

PART I: OVERVIEW

Allegations of Misconduct

- [1] It is alleged that Detective James Yuzefowich (“Detective Yuzefowich”), a member of the Peel Regional Police Service, committed the following act of misconduct contrary to section 80(1)(a) of the *Police Services Act, R. S. O. 1990 c. P. 15*, as amended;

Count One - Discreditable Conduct

It is alleged that Detective James Yuzefowich committed Discreditable Conduct in that on or about November 30, 2020 and February 11, 2021 he acted in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the Peel Regional Police constituting an offence against discipline as prescribed in section 2(1)(a)(xi) of the *Code of Conduct, Regulation 268/10*, as amended.

Background

- [2] Detective Yuzefowich of the Peel Regional Police Service appeared before me on May 13, 2021 in answer to a Notice of Hearing that was issued on April 28, 2021, alleging one count of misconduct contrary to section 80(1)(a) of the *Police Services Act*, constituting an offence against discipline, Discreditable Conduct, as prescribed in section 2(1)(a)(xi) of the *Code of Conduct, Regulation 268/10*, as amended.

Plea

- [3] On June 11, 2021, Detective Yuzefowich appeared before me and entered a plea of guilty to one count of Discreditable Conduct. An Agreed Statement of Facts was tendered as Exhibit #5 and read into the record. Based on those facts, and the confirmation by Detective Yuzefowich that they were substantially correct, a finding of misconduct was registered.

Decision

- [4] After examining and weighing all of the evidence presented, as the Hearing Officer I impose on Detective James Yuzefowich #2552 of the Peel Regional Police Service for one count of Discreditable Conduct:

A reduction in rank from Detective to First Class Constable for a period of nine (9) months, following which the officer will be returned to the rank of Detective.

- [5] The penalty is submitted in accordance with section 85(1)(c) of the *Police Services Act*.

PART II: THE HEARING

Exhibits

[6] The Exhibits for this matter are listed as follows;

Exhibit #1	Delegation of Powers and Duties to the Hearing Officer (Supt. Higgs)
Exhibit #2	Prosecutor's Designation (Ms. Sharon Wilmot)
Exhibit #3	Prosecutor's Designation (Ms. Jovana Orabovic)
Exhibit #4	Co-Prosecutor's Designation (Insp. Mark Noble)
Exhibit #5	Agreed Statement of Facts
Exhibit #6	Joint Submission as to Penalty
Exhibit #7	Brief of Authorities (Prosecution)
Exhibit #8	Book of Supporting Materials (Defence)

Representation

[7] In this matter, Mr. Mark Gordon represented Detective Yuzefowich, and Ms. Jovana Orabovic and Inspector Mark Noble represented the Peel Regional Police Service.

Agreed Statement of Facts

[8] The facts of this matter are substantially agreed upon by the parties to this Tribunal. The Agreed Statement of Facts, filed as Exhibit #5, states;

Background

[9] Detective James YUZEFOVICH #2552 has been a member of Peel Regional Police (PRP) since 2002. He is a Detective in 21 Division Criminal Investigation Bureau and held this position at the time of the alleged incident.

COUNT ONE - DISCREDITABLE CONDUCT

1. On November 29, 2020, at approximately 6:30 p.m., Detective James Yuzefowich attended a social function at a friend's residence in Amaranth Township. While at this residence, Detective Yuzefowich consumed approximately seven (7) beers.
2. Detective Yuzefowich left the residence to return home at 2:15 a.m.

3. On November 30, 2020 at 2:15 a.m., Detective Yuzefowich was operating his blue Chevrolet Silverado pickup truck, travelling south on County Road 16 in Amaranth Township.
4. Detective Yuzefowich was stopped by the Ontario Provincial Police who had set up a Reduce Impaired Driving Everywhere (RIDE) spot check on County Road 16 in Amaranth Township.
5. Provincial Constable Jeff Ridgway #15567 administered an ASD test, which Detective Yuzefowich completed with no issue. Detective Yuzefowich's test registered a fail
6. Provincial Constable Ridgway #15567 placed Detective Yuzefowich under arrest and transported him to the Dufferin OPP Detachment for testing.
7. While at the detachment, Detective Yuzefowich was turned over into the custody of a qualified breath technician. Detective Yuzefowich provided two breath samples, both registering readings of 84 milligrams of alcohol in 100 milliliters of blood.
8. Detective Yuzefowich was charged with excess blood alcohol and was released on an undertaking.
9. On February 11, 2021, Detective Yuzefowich pled guilty to Careless Driving contrary to the Highway Traffic Act before Justice B. A. Harris in the City of Orangeville. Detective Yuzefowich was placed on a 12-month probation order; was required to pay a \$1,000 fine; was ordered to attend a remedial driving course, and to have an interlock system placed in his personal vehicle. The criminal charges were withdrawn at the request of the Crown.
10. The actions of Detective Yuzefowich constitute Discreditable Conduct under 2(1)(a)(xi) of the prescribed Code of Conduct.

