evidence. Counsel and I permitted the witnesses to delve somewhat into areas not ordinarily considered appropriate for victim impact statements; this allowed for prospective, therapeutic testimony. In this decision, I did not include a comprehensive overview of all evidence heard, I focused on the aspects deemed most relevant to this proceeding.

The matter of *R. v C.C.*, 2018 ONCJ 542, was not provided to me by Counsel, but I reference it simply because it provides reasonable guidance pertaining to victim impact statements. The Court stated:

Obviously, the contents of the Victim Impact Statements may have some influence on the determination of a fit sentence. The Ontario Court of Appeal aptly observed in *R. v A.G.*:

...it is not an error in principle for a sentencing judge to determine that the impact of the crime on a victim, as described in a victim impact statement, is an aggravating factor. If it were otherwise, victim impact statements would have limited utility and the mandate to consider them as part of the sentencing process found in section 722 of the *Criminal Code* would be rendered meaningless.

...The sentencing provisions of the *Criminal Code* recognize this ability and permit judges to simply disregard any irrelevant information contained in the statements. This authority to disregard the inadmissible or irrelevant does not mean that there are no limits to the contents of a victim impact statement... Before the amendments to the *Code* allowing judges to disregard the irrelevant, in the decision of *R. v McDonough*, Justice Durno directed that victim impact statements should not contain certain information and he emphasized the important role that the Crown plays in assisting victims with properly preparing and circumscribing these statements:

There are other comments that appear all too frequently in victim impact statements that do not describe the harm done by or loss suffered as a result of the Commission of the offence.

The testimony of the prosecution witnesses is relevant to this proceeding, but it is important that I disabuse my mind from any portions of the victim impact statements that did not relate to the assessment of the harm caused by Staff Sergeant Harrison's behaviour. For example, the witnesses referred to how Stacey DeBungee's death has touched their lives. Undoubtedly, Stacey DeBungee's death has had devastating effects on the lives of many, but I cannot be influenced by that because Staff Sergeant Harrison is not responsible for his death. Instead, I must focus on the behaviour of Staff Sergeant Harrison with consideration given to how it has affected the Stacey DeBungee death investigation and the community.

To follow is a summary of prosecution witness testimony.

Testimony of James Leonard

Mr. Leonard was the Chief of Rainy River First Nations at the time of this matter. He testified from the perspective of a public complainant, and as a senior Indigenous community leader; Mr. Leonard had been given authority to speak on behalf of the Chiefs in Council, representing the community.

Mr. Leonard testified that he had been personally impacted by the death of Stacey DeBungee, but also, by not knowing what happened to him. Mr. Leonard explained his desire to understand how Stacey DeBungee died had created a void. Mr. Leonard testified that there is an ongoing discussion among community members, continuously questioning what happened to Stacey DeBungee. Mr. Leonard noted that neither he nor the community were given those answers in this process; he and the community are no further ahead today than they were in 2015. Mr. Leonard explained that this hearing process provided no sense of closure.

Mr. Leonard stated that complacency has draped over the Indigenous community now, they have succumbed to the notion that nothing will happen as a result of this hearing. He explained that the community has taken the position “that nothing ever changes so why bother?” Mr. Leonard stated the community has a feeling of “defeatedness.”

Mr. Leonard testified that the guilty findings provided some positivity, but they did not provide the community with what they deserve; the knowledge and understanding of exactly what happened to Stacey DeBungee, having such knowledge would allow the community to move forward.

Of note, prior to the commencement of the hearing and this disposition hearing, an Elder greeted the tribunal as part of an opening ceremony. An Elder provided commentary in welcoming the tribunal and its participants and also offered closing comments.

Mr. Leonard explained that community members still have a sense that they are not welcome in Thunder Bay. Prior to the hearing commencing, the tribunal was addressed by an Elder from the community, Elder Bella. Mr. Leonard testified that Elder Bella was afraid to attend the tribunal which was being held in downtown Thunder Bay, because she did not feel safe; a feeling shared by many in the Indigenous community. Mr. Leonard testified that members of his community feel afraid when they attend Thunder Bay, himself included. Mr. Leonard testified that he did not wish to attend this tribunal, he did, only because he was asked to do so by the current Rainy River First Nations Chief. Mr. Leonard stated that he would not turn to the Thunder Bay Police Service for assistance; he does not feel safe, or wanted, in Thunder Bay.

Mr. Leonard explained that the guilty findings in this matter were encouraging to the community, but there is still a feeling of disgust; the mistrust remains and will be there for years to come.

Mr. Leonard explained this incident is just another example of how the Indigenous community has been ill treated over the years. He stated he is not a defeatist; he sees good in the world but it is difficult to expect that anything in his community will change when they have been wronged, repeatedly, over hundreds of years; he held little hope for improvement.

Testimony of Candace DeBungee

Ms. DeBungee is the older sister by two years of Stacey DeBungee. She described Stacey as being a fun, easy going guy who would help anyone in need, her confidant, and best friend.

Ms. DeBungee explained how her life has been, and how it will remain dramatically affected by the death of her bother; she had a difficult time functioning in life since his death, often finding herself upset and crying. Ms. DeBungee asks the Spirits daily what happened to her brother.

Ms. DeBungee explained her disappointment in the Thunder Bay Police Service for not doing anything to determine what led to her brother's death. Ms. DeBungee explained that she held out hope that this tribunal would lead to change, but she did not expect it to occur because nothing ever changes; the Indigenous community is always treated poorly.

Ms. DeBungee explained that a community makes a family, and police are part of that community. She noted that the police are supposed to protect family, but there was no such protection in Thunder Bay. Ms. DeBungee explained that the Thunder Bay Police Service did nothing to find out what happened to her brother, and not knowing the truth has been torture for her. Ms. DeBungee testified that the very people who were supposed to protect her bother, did not do their job. Ms. DeBungee explained that in her opinion, Stacey did not drown, there was another, unknown cause which led to his death.

Testimony of Brad DeBungee

Brad DeBungee is the brother of Stacey. Mr. DeBungee stated that since the death of his brother, his relationships with his family, including his partner, kids, and grandkids, have been strained. He explained that since Stacey's death, he is known as "the guy from the news" and has been unable to obtain employment in the city of Thunder Bay as a result.

Mr. DeBungee testified that although the guilty findings mean Staff Sergeant Harrison will be held accountable for his actions, he still has no trust in the Thunder Bay Police Service. Mr. DeBungee explained that when he went to Staff Sergeant Harrison, he was lied to, and consequently, he does not trust him. Mr. DeBungee stated that he feels like a “target” in the eyes of the Thunder Bay Police Service as a result of his complaint and as a result, he no longer enjoys coming to Thunder Bay.

Defence Witness

The affidavit of Staff Sergeant Harrison is found at tab 7 of Exhibit #26 (Defence Book of Documents) wherein he stated:

In anticipation of submissions on penalty, I have prepared a document outlining investigative summaries of my involvement in cases which involved Indigenous victims (and one case relating to a victim who was a child of Asian descent)...

Of note, the affidavit contained in Exhibit #26 has been redacted. The unvetted version has been marked as Exhibit #27 and sealed because the document contains personalized information that could needlessly identify victims via a Freedom of Information request.

Ms. James submitted that the affidavit was of little assistance to the tribunal if Staff Sergeant Harrison could not be cross-examined on its content. Staff Sergeant Harrison gave evidence as it pertained to the content of the affidavit and other periphery issues.

Testimony of Staff Sergeant Harrison

Staff Sergeant Harrison’s affidavit contains a summary of 40 cases that he worked on in various roles, ranging in time from 2008 to 2016. The document addresses 39 cases involving Indigenous victims, and one matter involving a victim of Asian descent. Staff Sergeant Harrison testified that he was being truthful when drafting the affidavit.

Staff Sergeant Harrison testified that the case summary ends in 2016 because that year he was promoted to staff sergeant and assigned roles such as “Watch Commander,” and in the Intelligence Unit; he was no longer assigned to investigate criminal offences. Staff Sergeant Harrison explained that a Watch Commander is responsible for supervising all police officers and civilian staff working a particular shift; there is always a Watch Commander working. He noted that according to the Thunder Bay Police Service Board’s strategic plan, there are approximately 23,000 Indigenous people living in the city of Thunder Bay but suggested that the actual population could be significantly greater. His role as Watch Commander includes supervising the overall policing of the city of Thunder Bay.

Exhibit #26 includes documents such as annual performance appraisals. At tab 6, is a document titled NCO and Civilian Manager Competency Profile. Page two contains a note from Inspector Ryan Gibson which appears to document his failure to ensure a report was thoroughly completed. Staff Sergeant Harrison testified that he did not recall that specific incident but suggested the comment related to him failing to ensure that a box was struck on a report.

Staff Sergeant Harrison testified that in each of the 40 cases summarized in his affidavit, he did his job. In cross-examination, he agreed that incidents numbered 29 and 36, were reinvestigated. This was documented in the Broken Trust report. Staff Sergeant Harrison agreed that he did not highlight the fact that these two investigations were subject to having been re-investigated but denied the assertion he was trying to hide that fact; if he were trying to hide that, he would not have included them in his affidavit.

Ms. James read pages 149 to 151 from the Broken Trust report. It is a summary of an investigation and in part, states:

Based on police adequacy standards for the province of Ontario, including the requirements of the criminal investigation management plan, this investigation was incomplete and should be re-investigated.

Staff Sergeant Harrison acknowledged the above noted summary related to incident #9 listed in his affidavit. He agreed that the below noted summary found at page 113 of the Broken Trust report, related to investigative summary #36 from his affidavit. The Broken Trust report in part, reads:

Based on the OIPRD [Office of the Independent Review Director] interview of the lead investigator, it was obvious that over reliance was placed on the opinion of the coroner throughout the investigation. There also appeared to be little or no consideration of whether the documented injuries to Ms. E.F. could have contributed to her loss of consciousness, though not themselves fatal. This is yet another case in which police focused only on whether the injuries were themselves fatal. This death should be the subject of reinvestigation.

Analysis

In *O'Farrell and Wlodarek v. Metropolitan Toronto Police Force*, 1976 ONCPC 3 (CanLII) the Commission stated:

In Ontario, and in particular in Metropolitan Toronto, there is a multi-racial society, and our current laws are framed to ensure that the human rights of all our citizens, regardless of their racial origin, colour or creed, are not infringed or prejudiced. As upholders and guardians of the law, the police have an extremely high standard of

behaviour enjoined upon them as individuals to exhibit no racial prejudice, either while on or off duty. The behaviour of the police constable must be exemplary and conformed to the high standards of his profession.

This excerpt from 1976 remains relevant today, even more so in the Thunder Bay region. In this matter, the misconduct in question was serious; Staff Sergeant Harrison exhibited bias when he neglected his duty. Consequently, he did not adhere to the high standards of his profession and the fact he was a supervisor, increases the seriousness of his misconduct; it was his responsibility to ensure that a comprehensive investigation was held into the sudden death of Stacey DeBungee.

There is a significant disparity in the positions taken by Counsel in respect to disposition; dismissal, versus a demotion in rank from between three months and two years. Before I delve into the penalty factors that will help determine an appropriate penalty, I will first consider the circumstances which must exist for a police officer to be dismissed from employment.

In the matter of *Williams and Ontario Provincial Police* (1995), ONCPC 8, the Commission stated:

The assertion that Constable Williams can be useful or an asset to the Ontario Provincial Police after a finding of misconduct is argued by his counsel with reference to a number of prior decisions. For this to be the case though, three elements must be considered with reference to these cases: the nature and seriousness of the misconduct, the ability to reform or rehabilitate the officer, and the damage to the reputation of the police force that would occur should the officer remain on the force.

I was not provided the matter of *Favretto v. Ontario Provincial Police*, 2002 CanLII 76732 (ON CPC), but it is often relied upon as guidance in matters where dismissal of a subject officer is being considered. The Commission stated:

Dismissal should be reserved for the most egregious offences which nullify the usefulness of the officer and cause serious damage to the reputation of the police service.

As was noted in *Re Trumbley et al, and Fleming et al*, (1986), 55 O.R. (2d) 570 Ont. C.A.) at 589:

The basic object of dismissing an employee is not to punish him or her in the usual sense of this word (to deter or reform or, possibly, to exact some form of modern retribution) but rather, to rid the employer of the burden of

an employee who has shown that he is or she is not fit to remain an employee.

For reasons which will be explained in this decision, I do not find that the misconduct was so egregious that it warrants dismissal, nor do I find that Staff Sergeant Harrison's continued employment would be a burden on his employer. I do not find that the damage that would occur to the reputation of the Thunder Bay Police Service if he were to remain in their employ would be so damaged, that it cannot be saved. I am satisfied that following a significant sanction, one which includes training and education, Staff Sergeant Harrison can be an asset to the Thunder Bay Police Service.

In the matter of *Krug v. Ottawa Police Service*, (2003), ON CPC 1, CanLII, the Commission reiterated this position, and added:

This Commission in previous cases has identified various matters that [it] must take into consideration when determining penalty. Paul Ceysens, at page 5-129 of "Legal Aspects of Policing" summarized the factors which may be either mitigating or aggravating as follows:

1. public interest;
2. serious of the misconduct;
3. recognition of the seriousness of the misconduct;
4. employment history;
5. need for deterrence;
6. ability to reform or rehabilitate the police officer;
7. damage to the reputation of the police force;
8. handicap and other relevant personal circumstances;
9. effect on police officer and police officers' family;
10. management's approach to the misconduct in question;
11. consistency of disposition;
12. financial loss resulting from unpaid interim administrative suspension;
13. effect of publicity.

The Commission noted that there is no requirement that any one factor be given more weight than another, the seriousness of the misconduct alone for example, may justify dismissal. Aggravating factors can serve to diminish the weight of any mitigating factors.

As noted, in some instances, the seriousness of misconduct alone can be so egregious as to cause irreparable harm to the police service if the officer were to remain employed. Ms. James submitted this is one of those cases. She questioned how the community could possibly have confidence in Staff Sergeant Harrison's ability to conduct his duty free of bias and stereotypes in the future and suggested that any sanction less than

dismissal would be untenable. Consequently, any potential to reform is surpassed by the seriousness of misconduct.

I do not agree with the position taken by Ms. James for reasons which will follow, but most importantly, I do not find that the seriousness of misconduct rises to the level which warrants dismissal. Staff Sergeant Harrison did not exhibit overt gestures or acts of racism, nor is there evidence that the misconduct in question was a pattern of behaviour. Furthermore, there is little evidence to support the assertion that Staff Sergeant Harrison cannot reform, in fact, considering the length of time that he has been dealing with this matter, I find it unlikely he will commit misconduct of this nature in the future; I expect it more likely that he will continue to be a productive and valued employee as he has since the time of this misconduct. I do not accept that he has a fundamental character flaw that prevents him from continued employment as a police officer.

As documented in the annotated *Police Services Act*:

The jurisprudence has generated five foundation principles that govern the process of crafting an appropriate disposition when an allegation of misconduct is proved.

The first principle is that the disposition should fully accord with the purposes of the police discipline process, which are as follows: the employer's interest in maintaining discipline in the workplace; the rights of a respondent police officer suspected of misconduct being treated fairly; the public interest: ensuring a high standard of conduct in the constabulary, and public confidence in the constabulary...

The second principle which flows from the move towards a more remedial philosophy, as noted above, dictates that a corrective disposition should take precedence over a punitive disposition, where possible.

The third principle is the presumption of the least onerous disposition, which presumption would be displaced if the public interest or other specified considerations should prevail.

The fourth principle is proportionality, requiring that the tribunal consider all applicable mitigating and aggravating considerations, and then weigh those applicable factors appropriately.

The fifth principle is that the law holds police officers' conduct to a higher standard, compared to other employees...

It is a fundamental proposition that a disposition must be proportionate to the misconduct given due regard to those special considerations applicable to service in the police force. Proportionality is arguably the most complex of the five principles that govern the process of crafting an appropriate disposition and requires three decisions:

1. First, a decision maker must identify which disposition considerations are relevant to the matter in question.
2. Second, a decision maker must determine whether the relevant disposition considerations are mitigating or aggravating or neutral.
3. Third, a decision maker must properly balance or appropriately weigh the identified relevant considerations in accordance with the factual background of the matter and the competing interests. Thus, a decision maker must give proper weight to the relevant factors in a particular case and a proper balance is of utmost importance... There is no requirement that any one factor be given more weight than another and no requirement to give all factors equal weight...

In determining the most fitting sanction, I must be guided by the above noted principles. Staff Sergeant Harrison must receive the least onerous disposition available, and I note, a corrective disposition ought to be imposed, if possible, if that disposition is consistent with previous, similar fact matters.

Since the *Krug* decision in 2003, the list of penalty factors to be considered in *Police Services Act* disciplinary tribunals has expanded. To determine an appropriate sanction in this decision, I will address the disposition factors considered relevant by Counsel and/or by this tribunal. I will determine whether each of the individual factors is aggravating, mitigating, or neutral, and ultimately, I will determine the appropriate weight to be applied to each factor considered.

One of the penalty factors for consideration is consistency of penalty. It is understood that wherever possible, a sanction ought to fall within the range of penalties available, the range established based on cases involving similar facts. This is often referred to as, "consistency of penalty is the hallmark of fairness."

This case is unique, consequently, Counsel were unable to locate matters that closely mirrored the facts in this case as they relate to the issue of discreditable conduct. Because consistency of penalty will be of limited assistance pertaining to discreditable conduct, the importance of the remaining penalty factors is amplified.

Systemic Failure and Organizational/Institutional Context

Mr. Butt cited the matter of *Dinsdale and Ontario Provincial Police*, December 14, 2004, where the Commission stated:

Clearly Constable Dinsdale's conviction of neglect of duty requires a punishment. The punishment should not only befit him and his personal circumstances. It must take into account the systemic failure surrounding this accident investigation while keeping in context the consistency of his penalty with the joint submission and the penalty meted out to his supervisor at the time of the incident...

Mr. Butt submitted I must consider the broader context in which this misconduct occurred; pervasive systemic discrimination within the Thunder Bay Police Service. Mr. Butt noted that the Broken Trust and Sinclair reports make it very clear that there has been an ongoing, deep, and broad mistrust by the Indigenous community of the Thunder Bay Police Service. This episode of misconduct occurred in a pervasive system that has systematically failed Indigenous people for decades if not longer. Mr. Butt submitted Staff Sergeant Harrison was not the designer of those systems, he was merely working within that flawed system.

Mr. Butt described the pervasive failure of leadership that has existed in the Thunder Bay Police Service. He made note of the multiple chiefs of police that have led the Thunder Bay Police Service over the past seven years and highlighted the issues that they faced at times, including various charges. He submitted it clearly illustrates an utter lack of leadership. Mr. Butt cited a Globe and Mail article dated September 20, 2022. An expert panel had been established, they determined that a new chief of police and a new police services board were required immediately.

Mr. Butt expressed concern, stating that this disposition hearing cannot become a misguided attempt to address all of those deep seated, broad, long standing, systemic problems that flow from a lack of leadership by punishing one individual who had nothing to do with the design of those systems. I agree. I find it would be an error if I were to punish Staff Sergeant Harrison for anything other than his own behaviour; he cannot bear the brunt of leadership failures that existed at the time or over the years within the Thunder Bay Police Service. However, the investigation into the death of Stacey DeBungee was his responsibility, he was not being influenced by command staff when he purposely neglected to satisfy his duty as a police officer. My findings in relation to his behaviour, rest solely on his shoulders.

Mr. Butt emphasized the fact that no one, including the coroner, and Staff Sergeant Harrison's command staff, took issue with the decisions he made at the time. Mr. Butt

submitted Staff Sergeant Harrison was not a rogue actor, he was limited by the systems built around him; he cannot bear the sole blame for the systemic issues that existed at the time. Mr. Butt submitted I must resist the temptation to issue punishment as a means of fixing things; systemically, this is a fundamental problem that cannot be solved via retribution. Mr. Butt submitted the misconduct, in part is attributable to the systemic leadership failings that existed in the Thunder Bay Police Service.

I will not Staff Sergeant Harrison accountable for systemic issues, but he must be answerable for the decisions he made. I am not impacted by the fact that the coroner did not take issue with Staff Sergeant Harrison's decisions at the time; the decisions made were his responsibility, not that of the coroner. Supervisors must supervise. I accept that Staff Sergeant Harrison's mistakes could have been identified and corrected by a supervisor. Considering the systemic issues that reportedly permeated the Thunder Bay Police Service at the time perhaps it is not surprising that he was not questioned about the status of the investigation.

This is simply one penalty factor for consideration; Staff Sergeant Harrison must still be held accountable for his actions. In the matter of *Berger v. Toronto Police Service*, 2007 ONCPC 8 (CanLII), the Commission addressed the issue of an officer committing misconduct that was consistent with an "informal system" that involved many others, but "was a breach of the Rules and Regulations of the Service." The Commission noted:

In some parts of the Service, there appears to have been an ongoing practice of ignoring the scheduling rules for certain purposes. The reasons for this are outside the scope of our review, but the undisputed evidence before the Hearing Officer was that the misconduct which Sergeant Berger was charged was not isolated to his unit. Indeed it would appear that in certain places a climate of "don't ask, don't tell" existed or had existed for certain scheduling practices.

This does not condone Sergeant Berger's misconduct, but rather provides an important context that the Hearing Officer does not acknowledge in his decision.

I was particularly struck by Mr. Leonard's comments, noting that the community feels a sense of complacency and that nothing will change because of this disciplinary hearing. The Broken Trust and Sinclair reports provide context as to why the community would feel this way. The Broken Trust and Sinclair reports suggest that the misconduct that occurred in this matter may not be isolated, there is reason to believe in fact that it may have been commonplace. This does not suggest that it was appropriate for Staff Sergeant Harrison to behave in the manner he did, he must be held accountable, but the fact that apparently, none of his superiors questioned his investigative decisions carries some limited mitigation consideration.

Mr. Butt submitted that Staff Sergeant Harrison and his unit were “run off their feet busy.” The Broken Trust report recognized this and recommended the creation of a major crime unit and noted an urgent need to increase human resources. In his affidavit, Staff Sergeant Harrison stated:

During the time period of October 19, 2015, to March 31, 2016, the Criminal Investigations Unit I was supervisor of, investigated 43 major crime occurrences.... [the occurrences] included a hostage taking of a corrections guard, and riot in the district jail with multiple offenders, and a double homicide requiring three weeks of 24 hours surveillance... The other incidents included multiple sexual assault occurrences, weapons, various assaults, sudden deaths, missing persons, and robberies.

I accept that Staff Sergeant Harrison was busy, if he were not, I would have considered that an aggravating factor. Staff Sergeant Harrison was burdened with a very heavy workload, but regardless, police supervisors are required to assess and prioritize calls for service; homicide being the priority. While this was not deemed a homicide, it was a sudden death where homicide could not be ruled out, all other calls for service ought to have been set aside to allow for a thorough investigation to occur. I do not find the fact that Staff Sergeant Harrison and his subordinates were busy at the time, to be a factor for consideration.

Mr. Butt submitted that the length of time that this disciplinary matter has been hanging over Staff Sergeant Harrison’s head is a mitigating factor. Mr. Butt noted that the complaints were received in 2016. The subsequent OIPRD investigation took 18 months, requiring extension approval from the Police Services Board. Significant litigation followed about whether those submissions ought to be held in a public forum. Consequently, the Notice of Hearing was served on March 2, 2021, and the first appearance before this tribunal did not occur until April 14, 2021.

I accept Mr. Butt’s submission that Staff Sergeant Harrison was not responsible for any of that delay. I accept that it is more likely than not, that Staff Sergeant Harrison was subjected to years of stress, constantly seeing his name in the media. Even though it was his own misconduct that gave rise to the proceedings, Staff Sergeant Harrison should not have to wait over five years to address the allegations. I agree, this must be viewed as mitigating.

While I find that Staff Sergeant Harrison ought to receive some mitigation consideration as a result, it is limited however, because he was not suspended from duty and in fact, he was promoted from sergeant to staff sergeant during this time; he remained an engaged and productive employee.

I find that Staff Sergeant Harrison ought to receive slight mitigation consideration in relation to the penalty factor of Systemic Failure and Organizational/Institutional Context.

Public Interest

In the text, *Legal Aspects of Policing*, Mr. Ceysens states:

Public interest arises as a disposition factor in three principal situations:

- Where the misconduct has offended or undermined the public interest or public confidence, or would do so;
- Where the misconduct generated a demonstrable risk; and
- Where there is a need to demonstrate confidence in the police force, its members, or its discipline process.

Staff Sergeant Harrison's behaviour undermined public confidence and generated a demonstrable risk. It caused the public to question the integrity of the Thunder Bay Police Service because of the way he treated the DeBungee family, and the inadequate investigation failed to determine whether a murderer was at large in the community. Consequently, there is a need to demonstrate to the public that the Thunder Bay Police Service takes this matter seriously and that it resulted in a sanction which corresponds to the seriousness of the misconduct.

In the matter of *Chief John Gauthier v. Timmins Police Service*, 2015 ONCPC 19 (CanLII), the Commission effectively addressed the issue of public interest by noting:

The public's trust in police and policing is a crucial element of effective policing. Every time that public trust is undermined, effective policing is at risk.

The people of Ontario expect police to treat everyone fairly. Police services in Ontario should always exemplify the fair administration of justice for all. The public interest requires that conduct be set firmly in the democratic and fundamental principles of equality and justice for all.

Obviously, the public has an interest in ensuring police officers maintain an extremely high standard of conduct. Public trust is eroded when an officer fails to meet those expectations. Staff Sergeant Harrison's neglectful conduct and bias failed his community and his profession; he lacked integrity at the most crucial time, when the public needed their police service to conduct a comprehensive investigation into the sudden death of Stacey DeBungee. The public must have confidence that police officers will always act professionally, demonstrating the essential characteristics of a police officer, honesty, and integrity.