Positions on Penalty

[10] The parties representing the Prosecution and Defence provided a joint submission with respect to penalty, tendered as Exhibit #6, dated June 8, 2021. They propose that the appropriate disposition for the finding of one count of Discreditable Conduct is as follows:

A reduction in rank from Detective to First Class Constable for a period of nine (9) months, following which the officer will be returned to the rank of Detective.

[11] The penalty was submitted in accordance with section 85(1)(c) of the *Police Services Act*.

Submissions of the Prosecution – Inspector Mark Noble

[12] Inspector Noble noted that there is a joint submission in regards to a penalty of a 9-month demotion from the rank of the Detective to that of first class Constable on the plea of one count of Discreditable Conduct.

[13] It is submitted that this penalty is reflective of the applicable mitigating and aggravating factors and is consistent with penalties imposed in similar cases.

[14] Inspector Noble notes that a number of factors must be considered in determining the appropriate penalty and that these factors are set out in KRUG and Ottawa Police Service, January 21st 2003, found at tab one in the prosecution book of authorities.

[15] Inspector Noble submits that, while not all factors will necessarily be relevant in each case, that in this instance the mitigating and aggravating factors that must be considered are:

- i. Nature of the misconduct;
- ii. Public interest and damage to the reputation of the Police Service;
- iii. Employment history;
- iv. The ability to reform or rehabilitate the police officer;
- v. Deterrence, both General and specific;
- vi. Consistency of disposition.

[16] Inspector Noble submits that when these disposition considerations are balanced against the mitigating and aggravating factors specific to this case a demotion penalty of 9 months to the rank of first class constable is both appropriate and reasonable.

[17] Inspector Noble submits the following in regards to the nature of the misconduct:

- a. The Ontario Civilian Police Commission has repeatedly recognized that impaired driving offences must be treated seriously.
- b. It has become clear over the years that drinking and driving is an offense that constitutes serious misconduct.

- c. It is conduct which cannot be tolerated and for which a substantial penalty must be assessed.
- d. Both the community and the Service have become less tolerant of the offence of drinking and driving.
- e. The Service has expended considerable resources to combat drinking and driving.
- f. Our service specifically is becoming increasingly concerned with the incidence of impaired driving amongst our members and feel that this is a necessary and important message to be sent out that this sort of irresponsible behavior cannot be tolerated.
- g. There are several factors that make this misconduct serious;
 - i. On November 29th 2020 at 6:30 p.m., Detective Yuzefowich attended a social function at a friend's residence in Amaranth Township.
 - ii. While at this residence, Detective Yuzefowich consumed several alcoholic beverages leading him to fail an ASD demand at a R.I.D.E. spot check later on that evening.
 - iii. While there is no evidence before the tribunal to suggest that Detective Yuzefowich's driving was in any way erratic, his blood alcohol concentration was nonetheless above the legal limit and he should have known that he was not in a position to drive after consuming many alcoholic beverages.
 - iv. Detective Yuzefowich's misconduct not only put his own safety at risk but also threatened the safety of others on the road.
 - v. It is important that the seriousness of this misconduct be stressed sufficiently in order to ensure that we are protecting, and not jeopardizing, the lives that we aim to protect as police officers.
 - vi. This is particularly the case for when the misconduct is at the hands of a more seasoned and experienced officer such as a Detective.

- vii. We rely on this position to project a constructive image of the organization to the public and whom we look to be role models for our younger officers.

[18] Inspector Noble submits the following in regards to Public interest and damage to the reputation of the Police Service:

- a. It is an established principle that the public must be assured that the police officer protect and not threaten their safety.
- b. Any time a police officer is involved in any conduct which involves alcohol and the operation of a motor vehicle the public could reasonably expect that they face significant consequences for their actions.
- c. Detective Yuzefowich's conduct involved OPP officers who investigated and who were aware that he was a Peel Regional Police Officer.
- d. This contributes to the tarnishing of the reputation of our Police Service.
- e. This matter is a public one and may be subject to scrutiny from the media as they report on this decision in the future and further tarnish the reputation of the officer and the Service at large.
- f. Detective Yuzefowich's actions will not only impact his own reputation but also the reputation of the Service. This additional aggravating factor warrants the penalty being sought.