For police services to succeed, they, and their members, require the trust of the public. These relationships must be founded on respect and professionalism, an unachievable objective if the public cannot trust its officers to exhibit strong values such as ethical judgement and professionalism. Staff Sergeant Harrison breached the public's trust. Public trust is fragile. To maintain that trust, or in this instance, to attempt to re-instill public trust in the Thunder Bay Police Service, Staff Sergeant Harrison must be held accountable accordingly, with a sanction that corresponds to the seriousness of the misconduct.

Staff Sergeant Harrison committed serious misconduct. It has received significant media attention so undoubtedly, the public in general is very familiar with his behaviour. Unquestionably, the public would be disappointed that an experienced sergeant, tasked with supervising crime unit detectives, directed a negligent, and biased sudden death investigation, in fact, I would suggest they would be offended by his behaviour. A significant sanction is necessary to contribute to the process of re-instilling public confidence in the Thunder Bay Police Service.

Ms. James submitted that the misconduct in question is so serious that any sanction less than dismissal would not satisfy the community; it would amount to a *status quo* scenario. Ms. James also described the Thunder Bay Police Service as being abysmal in their relationships and treatment of Indigenous people. Her position is supported by the Broken Trust and Sinclair reports. I question then, whether any sanction, even dismissal, could satisfactorily address this penalty factor, not because of the seriousness of misconduct, but due to the long-standing discord between some members of the public and the Thunder Bay Police Service.

A disciplinary tribunal must not stray from the strict area of responsibility which in this instance, is to determine the most fitting sanction. In doing so, I must adhere to the principles governing a determination of a disposition to ensure the penalty imposed is proportionate to the conduct, guided by the applicable mitigating, neutral, or aggravating factors. I will not impose a sanction of dismissal of one officer to address the public's overall dismay with the Thunder Bay Police Service; to do so would be in breach of the rules of natural justice and procedural fairness.

The matter of the *Canadian Broadcasting Corporation v. Ferrier*, 2019 ONSC 34 (CanLII) is one of judicial review. The Court considered whether it was fitting for the Thunder Bay Police Services Board to hold the application for an extension of time in which to serve a notice of disciplinary hearing on the respondent officers in relation to this matter, in-camera. I agree with the following comments by the Court:

The public, and particularly the First Nations community in Thunder Bay, has a strong interest in the circumstances surrounding the death of Stacey DeBungee and in the Thunder Bay Police Service's investigation of his death. There is a strong public interest in seeing that, if police misconduct is found in regard to that investigation, those responsible for that misconduct are held to account.

I find Public Interest to be an aggravating factor. It necessitates a considerable sanction, but I am not convinced that dismissal is necessary to satisfactorily address this penalty factor.

Employment History

Mr. Dubois acknowledged that employment history is a mitigating factor; it is one of the reasons why the Thunder Bay Police Service did not seek a more serious penalty. He noted Staff Sergeant Harrison has no prior discipline history and recognized that when Deputy Chief Hay and Inspector Kaucharik testified at the hearing, they described him as an exemplary officer.

Mr. Butt submitted Performance Appraisals dating back to 2009. I find it reasonable to consider Staff Sergeant Harrison's performance that far back, noting that the misconduct occurred in 2015 and 2016. In 2009, Staff Sergeant Harrison held the rank of detective constable. In part, Detective Fennell made the following comments in Staff Sergeant Harrison's 2009 Performance Appraisal:

Produces quality work with minimal supervision... His skills and ability in understanding more complex investigations has greatly improved....

Demonstrates an exceptional awareness and dedication to customer service and victim needs. Shawn represents the Thunder Bay Police Service in a very positive manner....

Demonstrates a strong level of organizational awareness... Demonstrates an acceptable level of cultural awareness and provides service in a sensitive and respectful manner. Understands and applies the concept of bias free policing. Shawn is often seen assisting the Native Liaison officers with investigations.

A second 2009 Performance Appraisal addressed Staff Sergeant Harrison's promotion to sergeant and his transfer to uniform. Staff Sergeant Earley noted:

Shawn epitomizes "Service excellence" and is always highly respectful when dealing with the public he serves or members of our service. He is very calm when

dealing with stressful situations and has been called upon [by] myself to assist in conflict resolution...

Shawn has always proven to be aware and sensitive to all cultural differences and traditions... Shawn makes sound intellectual decisions which serve the best interests of our service.

The next Performance Appraisal is dated 2011. I find it confusing because it lists Staff Sergeant Harrison as a Detective Constable in the Criminal Investigation Branch. Perhaps Staff Sergeant Harrison was an acting sergeant when he was evaluated in the 2009 annual appraisal, or perhaps the date of this report is not accurate. Regardless, the report is another positive one. Sergeant Boyes stated:

This officer is always respectful when dealing with the public. He treats everyone with dignity and his professionalism shows in the success when conducting interviews.

Detective Constable Harrison is very sensitive to the various cultures we deal with in Thunder Bay and remains unbiased. He treats everyone with respect and fairness.

Detective Constable Harrison is very ethically minded and wishes that the Thunder Bay Police Service always look professional. He takes great pride in doing good work and shows his professionalism on and off work.

I am not certain why there is a gap, but the next Performance Appraisal submitted for my review is for the year 2014. The report was completed by Staff Sergeant Lewis who noted: Shawn was assigned to the Guns and Gangs unit from January to September 2014. He is now assigned as a supervisor on a general investigations unit in the Criminal Investigation Bureau. The productivity in this area is very demanding and he is doing well.

Sergeant Harrison demonstrates a strong awareness and dedication to customer service and victim needs.

Sergeant Harrison demonstrates a strong level of situational awareness and self-control; at times the problem-solving demands of the Criminal Investigation Bureau are the highest in the service... Sergeant Harrison demonstrates a strong ability to make informed decisions based upon a rational analysis of existing information. Shawn has also demonstrated a high degree of ethics.

I have worked with Shawn in the Criminal Investigation Bureau and the Intelligence Unit. I have found him to be a conscientious officer and supervisor he is well liked by other officers. I believe he will do well as a staff sergeant when the opportunity presents itself.

The next Performance Appraisal submitted for my consideration is believed to be for 2015 and 2016, although it is not formally dated. Staff Sergeant Harrison held the rank of detective assigned to the Criminal Investigation Bureau. He was evaluated by Staff Sergeant Kaucharik who stated:

Shawn has a strong level of applied skills and knowledge. Shawn demonstrates an above average level of productivity. He ensures the work by his unit is of high quality and accuracy. Shawn is able to perform under stressful circumstances and handles setbacks and successes in a professional manner.

Shawn demonstrates a strong level of dedication toward personal development. He is now the Major Case Management instructor for the department and has requested the Canadian Police College Major Case Management Multijurisdictional Manager team leaders' course which I strongly recommend should be budgeted for.

Shawn is on the staff sergeant list and has the skills and abilities to supervise a section. Promotion to staff sergeant would be a great benefit to the department. Shawn continues to perform exceptionally in the Criminal Investigation Bureau.

I note that in each of the 13 work performance categories assessed by Staff Sergeant Kaucharik, she assigned him a score of "exceeds expectations."

The final Performance Appraisal submitted for review is dated November 19, 2021, and notes that the last appraisal was submitted in 2016. I was not provided an explanation for the disruption in annual Performance Appraisals. Inspector Gibson documented Staff Sergeant Harrison for two incidents involving administrative errors. Inspector Gibson also noted:

Can take criticism and move on... Staff Sergeant Harrison follows the values. Addresses issues on his shift. He is an instructor on the Major Case Management course. Follows policy and procedures.

Ms. James submitted that I ought to apply little weight to the positive performance appraisals and the fact that Staff Sergeant Harrison has been promoted because the Thunder Bay Police Service is not reputable. Ms. James referred to the Broken Trust and Sinclair reports to support her assertion.

I agree that one might question the integrity of the Thunder Bay Police Service for promoting Staff Sergeant Harrison knowing that this allegation remained unresolved; it could be perceived by some as a racist police service promoting a racist officer. I do not view it in that manner, however. I understand the need for a mid-sized police service to continually address operational responsibilities. Staff Sergeant Harrison must have possessed the knowledge, skill, and ability required; the Thunder Bay Police Service remained obligated to focus on operational responsibilities while this *Police Services Act* matter progressed. It could have also been viewed as unfair treatment of Staff Sergeant Harrison had the Thunder Bay Police Service not considered him for promotion for approximately six years.

I acknowledge that the Thunder Bay Police Service has had a troubled past, but I do not accept that therefore, no one who has worked there or has been associated with them can be trusted. The Thunder Bay Police Service has also experienced a multitude of accomplishments, i.e., as noted by Staff Sergeant Harrison's mention of his success rate of major cases in criminal court. It would be inexcusable for me to conclude that the positive comments embedded in Staff Sergeant Harrison's Performance Appraisals are not reliable because the authors are likely biased or racist.

In the 2021 Performance Appraisal, Inspector Gibson noted:

Staff Sergeant Harrison follows the values. Addresses issues on his shift. He is an instructor on the Major Case Manager course. Follows policy and procedures. Has a well-rounded background so no issues with his skill level. Shows composure and self restraint...Is equitable and inclusive with all.

Supports his officers and encourages them... Gives credit where it is due... Treats all equitably and inclusively. Excellent written and verbal skills. Works well with others.

I find the employment history of Staff Sergeant Harrison to be most assistive. He has had a successful career thus far. He has demonstrated a strong work ethic and has been respected by his supervisors. There are a multitude of comments recognizing his ability to work well with others, including the Indigenous community. I can only conclude, based on the evidence presented, including the Performance Appraisals, that the behaviour attributed to this matter is out of character for Staff Sergeant Harrison. I am also encouraged by the assessment noting that he accepts criticism professionally.

I find Employment History to be significant mitigating factor; it bodes well for his ability and likelihood to reform.

Nature and Seriousness of Misconduct

Mr. Dubois noted that despite a positive employment history, a significant sanction is still warranted. In support of this assertion, he cited the matter of *Ebdon v. Durham Regional Police Service*, 2020 ONCPC 5 (CanLII) where the Commission stated:

There is no legal principle that requires progressive discipline in every case: *Agostino v. Gary Bean Securities LTD.*, 2015 ONCA 49. The nature of the misconduct must be considered and even a single act of misconduct may be sufficient to warrant dismissal in an extreme situation.

I accept that the seriousness of misconduct alone can justify a significant sanction, up to and including the dismissal of an officer; previous misconduct is not a prerequisite. Mr. Butt conceded that Staff Sergeant Harrison's behaviour is serious but submitted that a demotion in rank for three to six months is a significant sanction which corresponds to the seriousness of that misconduct.

Mr. Butt submitted that I must be cautious about "presentism;" viewing the misconduct which occurred within a systemically racist structure seven years earlier through today's lens. He submitted that doing so can adversely affect the validity of the conclusions drawn. Mr. Butt noted that First Nation communities have suffered from long-standing colonial structure; the profound harmful effects of which the public is only now coming to truly understand.

I agree. The Broken Trust report, the Sinclair report, and the report stemming from the Inquest into the Deaths of Seven First Nations have been released since the date of Staff Sergeant Harrison's misconduct. One purpose of those inquiries was to educate the police and the public so that constructive change could be implemented. It makes sense to conclude that had this misconduct occurred after the release of these reports, it would have generated a more significant sanction because Staff Sergeant Harrison would have been far greater informed about the existence and perils of unconscious bias.

However, I do note that at the time of Stacey DeBungee's death and Staff Sergeant Harrison's initial misconduct, the Inquest into the Deaths of Seven First Nations was in progress. This is an aggravating feature; the Inquest examined the deaths of seven First Nations youth and the professionalism of the Thunder Bay Police Service was being scrutinized. This was at the very time that Staff Sergeant Harrison neglected his responsibility to effectively investigate the sudden death of an Indigenous person. I simply cannot comprehend how an officer could have been so oblivious to the scrutiny that would accompany this investigation. Staff Sergeant Harrison was obligated to conduct a thorough investigation, he possessed the necessary skill set to do so. He should not

require motivation, but the fact that the Inquest was in progress at the time, should have inspired him to conduct himself and the investigation with professionalism.

Mr. Butt submitted I must ensure that the punishment imposed is proportionate to the misconduct. He submitted I must be cautious when considering an appropriate punishment in relation to an unconscious bias, equating it to punishing the morally ignorant. Mr. Butt submitted to do so has the potential to bring the administration of justice into disrepute. Mr. Butt noted that one of the key elements for me to consider is Staff Sergeant Harrison's ability to rehabilitate and he questioned how to reform behaviour that was related to an unconscious bias.

I agree that determining an appropriate sanction in this matter could be considered complicated because of the existence of an unconscious bias. However, in my decision, I determined that the behaviour exhibited by Staff Sergeant Harrison was so egregious that his bias should have been very apparent to him. I remain steadfast in that position. Therefore, I find it not only appropriate, but necessary to impose a significant sanction for behaviour of this nature.