[19] Inspector Noble submits the following in regards to Employment history:

- a. Detective Yuzefowich has been a member of this service since 2002.
- b. He has not had any formal findings before this tribunal in the past and it is the Service's sincere hope that he continues on this trajectory following today's formal finding of guilt.

[20] Inspector Noble submits the following in regards to Rehabilitation Potential:

- a. This factor includes acceptance of responsibility, expressions of remorse, and employment history.
- b. Detective Yuzefowich has taken responsibility for his actions by pleading guilty before this tribunal at the earliest opportunity. This is a mitigating factor.

- c. There are a number of factors pointing towards positive rehabilitation potential:
 - i. Detective Yuzefowich has quickly, and fully, accepted responsibility for his actions.
 - ii. Has shown signs of remorse.
 - iii. Has had a lengthy career with the Service and a very positive one.
 - iv. His lack of formal discipline in his past is a positive indication of his rehabilitation potential.

[21] Inspector Noble submits the following in regards to Need for Deterrence, both specific and general:

- a. Both are important factors in this case and there are concerns with the ability of the officer to obey the law and respect his position as a police officer.
- b. It is important that the severity of the penalty act as a reminder to Detective Yuzefowich of the seriousness of his actions.
- c. Further, the penalty should serve as a reminder to members of the service that criminal conduct, especially operating a motor vehicle while impaired, is serious misconduct and will be penalized accordingly.

[22] Inspector Noble submits the following in regards to Consistency of Disposition:

- a. It is the responsibility of the hearing officer to ensure the consistency of disposition and should look to previous cases for guidance.
- b. While perfect consistency cannot be achieved, it is helpful to examine how similar cases have been treated.
- c. Unfortunately, we do have a wide-body of examples to look at when determining appropriate penalties for impaired driving.
- d. This both confirms this behaviour is problematic, requires deterrence, and provides you with a reasonable range for the Tribunal's decision.
- e. When looking at consistency is important to look at local PRP cases as well as guidance from the Ontario Civilian Police Commission given that there may be regional variations when it comes to penalties for specific types of misconduct
- f. There may be certain decisions from other services that demonstrate a more

lenient historical approach to drinking and driving offences.

- g. It is Inspector Noble's position that it is more important to look at recent PRP cases and decisions to determine how senior management deals with these issues.
- h. A review of these cases over the last few years demonstrates that penalties within Peel have generally been in the range of a six to twelve month demotion with an upward trend given the recent rise in cases among Peel officers.
- i. A summary of four cases:
 - i. **Peel Regional Police and Detective Constable Darren Hunter #3320 – January 22, 2021**
 1. This officer was off-duty and involved in a three-vehicle collision of which he was not at fault.
 2. There is no driving evidence reported.
 3. The officer that attended detected an odour of an alcoholic beverage on his breath.
 4. The officer refused to provide a breath sample and he was charged with refused breath sample.
 5. The charge was later reduced to careless driving for which he pled guilty.
 6. The Penalty: a 9-month demotion from first class to second-class constable.
 - ii. **Peel Regional Police and Constable Christopher Cull #3126 – August 9, 2018**
 1. This officer was off-duty and pulled over for a traffic violation; namely, pulling a trailer without a license plate.
 2. There is no evidence of impaired driving.
 3. During the subsequent investigation, officers noted an odour of an alcoholic beverage emanating from his breath.
 4. A breath demand was made and the officer registered a fail on an approved screening device.
 5. His additional breath readings were in the lower range the scale.