To emphasize the seriousness of Staff Sergeant Harrison's misconduct, Mr. Dubois and Ms. James reminded the tribunal of some of the findings in my decision. The following excerpts from my decision provide an overview of my findings and also serve to underscore how I view the seriousness of Staff Sergeant Harrison's misconduct:

... because Staff Sergeant Harrison did not treat the death as a potential homicide, he committed neglect of duty... Staff Sergeant Harrison testified that he always kept an open mind as to what had happened, but the evidence simply does not support that assertion. Had Staff Sergeant Harrison treated the situation as a potential homicide or even as an unknown or undetermined case of death, the investigation would have been much more fulsome. Instead, the investigation conducted into the sudden death of Stacey DeBungee was far less than the bare minimum expected by any investigative standard.

... he [Staff Sergeant Harrison] was aware that the scene was his responsibility, but he determined nothing else was required... To release the scene then, Staff Sergeant Harrison must have determined that the death was nonsuspicious. Furthermore, the body had not yet been identified, the post-mortem was pending, and the next of kin had not been notified, meaning, they had not been interviewed to ascertain if they may have possessed information to suggest foul play. I find this concerning...

Ensuring a comprehensive search of the riverbank was conducted in an attempt to ascertain the point of entry was the responsibility of Staff Sergeant Harrison. It was irresponsible to assume that Stacey DeBungee's point of entry into the river was at the same location as he was found when there was no evidence to warrant such a conclusion...

There was no evidence whatsoever at that time that Stacey DeBungee was intoxicated or even that he had been consuming alcohol [the] previous evening. It goes beyond being irresponsible, it is the definition of neglecting his duties to merely assume that the deceased had been intoxicated. This presumption led to his working theory of Stacey DeBungee passing out from alcohol consumption, rolling into the river, and drowning. He testified that his mind was open to other theories, but none of them were ever documented and no witness presented in evidence, any other specific possibility that had been considered...

Further investigation was required, but very little if any investigating actually occurred...

...I am more than troubled that he [the coroner] left the scene with the belief that Staff Sergeant Harrison was planning to conduct interviews, to investigate, and to determine how Stacey DeBungee ended up in the river, yet no such investigation occurred... Not one formal interview was conducted...

I find it troubling that Staff Sergeant Harrison found it unnecessary to have these individuals [potential witnesses at the scene] interviewed by members of the Criminal Investigation Branch... This is basic police work and falls under the responsibility of the officer in charge, Staff Sergeant Harrison...

Even more disturbing, is that despite informing the coroner, and insinuating to the public via this media release that further investigation was warranted to determine the manner in which Stacey DeBungee died, no such investigation ensued...

Formal statement taking from these individuals [persons who last saw Mr. DeBungee] was required to thoroughly investigate the matter and to ascertain the whereabouts of Mr. Sapay to facilitate a timely interview with him...

Staff Sergeant Harrison had a duty to speak with Mr. Perry, a person who may have possessed information he wanted to share with police about his investigation into the sudden death of Stacey DeBungee. Staff Sergeant Harrison wilfully chose not to do so...

The inference to be drawn from this evidence, is that the investigators concluded that because people had consumed alcohol to such an extent that they passed out, rolled into the river and drowned in the past, that that is what had occurred in this instance. But that is speculative, based on no evidentiary foundation whatsoever. The circumstances are similar, a male was found in the river. The fact that he was Indigenous, like the other individuals described in the previous incidents, is a factor that must have been persuasive in Staff Sergeant Harrison arriving at his working theory. Indigenous males in the previous incidents had drowned and had been deemed to have been intoxicated. I do not believe Stacey DeBungee's Indigenous status was the only influencing factor, but I am convinced that in combination with the previous known similar incidents, and Stacey DeBungee's previous *Liquor Licence Act* infractions, it contributed to his premature conclusions. I note that the evidence did not suggest that Stacey DeBungee was regularly investigated for multiple liquor offences, only that it had occurred in the past in Thunder Bay...

There is no doubt whatsoever in my mind that Staff Sergeant Harrison decided very early on that the death was nonsuspicious. I am equally convinced that because the deceased person was Indigenous, found in a river where other Indigenous men had been found drowned, with a high level of alcohol in their system, he assumed the very same circumstances must have therefore existed in this case.

Frankly, there is no other reasonable explanation for such a shoddy investigation, one that was less than substandard from the very beginning. Staff Sergeant Harrison was more than capable of properly and thoroughly investigating the sudden death of Stacey DeBungee. No one saw Stacey DeBungee fall into the river, I question how Staff Sergeant Harrison immediately concluded the death was nonsuspicious which required virtually no investigation whatsoever if Indigenous status was not part of that consideration? To this day, how Stacey DeBungee came to be in the river has never been explained, yet Staff Sergeant Harrison immediately concluded that the death was nonsuspicious, and he has never wavered from this position. Stacey DeBungee's death is unexplained because how he got into the river has not been established; the Thunder Bay Police Service, specifically Staff Sergeant Harrison was duty bound to investigate accordingly.

As noted, I agree that it is a fundamental requirement for punishment resulting from this process, that there must be a blameworthy act. *Phipps* was an Ontario Human Rights Commission matter where individuals can be held liable for unconscious biases. In this case, the evidence shows that Staff Sergeant Harrison's negligent

investigation was so egregious that it should have been apparent to him that his investigation was deficient to such an extent that he was committing misconduct; he should have asked himself why his investigation was so deficient, and then remedied the situation.

Staff Sergeant Harrison was fully aware that the Inquest into the Deaths of Seven First Nations was occurring in Thunder Bay at the very time of this incident. Racism within the ranks of the Thunder Bay Police Service was being publicly scrutinized at the exact moment he was tasked with this investigation which ought to have raised Stacey DeBungee's Indigenous status to the forefront. He had to be aware that the public would likely be interested in the outcome of this investigation and had to have known he was dutybound to treat the sudden death as a potential homicide. Instead, he prematurely concluded that the sudden death was somehow nonsuspicious; he failed to properly manage the scene, failed to ensure key witnesses were formally interviewed and failed to review reports. He should have questioned whether the quality of his investigation was influenced by Stacey DeBungee's Indigenous status. His failure to recognize this in my opinion, amounts to a blameworthy act...

The actions, and inaction of Staff Sergeant Harrison rise beyond that of a performance issue. As the officer in charge, he was duty bound to ensure that a thorough, open-minded, sudden death investigation resulted. Instead, he wilfully neglected to ensure duties were completed. Based on speculation, void of evidentiary foundation, Staff Sergeant Harrison presumed the sudden death of Stacey DeBungee was accidental and consequently, failed to treat the incident as a potential homicide...

I find the behaviour of Staff Sergeant Harrison amounts to discreditable conduct because, with respect to police services he was duty bound to provide, he failed to treat the investigation equally, without discrimination due to Stacey DeBungee's Indigenous status.

As articulated above, I find the seriousness of the misconduct significant. However, I do not find that it rises to the level of termination. I do not find that the behaviour is indicative of a character flaw that cannot be addressed via training, education, and a considerable sanction.

Mr. Dubois submitted his position on penalty is in relation to Staff Sergeant Harrison's overall behaviour; the recommended two-year demotion incorporates both the neglect of duty and discreditable conduct offences. As illustrated in my conclusions above, I find the

seriousness of the misconduct to be a significant aggravating factor for consideration which calls for a corresponding sanction.

Mr. Dubois cited the *Ontario Human Rights Code*, which states:

Whereas recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world and is in accord with the Universal Declaration of Human Rights as proclaimed by the United Nations;

And whereas it is public policy in Ontario to recognize the dignity and worth of every person and to provide for equal rights and opportunities without discrimination that is contrary to law, and having as its aim the creation of a climate of understanding and mutual respect for the dignity and worth of each person so that each person feels a part of the community and able to contribute fully to the development and well-being of the community and the Province...

Every person has a right to equal treatment with respect to services, goods and facilities, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability.

Mr. Dubois also cited the *Canadian Charter of Rights and Freedoms*:

Every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or mental or physical disability.

Mr. Dubois submitted that Staff Sergeant Harrison was obligated to adhere to the *Human Rights Code* and the *Charter* as noted in section 1 of the *Police Services Act*. Clearly, Staff Sergeant Harrison's behaviour offended the principles found within the *Ontario Human Rights Code* and the *Canadian Charter of Rights and Freedoms*. Mr. Dubois submitted the matter of *Venables v. York Regional Police Service*, 2008 ONCPC 8 (CanLII) to highlight the significance of unequal treatment. The Commission stated:

Two aggravating factors arise from Constable Venables' actions. First, the assault had clear discriminatory overtones ("You fucking drunk Russian" and "I hate Russians"). As the hearing officer properly noted at page 16 of his decision:

I am particularly concerned with not only the assault but the bias that Constable Venables demonstrated towards the Russian community. I want to [assure] all citizens that the York Regional Police take this matter seriously. The Region of York is a multicultural community that respects all

citizens. I am concerned that our community outreach initiatives may face serious setbacks if this matter is not properly dealt with.

Staff Sergeant Harrison did not express overt racist commentary which separates this matter from other cases such as *Venables*. However, because I concluded that Staff Sergeant Harrison's negligent investigation was so egregious that it should have been apparent to him, that it was deficient to such an extent that he was committing misconduct, the concerns noted in *Venables* are applicable. His actions and inactions become interpreted as bias, whether that was his intent or not. The Indigenous community must know, that although this disposition will not result in dismissal, I, and the Thunder Bay Police Service, take this matter very seriously.

Mr. Dubois cited the matter of *Kyle v. York Regional Police Service*, 2003, CanLII, 75461 (ON CPC) in support of his assertion that seriousness of misconduct can be aggravated when the offending officer is in a supervisory position or holds a rank higher than constable. The Commission in *Kyle* stated:

This conduct brought discredit to Staff Sergeant Kyle, the York Police Service, and his fellow officers. It was particularly offensive given his senior rank and length of service.

Staff Sergeant Harrison held the rank of sergeant at the time of his misconduct, but more importantly, he was a valued, experienced officer who supervised the most serious cases investigated by the Thunder Bay Police Service. He was expected to be a leader in the organization and his actions failed his employer, his subordinates, Stacey DeBungee, Stacey DeBungee's family, and the community. His rank and subsequent critical area of responsibility are aggravating features.

Ms. James noted that in my decision, I found that Staff Sergeant Harrison failed to keep an open mind when investigating Stacey DeBungee's death as a potential homicide due to his Indigenous status. Instead, he conducted an inept, meaningless investigation. Ms. James submitted termination is the appropriate sanction because Staff Sergeant Harrison has demonstrated he is no longer capable of serving as a police officer. She questioned how the public could have any confidence in his ability to serve them free of bias and stereotypes. Ms. James stated she found the suggestion that Staff Sergeant Harrison morally blameless because the bias was an unconscious one, offensive; he made strategic decisions to do nothing.

In *R. v. Doering*, 2020 ONSC 5618 (CanLII), the Court addressed the issue of moral culpability. The facts in *Doering* are quite disparate, and the matter is a criminal proceeding, but I find the principle applicable to this matter. The Court stated:

Moral culpability is high when the crime involves a deliberate leap into criminality, such as when an officer decides to sell drugs, or steal money, or share confidential information. Moral culpability is lower when the crime committed by an officer is incidental to the discharge of a duty related to public safety....

It was argued by the defence that because Constable Doering was not subjectively aware of Ms. Chrisjohn's need for medical treatment, his moral blameworthiness is low. However the criminal law contemplates different types of moral blameworthiness. Penal negligence offences are designed to ensure minimum uniform standards of conduct. The culpability here lies in the failure of Constable Doering to advert to, and act upon, the risks that would have been obvious to a reasonable and prudent police officer or, indeed, any person who saw Ms. Chrisjohn's condition.

Staff Sergeant Harrison's investigation into the sudden death of Stacey DeBungee was negligent. Influenced by bias, he made the conscious decision to not conduct a professional, thorough, investigation into the matter. The need to act, and investigate, would have been obvious to any prudent police officer; Staff Sergeant Harrison's inaction makes him culpable and discipline is appropriate. I find that the behaviour in question was disrespectful and deplorable; it warrants a sanction which corresponds to the seriousness of his misconduct.

In the matter of *R. v. Yellowhead*, 2021 ONSC 7457 (CanLII), the Court considered an application to exclude evidence. The Court stated:

The Court takes judicial notice of local conditions in this case. Of particular relevance is the tension between Indigenous citizens of Thunder Bay and Thunder Bay Police Services in the execution of their duties. The Indigenous community believes that police actions frequently reflect systemic racism. Indigenous citizens do not trust the police to respect their rights and to act in their best interests.

The actions, and inactions, of Staff Sergeant Harrison work to support the position presented by the Court in *Yellowhead*; they served to increase tension between the community and his employer and support the Indigenous community's belief that "police actions frequently reflect systemic racism." Staff Sergeant Harrison's behaviour is very serious misconduct.