6. He pled guilty to careless driving.
 7. The penalty: a six-month demotion in rank from first-class Constable to second-class Constable.
- iii. **Peel Regional Police and Constable D’Arcy O’Shea #2807 – September 10, 2019**
1. This officer was off-duty and driving home when he was observed to be driving erratically by a citizen who called police.
 2. He was located by Halton Regional Police asleep in the front seat of his vehicle in the driveway of his residence.
 3. He was placed under arrest, refused to provide a breath sample, and later charged criminally.
 4. Plead guilty to impaired driving and refuse to provide a breath sample.
 5. The penalty: a 9-month demotion in rank from first-class Constable to second-class Constable.
- iv. **Peel Regional Police and Constable Bryan Lawrie #3485 – May 10, 2021**
1. This officer was off duty and driving home after visiting a friend's house, and attending a restaurant, both of which involved the consumption of alcoholic beverages.
 2. The officer was observed to be swerving and driving into oncoming traffic.
 3. As a result the OPP conducted a traffic stop.
 4. The officer was placed under arrest for impaired driving and provided two samples of his breath, which were well in excess of the legal limit.
 5. He was charged and plead guilty to operating a motor vehicle while impaired, blood alcohol concentration 80+.
 6. This officer had no disciplinary history and had an exemplary employment record up to this point.
 7. The penalty: a 10-month demotion in rank from first-class Constable to second-class Constable.

[23] Inspector Noble indicates that Peel Hearing Officers, as well as the Ontario Civilian Police Commission have been very clear that incidents of impaired driving must be treated seriously.

[24] Inspector Noble notes that one of the most recent decisions on the question of impaired driving was Ontario Provincial Police Sergeant Cameron Howard and Ontario Provincial Police (OCPC, August 16, 2016) located in Tab 6 in which the Commission upheld a 20-month demotion.

- a. Sergeant Howard was off duty, he consumed alcohol and declined a ride home.
- b. His vehicle struck his residence, he exited the vehicle with obvious signs of impairment.
- c. A witness attempted to call 911 and Sergeant Howard grabbed the witness' wrist and knocked the phone from his hand.
- d. He entered his residence, consumed additional alcohol, and fell asleep.
- e. Thunder Bay Police Service attended but did not lay criminal charges.
- f. The penalty: a 20-month demotion from the rank of Sergeant to First Class Constable.
- g. This penalty was later upheld on appeal by the commission.
- h. It is important that this was a case where no criminal charges were associated with the impaired operation of a vehicle.
- i. Inspector Noble highlights that in paragraph 24 of the appeal where the Commission stated:
 - i. We take no issue with the hearing officer stating his belief that the Public's perception of the seriousness of drinking and driving by police officers has increased in subsequent years.
 - ii. We are of the view that the penalty imposed by the hearing officer was not so inconsistent with the other penalties supplied so as to warrant the intervention of the Commission.

[25] Inspector Noble identifies that in the case of Ontario Provincial Police Sergeant Cameron Howard and Ontario Provincial Police (OCPC, August 16, 2016):

- a. This case serves as an indication of police officers and police services across the province that the penalties for impaired driving has steadily increased given the seriousness of this misconduct.
- b. Detective Sergeant Kenny was off duty operating an unmarked police vehicle.
- c. He is involved in a single motor vehicle collision in which his vehicle ended up on its roof.
- d. When officers responded several beer cans were found within the vehicle and in the immediate scene.
- e. Detective Sergeant Kenny was unsteady on his feet and was exhibiting signs of impairment, He steadied himself against the side of a truck.
- f. He attempted to the walk away from the accident scene and was handcuffed and transported to the detachment where he refused to provide a breath sample.
- g. He plead guilty to impaired operation and refuse to provide a breath sample.
- h. Kenny had 22 years of service and a clean disciplinary record.
- i. There was no previous indications of alcohol-related problems.
- j. In the months previous to this incident he had experienced a significant loss in his personal life; a marriage breakup, a loss of his K9 partner and a stillborn child.
- k. A total of 13 letters of support were entered which included several from senior officers who attested to this officer's strong work ethic and investigative skill.
- l. The penalty: 24-month demotion from the rank of Detective Sergeant to First Class constable.

[26] Inspector Noble submits that this misconduct is clearly serious and that this behaviour will not be tolerated from its members.

[27] Inspector Noble summarizes that:

- a. It is important to note that Detective Yuzefowich has taken responsibility for his actions and has demonstrated a willingness and ability to be rehabilitated and move forward in a positive manner.

- b. It is the service's sincere hope that he continues in this positive trajectory
- c. It is the Service's position that this position is reflective of the factual circumstances of this misconduct and addresses the various aggravating and mitigating factors applicable in this case, and its in line with the range established by similar case law.

[28] Inspector Noble submits that there is no reason for the Tribunal to depart from the joint position that is being presented to it.