Ms. James noted that in *Venables*, the Commission stated:

...policing in Ontario is based on six principles. They are set out in the very first section of the *Act*. It reads:

Police services shall be provided throughout Ontario in accordance with the following principles:

1. The need to ensure the safety and security of all persons and property in Ontario.
2. The importance of safeguarding the fundamental rights guaranteed by the *Canadian Charter of Rights and Freedoms* and the *Human Rights Code*.
3. The need for cooperation between the providers of police services and the communities they serve.
4. The importance of respect for victims of crime and understanding of their needs.
5. The need for sensitivity to the pluralistic, multiracial, and multicultural character of Ontario society.
6. The need to ensure that police forces are representative of the communities they serve.

Ms. James submitted that Staff Sergeant Harrison failed to adhere to any of these six principles; consequently, he has nullified any usefulness to the community and to his employer. I agree that Staff Sergeant Harrison violated the first five principles, but I do not accept that the result, therefore, must be dismissal. The behaviour in question absolutely speaks to the seriousness of his misconduct, but I do not find that the behaviour is so egregious that dismissal is warranted on the strength of that factor alone, to the exclusion of the other factors.

In the matter of *Santiago v. Peel Regional Police*, 2021 ON CPC 4 (CanLII), the Commission upheld the hearing officer's decision that the officer could resign from his employment within seven days, failing which, employment would be terminated. The Commission made note of the following commentary of the hearing officer:

I conclude that Constable Santiago has expended and made worthless any potential for rehabilitation. When those chosen to protect and serve the public fall short of the public's expectations, the confidence is eroded and the officer must be held accountable. Constable Santiago's misconduct undermined the public interest and betrayed the people's trust which ultimately affects the public's confidence in the Service, and that of our policing partners. An officer whose misconduct has undermined the trust between himself, the Service, and the community, has demonstrated very clearly that he is not fit to remain an employee and lacks suitability to be a police officer...

Ms. James submitted that I ought to take the same approach that was taken in *Santiago*, asserting that Staff Sergeant Harrison's misconduct sufficiently warrants his dismissal.

Ms. James submitted that any sanction less than dismissal would send the message to the Indigenous community that everything will remain *status quo*; change is not imminent because the offending officer will not be held accountable.

While I accept Ms. James' submission that a sanction less than dismissal may not satisfy some members of the public, including some members of the Indigenous community, I do not accept that therefore, it is cause for dismissal. I do not accept that the seriousness of misconduct is so egregious that dismissal is the only feasible outcome. Consequently, I must consider all penalty factors when determining the most fitting sanction.

I find the misconduct in this matter to be very serious. Staff Sergeant Harrison allowed his unconscious bias toward Indigenous people to adversely affect his ability to behave in a professional manner. Consequently, he neglected his duty to conduct, and/or ensure, a thorough, unbiased investigation into the death of Stacey DeBungee was conducted.

I find the Nature and Seriousness of Misconduct to be a significant aggravating factor.

Recognition of the Seriousness of Misconduct

Mr. Dubois submitted that when an officer accepts responsibility for their behaviour and demonstrates remorse, it can result in a mitigating feature for consideration. Mr. Dubois conceded that Staff Sergeant Harrison accepted limited responsibility by entering a partial guilty plea to neglect of duty as it related specifically to not meeting with Mr. Perry, an individual who offered to share relevant information with police. Mr. Dubois cited the matter of *Clough v. Peel Regional Police Service*, 2014 ONCPC 12 (CanLII) where the Commission stated:

The first Hearing Officer made the following comment at the bottom of page nine of his decision:

Despite the partial plea, and acceptance of the facts, I am far from convinced Constable Clough truly understands the seriousness of her misconduct, or has truly taken responsibility. I agree with the prosecution that the compelled interview does not accord with meaningful cooperation, and my opinion is devoid of any form of acceptance of responsibility, regret, or remorse.

The first Hearing Officer also downplays the importance of a written apology to him from Constable Clough which, he said "rings hollow, and I assigned it little weight in terms of mitigation." Hearing Officers are entitled to assess the sincerity of a letter of apology. In our view the mere existence of a letter of apology does not equate to automatic mitigation.

In *Welfare v. Peel Regional Police*, 2018 ONCPC 15 (CanLII) the Commission noted:

The Appellants admitted that the Hearing Officer committed an error in principle when she gave no weight to the Appellant's guilty pleas. In *Allen v. Ottawa Police Service*, 2006 ONCPC 6 (CanLII), the Commission wrote "...a guilty plea should always be recognized as a mitigating factor and that giving no weight to a guilty plea is an error in principle." The Hearing Officer acknowledged that the Appellant pleaded guilty at the earliest opportunity but also wrote that "a guilty plea can be motivated by many different things including the strength of the case against the person." Ultimately she decided to "...attribute limited weight to her guilty plea as a mitigating factor."

In *Kobayashi*, above, the Commission wrote the following at paragraph 60:

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.

We see no error in the Hearing Officer ascribing limited weight to the guilty pleas.

It is important to note that Staff Sergeant Harrison entered a partial guilty plea in relation to the neglect of duty allegation. Furthermore, the hearing was originally scheduled for three weeks. A lengthy and detailed Agreed Statement of Facts resulted in a narrowed and focused approach, reduced testimony and time saved; essentially, the hearing was conducted in less than half the time initially expected. I accept that Staff Sergeant Harrison's partial plea and agreement to considerable evidence amounts to limited mitigation consideration.

Mr. Dubois acknowledged that Staff Sergeant Harrison cooperated fully with the investigation. Mr. Dubois submitted that if it were not for the above noted mitigating factors, the Thunder Bay Police Service would have sought a more significant sanction.

Ms. James submitted Staff Sergeant Harrison has not recognized the seriousness of his misconduct. Ms. James noted that Staff Sergeant Harrison did not apologize to this tribunal, the family of Stacey DeBungee, or to the community; those he personally offended with his misconduct. Ms. James noted that at the time of the hearing, he had never read the Broken Trust or Sinclair reports. Ms. James submitted that his cavalier attitude is demonstrative of a lack of remorse and illustrates an inability to reform, consequently, termination is required.

Ms. James submitted that Staff Sergeant Harrison testified that he conducted his “best work” on the Stacey DeBungee investigation; it exemplifies his lack of recognition and shows that he is unfit to serve as a police officer any longer.

Staff Sergeant Harrison in his testimony, apologized for not speaking to Mr. Perry. He made no other apology during this disposition hearing. The fact that Staff Sergeant Harrison did not offer an apology is not an aggravating feature, nor does it demonstrate a lack of remorse; he simply does not receive mitigation that often accompanies a sincere apology and clear remorse.

I find it concerning that Staff Sergeant Harrison testified that other than not meeting with Mr. Perry, he conducted and supervised the sudden death investigation properly. He had ample opportunity to consider the possibility that he and his subordinates could have done better. The Ontario Provincial Police Criminal Investigation Branch conducted a review of the Thunder Bay Police Service investigation into the death of Stacey DeBungee and made numerous findings. Staff Sergeant Harrison has been instructing the Major Case Management course for the past several years. He is a very experienced criminal investigator. He had plenty of time to consider whether there was merit to any of the findings in the Ontario Provincial Police report. He concluded his investigation was flawless other than omitting the interview with Mr. Perry. This is troubling. I find it difficult to accept that any credible homicide investigator would conclude, after having their file peer reviewed, that they could not have done some things better. Personally, having spent the majority of my career investigating serious and complex major cases, I am convinced that I never conducted a flawless investigation.

I agree with the position taken by the prosecution, Staff Sergeant Harrison must receive mitigation consideration for his guilty plea, but it is minimal. The guilty plea and the Agreed Statement of Facts are the only indicators of any type of remorse. I find Recognition of the Seriousness of Misconduct to be a very slight mitigating factor.

Ability to Rehabilitate

Mr. Butt submitted Staff Sergeant Harrison has no previous disciplinary history and since the time of this misconduct, Staff Sergeant Harrison has done exceptional police work resulting in his promotion to the rank of staff sergeant. He highlighted the commendable comments from witnesses about the professionalism exemplified by Staff Sergeant Harrison during the course of his career. Mr. Butt noted that the Thunder Bay Police Service could have easily assigned Staff Sergeant Harrison to administrative duties considering the nature of the allegations. Instead, he was placed in a leadership position

as Watch Commander, a clear vote of confidence in his ability. Mr. Butt submitted that I can easily conclude that at best, the conduct in question, was an isolated issue.

Mr. Butt submitted the Thunder Bay Police Service's position on penalty is conflicted. It has been well documented that the Thunder Bay Police Service has been plagued by systemic issues and a lack of leadership over the years. Mr. Butt submitted that after allowing Staff Sergeant Harrison to excel in the leadership role of Watch Commander, seven years after the conduct in question, they are now suggesting he deserves to be demoted to the rank of constable; their stance demonstrates a lack of reality.

Mr. Dubois acknowledged Staff Sergeant Harrison has the potential to reform; the misconduct was not so egregious that there is no hope for his rehabilitation. Mr. Dubois made note of Staff Sergeant Harrison's unblemished service record and acknowledged Staff Sergeant Harrison has agreed to attend Indigenous Cultural Competency Training as one component of his disposition.

Ms. James submitted little weight ought to be attributed to the character evidence led by Staff Sergeant Kaucharik and Deputy Chief Hay during the hearing because they lack credibility; the systemic failures and discrimination that exist within the Thunder Bay Police Service is well documented and they were part of that administration.

While in theory, there could be merit to Ms. James' position, there is no evidence indicating that Deputy Hay and Staff Sergeant Kaucharik specifically, cannot be trusted to provide an honest opinion about the character of Staff Sergeant Harrison. Furthermore, their perspectives are consistent with his documented annual Performance Appraisals.

Ms. James noted that in his affidavit, Staff Sergeant Harrison failed to indicate that two of his cases were subject to reinvestigation. Ms. James submitted failing to disclose this information speaks to his poor character. Ms. James submitted he had a duty to flag these two incidents considering he was leading the evidence, failing to do so is indicative of him attempting to deceive this tribunal; he presented the cases as triumphs where in fact they were identified as necessitating reinvestigation.

I agree that it is noteworthy that two of Staff Sergeant Harrison's investigations which were included in his affidavit, required reinvestigation according to recommendations found in the Broken Trust report. However, I do not find that he was attempting to mislead this tribunal. Had he been looking to hide the fact that two of his investigations were subject to this scrutiny, he simply would not have included them in his affidavit. I doubt Staff Sergeant Harrison would have expected this tribunal to be influenced greater by 40 cases submitted for consideration rather than 38.

Ms. James cited comments and observations found in the Broken Trust report in relation to the two investigations recommended for reinvestigation. Ms. James submitted, and I agree, I ought not rely on Staff Sergeant Harrison's assertion that he conducted thorough and unbiased investigations in relation to the 40 cases included in his affidavit. To do so would require at minimum, a peer review. I accept that he was involved in these cases as an investigator and/or supervisor, but I am not impacted by it; I am unable to draw the conclusion that the cases involved "good police work" as a result. Similarly, because two of his cases were recommended for reinvestigation does not suggest that he committed similar misconduct in relation to either of those files. I will not rely in any way on Staff Sergeant Harrison's affidavit, the content is inconsequential and not relevant to this proceeding.

Given the unique circumstances in this case, for Staff Sergeant Harrison to rehabilitate, training and education are essential. I am encouraged by the fact Staff Sergeant Harrison has agreed to participate in Indigenous Cultural Competency Training. It is imperative that Staff Sergeant Harrison develop a better understanding of how his behaviour has impacted the Indigenous community and how he can improve his relationships in the future.

Staff Sergeant Harrison does not have a history of previous disciplinary matters. He has exemplified a strong employment history not only prior to this matter, but even more importantly, after this misconduct was alleged. I find post offence behaviour very relevant to one's ability to rehabilitate. In this instance, Staff Sergeant Harrison was promoted to staff sergeant and assigned to the critical role of Watch Commander, necessitating increased responsibility and accountability. I am encouraged by Inspector Gibson's critique in Staff Sergeant Harrison's 2021 Performance Appraisal and also by the comments of Sergeant Justin Dubuc who would have been in an insubordinate position to Staff Sergeant Harrison at the time he drafted the following internal correspondence, dated September 10, 2019, addressed to Deputy Chief Hughes. In part, he stated:

Staff Sergeant Harrison has been noted to be very approachable and positive during the course of his duties. Staff Sergeant Harrison actively takes part in conversations with the people he supervises and interacts with them in a positive and professional manner. This has been conveyed to me by members of the unit as well as I have had personal conversations with Sergeant Tilbury as well as Sergeant Quinlan who will equally share in this aspect of my letter to you. His approachability and positive attitude during briefings and during his shift are somewhat infectious and lend to a good trait of a leader in an environment that is most often overly busy and stressful... I believe that Staff Sergeant Harrison does not even take lunch breaks on his tour of duty. I have not once been asked to

relieve him for a break, (despite asking) which to me, demonstrates that he is a diligent [leader] and puts everybody else before himself.

Ability to Rehabilitate is a mitigating factor; I am satisfied that Staff Sergeant Harrison is a strong candidate to reform.

Specific and General Deterrence

In *Doering*, the Court stated:

It has been recognized that crimes committed by police officers represent a breach of the public trust. It is for this reason that police are “held to a higher standard than would be expected of ordinary citizens,” and “the principles of denunciation and deterrence become magnified” in the sentencing of police...