[29] Inspector Noble notes that, pursuant to case law, in particular *R. versus Anthony Cook 2016*, while the Tribunal is not bound by joint positions, in order to depart from the joint position the Tribunal would need to find that the penalty proposed is outside of the reasonable range of penalties available for similar misconduct and that accepting the joint position would bring the administration of justice into disrepute.

[30] Inspector Noble submits that, in considering the dispositional factors that have been highlighted, the Tribunal will find that the proposed penalty is reasonable and fair and that there is no reason to depart from the joint position.

Submissions of the Defense – Mr. Mark Gordon

[31] Mr. Mark Gordon, Member Representative for the Peel Regional Police Association, spoke on behalf of the officer and submitted the following points which have also been entered as Exhibit #8:

[32] Detective James Yuzefowich stands before you having accepted responsibility for the charge of Discreditable Conduct. By entering a guilty plea, he has acknowledged that the Agreed Statement of Facts accurately reflects the nature of his misconduct. The joint submission on penalty is a reduction in rank from Detective to First (1st) Class Constable for a period of nine (9) months following which the officer will be returned to the rank of Detective. He is also in congruence with the penalty proposed by the prosecution, which is supported by the Association, in the form of a joint submission.

[33] As you are aware, in the matter of *Krug and the Ottawa Police Services - OCCPS 2003*, the Ontario Civilian Commission on Police Services highlighted crucial elements or

factors, both mitigating or aggravating, that should be examined by a Hearing Officer when determining penalty *{Refer Tab 2, pg. 21}*. I have outlined those mitigating factors in favour of Detective Yuzefowich for your consideration with respect to the matter before you. These factors also serve to support this joint submission for the proposed penalty:

a. Seriousness of the Misconduct:

- i. It is agreed that Detective Yuzefowich's conduct was in contravention of the internal directive I-A-204(f) - Code of Conduct, Ethics, Conduct and Discipline, and that the misconduct was serious in nature. The congruently proposed penalty adequately addresses the misconduct in the matter. *{Copy of the Directive included in Tab 3}*.

b. Recognition of the Seriousness of the Misconduct:

- i. Detective Yuzefowich was originally charged by the Dufferin County Detachment, Ontario Provincial Police (OPP) for the offence of Excess Blood Alcohol Over 80 mg.
- ii. At the earliest opportunity, within a three (3) month period following the time of the offence, Detective Yuzefowich plead guilty to the offence of Careless Driving under the Highway Traffic Act (HTA). Detective Yuzefowich accepted the imposed sentence for the HTA offence of twelve (12) months probation; \$1,000 fine; attend a remedial driving course and have an interlock system placed in his personal vehicle; subsequently the criminal charges were withdrawn by the crown.
- iii. Throughout the process, as well as during the initial contact with Dufferin OPP, Detective Yuzefowich maintained his professionalism and respect in an otherwise un-professional circumstance. This was evident in the statements of both officers from the OPP with respect to his compliance and cooperation; specifically, of the Breath Technician who indicated that had Detective Yuzefowich attempted to create a delay in testing he would most certainly have blown under the legal limit. Having firsthand knowledge of this delay tactic, Detective Yuzefowich could have exercised this option; instead, he took immediate responsibility for his actions.

- iv. Detective Yuzefowich displayed remorse at the time of the incident, also indicated in the statements from the OPP officers, and further illustrated this during interviews with the Members of Internal Affairs. He was open, honest, forthright, and undoubtedly remorseful and embarrassed by his actions, this was abundantly clear in his statements to Internal Affairs.
- v. A plea of guilt registered here today, in conjunction with, his agreement of the facts herein, clearly demonstrates both a clear acceptance of responsibility and recognition of the misconduct.

c. Employment History:

- i. Detective Yuzefowich has provided just under twenty (20) years of professional and dedicated service to the Peel Regional Police. He is currently assigned to 21 Division - Criminal Investigations Bureau where he has been assigned for the past three (3) years. Detective Yuzefowich has dedicated his craft as a police officer for the majority of his career in an investigative capacity, working in some of the highest volume and more complex areas of policing. During his career with the Peel Regional Police, he has amassed fifty-five (55) honors and awards that consist of both internal and external recognitions; included in these decorations an award presented by the Regional Municipality of Peel Police Services Board. *(Included copies of the above mentioned in Tab 4)*. Overall, his employment record can be described as extremely positive.

d. Potential to Reform or Rehabilitate:

- i. This factor of potential to reform or rehabilitate speaks to the issue of the proclivity of the said behaviour or misconduct. There is a significant nexus to employment history that can lead us to a conclusion in this regard.
- ii. Based on work performance from the inception of his policing career, Detective Yuzefowich has demonstrated an exemplary employment record; both current and past supervisors support this statement.
- iii. This officer deserves the opportunity to demonstrate he has the appetite to reform and rehabilitate himself; the penalty proposed will allow Detective Yuzefowich such an opportunity. On occasion, members facing

discipline can shut down, distance themselves from positive steps of rehabilitation and become part of a toxic culture that has a negative effect in the workplace. This has been the polar opposite of what Detective Yuzefowich represents, he has continued to make positive contributions in his area and maintained a greater than average workload during this process.