Staff Sergeant Harrison did not commit a criminal offence, but he offended his Oath of Office and public trust when he was neglectful and biased in his duty. It is well understood in police disciplinary matters that police officers are held to a higher standard, in fact, as noted, it is one of the five foundation principles that govern the process of constructing a fitting disposition.

In the matter of *Brayshaw v. Ontario Provincial Police*, 1992 CanLII 12273 (ON CPC), the Commission stated:

In his reasons for penalty the Presiding Officer said: “The mistaken belief that complaining of a supervisor's behaviour in the workplace will not be addressed, or worse still, lead to further hardship on the employee, has to be removed.” We concur. We support the Presiding Officer in his attempt to send a clear message to the police and the public that this type of behaviour is indeed discreditable and will not be tolerated.

Specific deterrence is necessary to impress upon Staff Sergeant Harrison that further misconduct of a similar nature, would most likely, result in a sanction far more significant than the one imposed in this instance. Furthermore, all police officers must understand that conduct of this nature cannot be tolerated; it will be taken seriously by their employer and it will have significant consequences.

Specific Deterrence and General Deterrence are aggravating factors but I find that the recommended training component, and a significant demotion in rank will satisfactorily address specific and general deterrence.

Publicity and Damage to the Reputation of the Thunder Bay Police Service

In *Martin v. Windsor Police Service*, 2009 ONCPC 1 (CanLII), the Commission stated:

The Hearing Officer noted the fact that the disciplinary proceedings were widely publicized and therefore known to the community. In our view the Hearing Officer was entitled to consider that information as very relevant in weighing the appropriate penalty to impose and considering the context of the Reasons as a whole, the Hearing Officer was entitled to reach the conclusions he did relating to this factor... Previous Commission decisions have held that public media coverage of misconduct of an officer is an appropriate consideration when assessing the extent of damage to the reputation of a police service...

Exhibit #23 is the affidavit of Ruopeng Song, an articling student assisting the prosecution. The affidavit contains 23 distinctive media articles which refer to Staff Sergeant Harrison in relation to this matter ranging in time from March 5, 2018, to July 21, 2022. The incident was reported by The Globe and Mail, Toronto Star, CBC, and other more localized media outlets. Exhibit #24 contains additional media reports documenting this process. Many of the media reports are lengthy and very detailed.

Clearly, this matter has garnered significant media attention not only in the Thunder Bay region, but at minimum, Province wide. The Broken Trust 206-page report was generated as a result of the public complaint. It is yet another document that contains specific details in relation to this matter. Each time this matter is reported on in the media or otherwise, the reputation of the Thunder Bay Police Service is tarnished as a direct result of Staff Sergeant Harrison's misconduct.

Damage to the reputation of the Thunder Bay Police Service is a standard disposition consideration. In *Williams*, the Commission stated:

Finally, with regard to the reputation and image of the police force, the Commission cannot come to any possible conclusion other than were the circumstances of Constable Williams' actions ever to become public knowledge, his continued presence in the force would seriously harm the image and reputation of the Ontario Provincial Police.

Damage captures the reputational harm arising from the misconduct in question, and also the damage that would occur to the reputation of the Thunder Bay Police Service if Staff Sergeant Harrison were to maintain his employment.

Mr. Butt submitted that the reputation of the Thunder Bay Police Service is already abysmal; he questioned how much further it could have been damaged by this matter.

He submitted the net impact must be considered; the poor reputation of the Thunder Bay Police Service is well documented from failed leadership to systemic dysfunction, Staff Sergeant Harrison's misconduct must be but one small part of the reputational harm.

Ms. James reminded the tribunal of the comments made by Constable Lewkoski when she testified at the initial hearing. Constable Lewkoski stated there has always been a difference of opinion between the Thunder Bay Police Service and the Indigenous community and the relationship appears further stressed now than even one year earlier.

Ms. James submitted that allowing Staff Sergeant Harrison to maintain his employment would further damage the relationship between the Indigenous community and the Thunder Bay Police Service; it would serve to bring additional mistrust. Ms. James questioned how there could be potential to salvage these relationships when the Thunder Bay Police Service employs officers who engage in this type of racial stereotyping.

The sanction in this matter should be fitting so it can serve to re-instill public trust and help repair the damage done to the reputation of the Thunder Bay Police Service. I do not accept that the reputation of the Thunder Bay Police Service could not be further damaged by this behaviour. It was often and widely reported and each time, it brought the reputation of Staff Sergeant Harrison and his employer into disrepute. I find that a significant sanction is required to address the damage that has occurred resulting from Staff Sergeant Harrison's behaviour.

Mr. Leonard testified about his clear lack of trust in the Thunder Bay Police Service. Mr. Leonard explained there is a feeling of disgust in the Indigenous community and the distrust will remain for years to come regardless of this hearing process. I accept Mr. Leonard's position; this disposition decision is but one mechanism to be relied upon in the process of re-instilling trust between the public and the Thunder Bay Police Service.

I do not hold the power to create a clean slate between the Indigenous community and the Thunder Bay Police Service. In my opinion, considering the history, even the dismissal of Staff Sergeant Harrison would fail to address the deep-rooted mistrust and continuing concerns for public safety.

I do not question Ms. James' submission that in general, the Indigenous community would look at the dismissal of Staff Sergeant Harrison as a positive step forward in repairing relationships, but I fail to accept that it would be anything more than superficial. I do not accept that dismissal would help to reduce skepticism; addressing the issue of mistrust is a much more complex matter, the responsibility of community leaders and the Thunder Bay Police Service.

I find Publicity and the Damage to the Reputation of the Thunder Bay Police Service to be aggravating factors for consideration.

Effect of Penalty on Staff Sergeant Harrison and his Family

The effect that a sanction has on a police officer and their family is an additional factor for consideration when determining an appropriate and fitting sanction. The sanctions proposed by Mr. Butt and Mr. Dubois are demotion in rank resulting in a loss of income for a finite period of time. The financial burden associated with termination of employment is obvious.

In the matter of *Stone v. Toronto Police Service*, 2007 ONCPC 11 (CanLII), the Commission stated:

The Hearing Officer also noted that the facts of this case did not disclose any concerns relating to handicap or provocation. He acknowledged the impact of the conviction on Constable Stone's family but found that there is no evidence of extenuating hardship. To our mind, these are all fair observations.

I agree with the submission of Ms. James; certain harsh punishments are reflective of the behaviour in question, the effects on the officer and their family in those instances are necessary consequences of the seriousness of misconduct. Staff Sergeant Harrison and his family will be impacted by the sanction imposed; there will be financial loss as a result of his demotion in rank because of the disparity in pay between ranks. Additionally, a promotion in rank will not be available to Staff Sergeant Harrison for the duration of this sanction. Lastly, Staff Sergeant Harrison stated he is eligible for retirement in 2028. The pension of Thunder Bay Police officers is calculated based on their best five years' income. A demotion in rank will adversely affect his income from his pension if he were to retire in five years.

The Effect of Penalty on Staff Sergeant Harrison and his Family is a mitigating penalty factor, but I do not find that it is not so substantial that it ought to affect the penalty to be imposed. The financial impact on Staff Sergeant Harrison and his family is clear. Although it is a mitigating factor, the aggravating factors are substantial; the associated financial burden that resulted from Staff Sergeant's behaviour is an unfortunate, but necessary consequence.

Consistency of Penalty

In the matter of *Reeves v. London Police Service*, 2021, ON CPC 3 (CanLII), the Commission stated:

Consistency of penalty has been referred to in the caselaw as the “earmark of fairness.” We agree with its importance in considering the imposition of a penalty, with two qualifications. First, consistency of penalty is not an absolute principle carved in stone. Second, it is rare for there to be identical cases that establish with certainty what a penalty will be in any given case. This is why 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. This case amply illustrates the difficulties faced by a hearing officer in attempting to find the perfect comparator situation. That is one reason why ultimately, the question to be answered is whether the penalty imposed was in all of the circumstances, reasonable.

Consistency in penalty is essential to ensure the sanction which is imposed is not only fitting but, whenever possible, is within the range of other sanctions concerning similar misconduct. Counsel submitted they were able to identify cases similar enough to this matter pertaining to the neglect of duty finding to provide reasonable guidance. The count of discreditable conduct however is distinctive. Counsel submitted cases that they felt would assist me in determining an appropriate range of available penalties based on facts that could be considered somewhat comparable. The cases are not specifically on point because no such case exists.

Mr. Butt stated that when considering cases to be submitted for the purpose of consistency of penalty, he focussed on serious cases that involved the death of an individual. He submitted that those cases best exemplify the conditions that exist in this matter so they ought to provide the best guidance regarding the neglect of duty matter.

Mr. Butt stated that based on the neglect of duty cases he located, a loss of hours would be an appropriate sanction for that aspect of Staff Sergeant Harrison’s misconduct. Mr. Butt submitted that his proposed sanction of a demotion for a term of three to six months, is a global sentence; it incorporates the seriousness of my findings as they relate to the neglect of duty and discreditable conduct matters.

Mr. Butt submitted unconscious bias affects everyone, which is why it cannot be the basis for punishment; only deliberate or careless actions can be subjected to penalty. He submitted that the unconscious bias component can be addressed by the training component agreed upon, punishment is not a requirement.

I agree that the Bimickaway Indigenous Cultural Competency Training is a necessary component of any sanction imposed, but I do not accept that Staff Sergeant ought to avoid further discipline associated to the offence of discreditable conduct. In my decision, I stated:

Staff Sergeant Harrison failed to treat or protect the deceased and his or her family equally and without discrimination because the deceased was Indigenous; there are no explanations that account for the failings in this case; the failure to conduct an adequate investigation including the premature conclusion that the death was nonsuspicious is, at least in part, attributable to an unconscious bias...

I find Staff Sergeant Harrison was affected by an unconscious bias, which resulted in him failing to treat the Stacey DeBungee sudden death investigation equally, without discrimination with respect to police services because of his Indigenous status. The resulting negligent investigation was so deficient, that he should have been aware that his conduct was adversely affected by an unconscious bias.

I find the misconduct was deliberate and/or careless actions and bias that Staff Sergeant Harrison should have been aware of and must be held accountable for.

I agree with Mr. Butt's submission that Staff Sergeant Harrison has demonstrated over the last seven years that he is a capable leader; a factor to be considered when reviewing other cases for similarities and disparities. I also agree that I must avoid using Staff Sergeant Harrison as a "scapegoat;" the documented history of systemic racism in the Thunder Bay Police Service cannot drive penalty, the penalty must be proportionate to the misconduct.

In *Orser v. Ontario Provincial Police*, 2018 ONCPC 7 (CanLII), the Commission stated:

We also note that the presence of cases involving lesser penalties is not determinate. As the Commission has previously observed, assessments of appropriate penalties are not only fact specific, they may shift and evolve over time. Consistency of penalties 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.

With *Orser* in mind, while I must not look at imposing a significant sanction in this matter as a means of addressing the historic systemic racism, it is appropriate to consider the context in which this misconduct occurred; in a community of broad, longstanding issues between the Thunder Bay Police Service and the Indigenous community, and while the Inquest into the Deaths of Seven First Nations was in progress.

Counsel submitted cases for my review which focused primarily on neglect of duty cases but included other offences as well. The sanctions varied from reprimand to the forfeiture of hours, demotion, and dismissal. I reviewed each of the cases. I will address those matters which Counsel focused on in oral submissions, and/or matters which impacted my decision.

Shouldice and Ontario Provincial Police, October 17, 1994

The officer was advised of an occurrence involving three parties who had not returned from a fishing trip in a small boat under deteriorating weather conditions. While Constable Shouldice took several positive steps, he failed to follow-up with the Coast Guard and family members, failed to prepare the occurrence report and his notes were lacking sufficient information. The Commission noted:

It is doubtful that anything that Constable Shouldice might have done would have made any difference with respect to the eventual outcome of these tragic events. However, all that being said, given the concerns of the families and the circumstances of this case, we are not able to conclude that Constable Shouldice applied full diligence to his duties that evening.

Similarly, had Staff Sergeant Harrison completed a thorough investigation, it would not have saved the life of Stacey DeBungee, but it may have provided comfort and understanding to his family. The sentence imposed was that of a reprimand.

Dinsdale and Ontario Provincial Police, December 14, 2004

The officer appealed the penalty of 160 hours imposed by the hearing officer following a guilty plea and an agreed statement of facts. The Commission stated:

The essence of the charge against Constable Dinsdale was that he failed to properly carry out the investigation of a head on motor vehicle collision... [it] resulted in the deaths of five members of one family and the serious injury of two others. Two people in the other vehicle were also injured...

It was agreed that Constable Dinsdale failed to interview all essential witnesses. He failed to provide some information as requested by the Crown Attorney within the timeframes required. He failed to follow up on witness statements and submit statements and notes from police personnel in a timely fashion and failed to ensure documents were provided well before trial.

The Commission varied the sanction and the officer was ordered to forfeit 48 hours. There were mitigating features that do not exist here such as the officer expressing a lack of

experience to his supervisor who was in attendance at the scene. His supervisor also faced discipline and received a penalty of 32 hours.

Ontario Provincial Police and Neild, December 9, 2016

The hearing officer found the sergeant guilty of neglect of duty for failing to properly supervise a sudden death investigation. The hearing officer stated:

I find the nature of Sergeant Neild's misconduct at the high end of seriousness. While I inferred from his testimony that he approached the scene as a homicide, I saw no evidence to support this. Rather I found the evidence illustrated Sergeant Neild's mind never turned to the possibility that something untoward had happened once he erroneously eliminated a collision from the equation. He was left with a sudden unexplained death. I find the consequences of failing to follow the checklists in regard to death investigations and summoning the appropriate resources, significant....

He failed to properly supervise and ensure the scene was protected and the appropriate resources summonsed.... the failures to ensure the basic fundamentals were performed in this death investigation are difficult to reconcile.

The hearing officer imposed a sanction of a forfeiture of 24 hours.

Dickinson v. Ontario Provincial Police, December 19, 2018, ONCPC 20

The officer failed to protect the life and safety of two individuals deemed "vulnerable" in the community. The officer failed to properly conduct a "wellness" check and failed to conduct a diligent and thorough investigation. The officer was ordered to forfeit 35 hours.

Sakalo v. Ontario Provincial Police, February 28, 2022, ONCPC 3,

The staff sergeant was found guilty of neglect of duty for failing to ensure his subordinate properly investigated a fatal motor vehicle collision. Their collective failure resulted in such a significant delay of the proceedings, that the Crown Attorney concluded there was no reasonable prospect of conviction and the criminal charges were withdrawn.

As penalty, the Commission upheld the forfeiture of 48 hours.

The above noted cases submitted by Mr. Butt are assistive, the facts are similar enough to support his assertion that Staff Sergeant Harrison's neglect of duty could potentially

result in a sanction at the low end of the spectrum; reprimand or a loss of hours. They do not take the discreditable conduct into account, however.

Upjohn v. Toronto Police Service, July 6, 2021

Mr. Butt also submitted the matter of *Upjohn* wherein; the officer was approached by a citizen requesting his assistance regarding a person who was attempting to hang himself. The officer refused to provide aid, informing the citizen that he was on a call for service when in fact he was not. The officer drove out of the immediate area only to be detailed to the very call for service he had attempted to avoid. The officer was neglectful in assisting the citizen who approached him and the person in crisis was successful in taking his own life.

I find the *Upjohn* matter to be far more egregious than the facts in this case. The Agreed Statement of Facts in that matter include the following:

A member of the public S.M., was exercising in High Park when she observed another member of the public A.B., with a rope around his neck and attempting to place the other end of the rope in a tree. It appeared to S.M. that A.B. was attempting to hang himself...[S.M. called her husband S.V. for assistance]

...S.V. approached the cruiser and told Constable Upjohn that there was a man hanging himself in the park and asked Constable Upjohn to accompany him to locate the individual attempting suicide. Constable Upjohn responded that he was on a call for service and could not assist. S.V. asked again for Constable Upjohn to help. Constable Upjohn replied that if it was an emergency then S.V. should call 9-1-1.

While the Agreed Statement of Facts included, “there is no evidence that Constable Upjohn could have prevented A.B.’s death,” I would suggest that had he responded accordingly, providing life saving effort was entirely possible. The hearing officer accepted the joint penalty proposed and ordered the officer demoted from second-class constable to fourth-class constable for one year, followed by another 12 months at the rank of third-class constable.

I have difficulty accepting that Staff Sergeant Harrison ought to receive a sanction of equal or greater consequence than that of Constable Upjohn. Therefore, the sanction to be imposed ought to be less than 24 months. I find a demotion of 18 months appropriate; Staff Sergeant Harrison disregarded the worth of Stacey DeBungee’s life to bother to ascertain how he died.

Andrews v. Midland Police Service, 2003 CanLII 87663 (ON CPC)

Mr. Dubois submitted the matter of *Andrews* can be used as a true comparator. The officer was found guilty of several counts of neglect of duty and one count of deceit. Sergeant Andrews failed to conduct and/ or ensure a proper investigation was even initiated into a physical altercation involving off-duty police officers and members of the public, failed to submit an incident report, failed to make notes, and then provided information with intent to mislead the detectives conducting a criminal investigation.

The Commission amended the sentence imposed by the hearing officer and ordered Sergeant Andrews demoted from the rank of sergeant to “second-class constable for a period of two years after which he can move upwards in graduation from second to first-class constable in accordance with the current provisions... Thereafter, he was permitted to enter the promotional process for the rank of sergeant and was required to rewrite the qualifying exam to demonstrate his suitability for the position of sergeant.

The sanction imposed in *Andrews* is significantly greater than the deceit cases submitted by Mr. Butt and suggests the position taken by the prosecution is reasonable. I find the circumstances in *Andrews* more serious, however. The sergeant intentionally suppressed the facts by ensuring the physical altercation involving other police officers was not documented or investigated by himself or his subordinates. He purposely neglected his duty to protect the police officers engaged in the altercation. Then, with full knowledge of the incident, he made a false, misleading, or inaccurate statement to the investigating officer. Furthermore, there was serious concern about the sergeant’s ability to rehabilitate.

I find Sergeant Andrews’ repeated intent to mislead, far more serious than Staff Sergeant Harrison’s behaviour. The sanction imposed is more than that proposed by the prosecution in this matter because the sergeant was not automatically returned to his former rank, he would have had to re-enter the promotional process after two years. The case is assistive, it suggests that a two-year demotion in rank in this case is within the range of available penalties.

Andrews is also helpful to illustrate that dismissal is not within the range of available penalties. In my opinion, the misconduct was more serious, yet the Commission stated:

The prosecution had sought a penalty of dismissal and the Hearing Officer did consider this penalty. In fact, he stated that dismissal was in the appropriate range given the seriousness of the misconduct. However, the Commission believes that unless the offence is so egregious and unmitigated, the opportunity to reform should be a significant consideration. The Hearing Officer was correct in his final assessment not to impose the penalty of dismissal. He was also correct that the

penalties imposed for misconduct must be strong enough to send a clear message to other officers that such conduct or any conduct of this nature will not be tolerated. He was also correct that the penalty must ensure public confidence in their police force.

I find the penalty of an 18-month demotion in rank appropriately considers Staff Sergeant Harrison's ability to rehabilitate while also satisfying the matters of specific and general deterrence.

Parsons and Halton Regional Police Force, 1989 CanLII 6718, ONCPC

Mr. Dubois conceded that the facts in *Parsons* are more serious, but still, it can be a useful comparator. The Commission upheld dismissal. For an extended period, the officer was documented for poor performance. He was demoted one year for neglect of duty. Then, he was found guilty of neglect of duty and deceit resulting in his dismissal. I do not find the matter assistive; the disparity in the seriousness of misconduct is too great and the employment history between the two officers, far too disparate, a factor which directly relates to the officers' ability to rehabilitate.

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

The *Venables* matter has been referenced in this decision already. Mr. Dubois noted that the behaviour is not precisely on point, but it does illustrate how serious the Commission considered the issue of discrimination. Unprovoked, the officer struck a handcuffed prisoner in the face and used derogatory language and racial slurs in conversation with the prisoner and with other officers. I find that behaviour quite worthy of dismissal; it is more egregious than the behaviour being assessed in this matter.

Khan v. York Regional Police Service, 2018 ONCPC 14 (CanLII)

The officer was found guilty of discreditable conduct, deceit and two counts of insubordination for conduct that included sexual assault. Mr. Dubois submitted that the unequal treatment based on sex in *Khan*, would be assistive in establishing a range of penalties available to this tribunal. I do not agree, in my view, the facts are not similar enough to warrant consideration.

Krug and Ottawa Police Service, 2003 CanLII 85816 (ON CPC)

The officer was charged with four counts of discreditable conduct related to allegations of inappropriate comments or touching of a sexual nature over a four-month period. The

incidents involved different women on separate occasions while the officer was on duty. The hearing officer was not convinced that the officer would not repeat the same misconduct and the officer was dismissed. The penalty was upheld upon appeal.

While *Krug* deals with vulnerable members of the community, I do not find it assistive, the facts are just too different to provide meaningful guidance,

Cate and Peel Regional Police Service, July 17, 1998 (ON CPC)

While on duty Constable Cate initiated an unwelcome, sexually suggestive conversation with a young woman working alone at 3 a.m. He then invited unwelcome physical contact in the guise of a back rub. The penalty of dismissal was overturned upon appeal and the officer received six-month demotion in rank.

Cate is only helpful in demonstrating that a demotion in rank accompanied by a training component is appropriate in matters of this scale of serious misconduct.

O'Farrell and Wlodarek v. Metropolitan Toronto Police Force, 1976 ONCPC 3 (CanLII)

The two officers were demoted in rank, one for 12 months, the other, for two years. They “exhibited unacceptable conduct by making racial insults and using obscene and insulting language to a fellow constable and his wife...” Mr. Dubois noted a single act of misconduct resulted in a significant sanction. Mr. Dubois suggested that because Staff Sergeant Harrison’s misconduct was not confined to one moment in time, a more significant sanction could be warranted.

I find the deliberate and appalling conduct exhibited in *O'Farrell and Wladarek* to be more serious than the actions and inactions of Staff Sergeant Harrison. To demonstrate such overt, flagrant, racism, demonstrates a character flaw that could have easily resulted in dismissal, in fact one officer was dismissed by the hearing officer but the sanction was reduced by the Commission. Even though *O'Farrell and Wladarek* is more serious, the matter does help illustrate that a significant demotion is warranted for behaviour of this nature; behaviour which demonstrates a bias, or racism.

Herridge v. St. Thomas Police Service, 2007, ONCPC 5 (CanLII)

Mr. Dubois submitted this matter to demonstrate that it is not only the length of demotion that is important, but also the specific rank must be considered. In *Herridge*, the Commission sated:

With respect to the magnitude of demotion, we agree that the case law presented was not particularly helpful, as it deals with misconduct committed by constables, not leaders. In the case such as this, we must consider three aspects of suitability continuum: is Staff Sergeant Herridge able to serve as a police officer; is he capable of serving but not leading; or, is he capable of serving and leading?

Mr. Dubois submitted that seeking a demotion from staff sergeant to constable was done intentionally; the sanction must be significant and a reduction in rank to a non-supervisory role is necessary to reflect the seriousness of the offence. I find it noteworthy that Staff Sergeant Harrison was promoted since the time of this misconduct seven years ago. Since then, he has demonstrated an ability to be a leader. It causes me to conclude that a demotion to the rank of constable is not necessary. As noted in *Herridge*:

Past performance, ability to be rehabilitated, remorse and leadership abilities are mitigating factors in assessing penalty.

The fact that the Thunder Bay Police Service felt it appropriate to place Staff Sergeant Harrison in the important role of Watch Commander is an indicator of his leadership ability; he could have been assigned an administrative role had his leadership skills been in doubt. In *X. v. Y.* (1994), 2 P.L.R. 285 (Ont. Bd. Of Inq.) the Board stated:

In addressing the “suitability” concern, the Board must recognize that there will be situations where the Board may find that an officer is still qualified to be a member of the force, but is unsuitable for a particular rank, and therefore should be demoted - but at the same time, perhaps the Board does not believe that the officer will be permanently unsuitable for that rank. In other words, the Board believes that the officer should be given a chance to apply for promotion at some later time period in such cases, the Board has no way of knowing when the officer will become suitable for return to his or her former rank. Nor is it proper for the Board to be involved in, or supervise, that process. The Board does not believe that it is delegating any of its authority or exercise of judgment to the police force when it imposes a penalty which essentially compels an unsuitable senior officer to start all over again from some lower rank.

The Thunder Bay Police Service has not taken the position that Staff Sergeant Harrison is not fit to lead. Had they done so, the penalty proposed by the prosecution would not have included an automatic reinstatement from the rank of constable to sergeant and then from sergeant to staff sergeant. I agree. It is my position that the seriousness of misconduct is not so egregious to warrant a demotion to constable, and the fact that he remains a competent leader suggests a demotion to the rank of constable is unnecessary.

I agree with Ms. James' submission that consistency in penalty across the province is not always appropriate. Ms. James submitted this is one of those cases. In the matter of *Gibson and the Waterloo Regional Police Force*, 1986 CanLII 4297 (ON CPC), the Commission stated:

Appeals of this nature confront this Commission with the fact that there is no absolute standard by which to measure the appropriate penalty. There are reasons why province wide uniformity is not always an appropriate objective. The forces of the Province are each entitled to emphasize corrective measure for problems which may be of particular concern to them. Concerns may change from year to year, community demands and standards may be different from one to another. In many respects what may appear just and fair to one hearing officer may not appear likewise to another. Fairness can be a matter of opinion.

Ms. James submitted the Broken Trust report captured the social context in Thunder Bay, an important consideration in this disposition determination; I am permitted to take judicial notice of the systemic racism that exists in the Thunder Bay Police Service. The Court's comments in *Canadian Broadcasting Corporation v. Ferrier* are worthy of repeating:

The public, and particularly the First Nations community in Thunder Bay, has a strong interest in the circumstances surrounding the death of Stacey DeBungee and in the Thunder Bay Police Service's investigation of his death. There is a strong public interest in seeing that, if police misconduct is found in regard to that investigation, those responsible for that misconduct are held to account.

Ms. James referred to *The Matter of the Thunder Bay Police Services Board*. On May 29, 2017, the Ontario Civilian Police Commission received a request to exercise its powers to investigate the Thunder Bay Police Services Board's alleged administrative failures in addressing the blanket denial of the concerns of Indigenous communities. The Executive Chair stated:

Numerous interviews with both Indigenous and non-Indigenous people, analyses of Thunder Bay's media coverage and statistics on rates of violent and race based crime, and numerous previous studies and reports clearly demonstrate the prevalence of racist attitudes in Thunder Bay. The Service is not exempt from racist attitudes and, as a result the Indigenous community has lost its confidence in the ability and, in many cases the commitment of the Service to protect them.

Ms. James submitted there is a need to denounce the behaviour demonstrated by Staff Sergeant Harrison. Ms. James submitted that any sanction less than dismissal would fail to address the community's concerns and would serve to announce that nothing has changed; this type of behaviour is acceptable and will continue.

Consistency is essential to ensure the penalty is not only fitting but is within the range of other sanctions concerning similar misconduct. As noted earlier in this decision, Counsel were unable to identify cases precisely on point. The cases that were submitted for my consideration, are to provide assistance in generating a broad range for available sanctions for comparable misconduct.

In *Galloway and Innisfil Township Police Force*, 1987 CanLII 63480, ONCPC the Commission stated:

We recognize that many police forces of this Province have established their own individual standards. Province wide uniformity of penalty is improbable even if it were desirable. We have not attempted to establish a uniform scale of penalty which would enable us to substitute our exact scale from the wisdom and experience of the hearing officer and his governing authority. Each force has its own peculiar problems in each set of circumstances is unique.

There is no dispute that Thunder Bay has its own unique policing issues. As noted, Staff Sergeant Harrison knew that the Inquest into the Deaths of Seven First Nations was in progress at the time of his misconduct; I find this unique circumstance to be an aggravating factor, it elevates the seriousness of both the neglect of duty and discreditable conduct offences.

The cases provided for my consideration were assistive; I find that they support a range of available penalties from reprimand to a two-year demotion in rank.

Conclusion

Mr. Butt submitted that when all factors are considered, this is a demotion case but the demotion ought not be for more than six months. He also submitted that demoting Staff Sergeant Harrison to constable is needless, a demotion in rank from staff sergeant to sergeant for three to six months is fitting.

Ms. James submitted Staff Sergeant Harrison deserves to be dismissed and Mr. Dubois submitted a two-year demotion in rank from staff sergeant to sergeant was the most fitting penalty.

Doering is an Ontario Superior Court of Justice decision relating to exceptional circumstances. Madam Justice Pomerance stated:

There is a dearth of authority directly on point. It is difficult to find another case in which a police officer was found criminally liable for a death in custody... Despite

the scarcity of case law, the law offers guidance in the form of basic sentencing principles, relevant statutory provisions, and more general case law.

It is sometimes said that sentencing is an art rather than a science. As noted by the Supreme Court of Canada in *R. v. Lacasse*, 2015 SCC 64, [2015] # S.C.R. 1089, at para 58: “It involves a variety of factors that are difficult to define with precision.” That does not mean that judges exercise a free hand. The “art” - the discretion inherent in the exercise is constrained by well defined rules and principles. Discretion is necessary to ensure that the sentencing is an individual process, carefully tailored to the circumstances before the court. The ultimate goal is a sentence that is “proportionate to the gravity of the offence and the degree of responsibility of the offender”... This, in turn calls for consideration of several factors as it was put by Lamer C. J. (as he was then) in *R. v. M (C.A.)*, [1996] 1 S.C.R. 500, 105 C.C.C. (3d) 327, at para. 91, sentencing is “a delicate art which attempts to balance carefully the societal goals of sentencing against the moral blameworthiness of the offender and the circumstances of the offence, while at all times taking into account the needs and current conditions of and in the community.”

I am not a judge; I am a hearing officer. In this instance, I am tasked with a similar role however, that of determining a fitting sanction. The misconduct in question relates to serious police misconduct that is uniquely distinct.

Guided by *Doering*, I landed on a sentence that is proportionate to the gravity of the misconduct and Staff Sergeant Harrison’s degree of responsibility. In arriving at a penalty of an 18-month demotion in rank, I considered and balanced the applicable penalty factors including the social context that existed at the time of the misconduct.

I am guided by the principles governing the determination of a disposition. In so doing, I have attempted to ensure the public complainants’ interests have been protected, while fulfilling my obligation to ensure the least onerous disposition prevails, one which moves towards a more remedial philosophy rather than a punitive disposition.

Elder Bella and Mr. Leonard addressed the tribunal at the conclusion of oral submissions at this disposition hearing. Elder Bella said she was uncomfortable closing the hearing because the matter will not truly be closed until the issues between the Thunder Bay Police Service and the Indigenous community are resolved. Mr. Leonard added his comments, noting that this issue will take years to resolve.

While the above noted comments were not part of the hearing and not part of the official record, they are relevant, and I share their perspective on this issue. The finality of this hearing will not have significant impact on the relationship between the Indigenous community and the Thunder Bay Police Service; that responsibility rests with the respective leadership groups to navigate. Holding Staff Sergeant Harrison accountable as a symbolic gesture toward reconciliation, would breach the rules of natural justice and procedural fairness while bringing the administration of justice into disrepute. If Staff Sergeant Harrison's employment was terminated, it would be as though he was bearing the entire history of the Thunder Bay Police Service, an unacceptable consequence.

In the matter of the *Canadian Broadcasting Corporation v. Ferrier*, the Court stated:

Most significantly, there is a very high level of distrust between the First Nations community and the Thunder Bay Police Service, with many Indigenous peoples in the Thunder Bay area believing that the policing practices relating to them are racist.

It is important to consider the social context in which this issue arose. Staff Sergeant Harrison would have been well aware of the Indigenous community's distrust of the Thunder Bay Police Service. He was fully aware that the Inquest into the Deaths of Seven First Nations was in progress. As noted, I find it incomprehensible that while the Inquest was ongoing, Staff Sergeant Harrison demonstrated such a blatant disregard for his duty. This an aggravating feature for my consideration.

I accept Ms. James' submission that the Indigenous community requires a significant sanction in an attempt to re-instill confidence in the Thunder Bay Police Service. As stated in *Gibson*, there are instances when penalties can be affected by factors such as that community's particular social context. The Indigenous community makes up a significant portion of the Thunder Bay population, and as such, the sanction imposed in this matter might be different than in other communities with a lesser Indigenous presence. Sanctions imposed in police discipline matters must take the public's interest into consideration. Public Interest in this matter is a significant aggravating factor.

The prosecution on behalf of the Thunder Bay Police Service submitted dismissal was not an appropriate sanction; a demotion in rank was fitting. I agree. I do not find that Staff Sergeant Harrison has a character flaw that cannot be corrected by way of this sanction. Staff Sergeant Harrison was not suspended from duty; over the course of the past several years while the complaint process progressed, Staff Sergeant Harrison maintained a professional attitude and commitment to his career. I do not accept that suddenly, he is no longer qualified to do his job; he is a likely candidate to reform and the seriousness of his misconduct does not warrant dismissal.

I have determined that a demotion from staff sergeant to sergeant is fitting; I must now consider the duration of that demotion in rank. The sanction must incorporate both neglect of duty and discreditable conduct.

I find the matters of *Upjohn* and *O'Farrell and Wlodarek* most assistive. In my opinion, the seriousness of the misconduct is greater in those matters than that of Staff Sergeant Harrison's misconduct. The penalties resulted in demotions ranging from one to two years in length.

I find the factors of Public Interest and Seriousness of Misconduct to be so substantial that a considerable demotion in rank is required. The fact that the Inquest into the Deaths of Seven First Nations was in progress at the time of the misconduct certainly adds to the seriousness of misconduct. Staff Sergeant Harrison's unprofessionalism, negligence, and bias, failed Stacey DeBungee, Stacey DeBungee's family, the public, and the Thunder Bay Police Service. As noted earlier, Staff Sergeant Harrison disregarded the worth of Stacey DeBungee's life to bother to ascertain how he died. If it were not for the mitigating factors that exist, I would have increased the terms of Staff Sergeant Harrison's demotion.

The penalty factors of Employment History and Ability to Rehabilitate demand significant mitigation consideration. Not only does Staff Sergeant Harrison have an unblemished record prior to this misconduct, his post offence behaviour is commendable. I have little concern that Staff Sergeant Harrison will commit misconduct of this nature in the future.

I am satisfied that a demotion in rank from staff sergeant to sergeant for a term of 18 months is the most appropriate penalty to be imposed.

I accept Counsel's submission that Staff Sergeant Harrison's return to the rank of staff sergeant following the term of his demotion, ought to be in accordance with existing policy. Exhibit #21 is the Thunder Bay Police Service Promotional Policy. In part, it states:

3.3 A member who is suspended from duty and who is charged with a criminal offence at the time a promotional competition is held shall not be eligible to compete for promotion in that competition.

3.4 A member who has been charged with serious misconduct or served with a notice of hearing on a charge or charges of misconduct as defined under the *Police Services Act*, or any replacing legislation, at the time a promotional competition is announced shall not be eligible to compete for promotion in that competition.

Therefore, in order to return to the rank of staff sergeant at the conclusion of this term of demotion, Staff Sergeant Harrison must not be suspended from duty; facing a criminal charge(s); or facing formal *Police Services Act* charge(s).

Disposition

Staff Sergeant Harrison was found guilty of neglect of duty and discreditable conduct. I have carefully reviewed the evidence, the submissions of Counsel and the jurisprudence provided.

I find that Staff Sergeant Harrison's usefulness to the Thunder Bay Police Service has not been annulled. I do not find it necessary that Staff Sergeant Harrison be demoted to the rank of constable. I find the fitting sanction is a demotion in one rank for a term of 18 months; it is a penalty which meet the goals of the discipline process: to strike a balance between community expectations, fairness to Staff Sergeant Harrison and the needs of the organization.

I order Staff Sergeant Harrison demoted in rank from staff sergeant to sergeant for a term of 18 months. At the conclusion of that period, he is to be returned to the rank of staff sergeant provided his disciplinary record remains unblemished. Furthermore, within three months of the release of this decision, Staff Sergeant Harrison must attend Indigenous Cultural Competency Training, a curriculum called Bimickaway.

This order is pursuant to section 85(1)(c) and 85(7)(b) of the *Police Services Act*.



Greg Walton
Superintendent (Ret.),
Ontario Provincial Police Adjudicator

Date delivered: February 03, 2023

NOTE: On February 3, 2023, the following sections from this disposition decision were read into the record partly, or in full, during a virtual hearing appearance: Background; Positions on Penalty; Conclusion; and Disposition. This decision was released to Counsel via email immediately thereafter.

APPENDIX A

Exhibits 1 - 19 were tendered at the hearing.

- 1a) Delegation of Authority - Walton
- 1b) Delegation of Authority - Walton
- 1c) Delegation of Authority - Walton
- 2a) Prosecution Designation – Bordeleau
- 2b) Prosecution Designation – Bordeleau
- 2c) Prosecution Designation – Bordeleau
- 3a) Prosecution Designation – Dubois
- 3b) Prosecution Designation – Dubois
- 3c) Prosecution Designation – Dubois
 - 4) Agreed Statement of Facts
 - 5) Book of Documents – Volume I
 - 6) Book of Documents – Volume II
 - 7) Book of Documents – Volume III
- 7a) Tab 64 – Broken Trust report
- 7b) Tab 65 – Thunder Bay Police Services Board Investigation – Final Report
 - 8) Notes of Detective Primmer
 - 9) Photograph of Stacey DeBungee
 - 10) USB Drive – Scene video and photographs
 - 11) Curriculum Vitae – Perry
 - 12) Supplementary Occurrence Report
 - 13) Book of Authorities – Butt
 - 14) Oral submissions outline – Butt
 - 15) Book of Authorities – Dubois
 - 16) Transcript – Harrison – Volume I
 - 17) Transcript – Harrison – Volume II
 - 18) Book of Authorities – Volume I – James
 - 19) Book of Authorities – Volume II – James

Exhibits 20 – 29 were tendered during the disposition hearing.

- 20) Prosecutor Designation – Blanco-Sanchez
- 21) Thunder Bay Police Service Promotional Policy
- 22) Bimickaway Document
- 23) Song Affidavit
- 24) Media Compilation
- 25) Book of Authority – Defence – USB
- 26) Book of Materials – Defence – same USB as Exhibit 25
- 27) Sealed Exhibit – unredacted Harrison Affidavit – redacted version in Exhibit 26

- 28) Book of Authorities – Prosecution
- 29) Book of Authorities – Public Complainants