- iv. The most recent Performance Appraisal in 2021 clearly demonstrates these points wherein, he "Met Expectations" in all areas and "Exceeded Expectations" in two (2) categories, namely one (1) of which in the competency of Accountability and Excellence. Comments made by his immediate supervisor refer to this officer as "a strong leader" who "has his finger on the pulse". Over this period of evaluation, he has been heavily relied upon in the capacity of Acting Detective Sergeant, who was supportive of team members dealing with personal issues and conflict. He is deemed "reliable, trustworthy and model supervisor, and performed at a high standard." (*Refer to Tab 5, pg. 1-2, pg. 3- 4, pg. 5*)
- v. From the 2020 Performance Appraisal, Detective Yuzefowich was rated as meeting expectations in his role, and further was rated as "Exceeds Expectations" in four (4) competencies and "Clearly Exceeds Expectations" in two (2) competencies; namely, Achievement Orientation; Conflict Management; Developing Self and Others; Interpersonal Skills; Leadership and Teamwork. His supervisor remarks that Detective Yuzefowich "effortlessly and effectively filled the role of Acting Detective Sergeant". The supervisor further goes on to describe the actions of Detective Yuzefowich, "regularly demonstrating a high standard of performance, leads by example, performs his duties with the highest level of professionalism and integrity". (*Refer to Tab 6, pg. 1-8, pg. 11-12*)
- vi. Dating back to the Performance Appraisal of 2019, Detective Yuzefowich has clearly established a positive trend in performance; supported by the evaluation of his supervisor, indicating he "Exceeds Expectations" in the overall rating. The supervisor indicates that Detective Yuzefowich "Possesses

excellent decision-making skills, he uses principles, values, common sense, and sound judgement", "leads by example, acting with professionalism and integrity". (*Refer to Tab 7, pg. 1-8, pg. 10, pg. 12*)

- vii. When you make your evaluation, please consider all the material by closely examining the entire body of work, indicated above, rather than focusing on the smallest sample size that would only show the behaviour of Detective Yuzefowich when he was not at his finest. Based on the totality of positive and effective work performance, as indicated in his previous evaluations, there is no doubt that he can continue this trending performance, given the opportunity.

e. Specific and General Deterrence:

- i. It is recognized by everyone, including Detective Yuzefowich, that this type of misconduct does require deterrence; the proposed penalty does address this. It is our position that this penalty will have a significant impact on the career of Detective Yuzefowich. In addition, to being designated as a McNeil Officer, his aspirations of being considered for promotion being delayed an additional five (5) years.
- ii. The area of promotion ineligibility is significant, as by all appearances based on his past performance and designation for acting at the next rank would otherwise indicate he is trending in that direction.
- iii. This penalty also has a sizeable financial impact, approximately \$11,500, not only an impact to the officer himself but also his family. This type of impact resonates a strong message to Detective Yuzefowich, as well as other officers that this type of conduct is unacceptable and will not be tolerated by the Service.

f. Damage to the Reputation of the Service:

- i. Common considerations made when assessing penalty, the possible impact on the police service. The reflection on the service can be an integral part of the penalty process. Fortunately, in this matter, there was no publicity, and no members of the public were involved or interviewed because of the subsequent investigation. Furthermore, in the statements provided by the two officers from the Dufferin OPP, they both indicated, without any prompting questions, that

Detective Yuzefowich was extremely cooperative, compliant, and very professional in an otherwise unfortunate incident. From infancy of this investigation, Detective Yuzefowich displayed a level of professionalism and integrity that left a lasting impression with members of a police service outside our jurisdiction. The actions and response in the face of this adverse situation, demonstrated by Detective Yuzefowich, played a mitigating role in the damage to the reputation of the Service.

- ii. Detective Yuzefowich stepped up at the earliest opportunity to remedy the matter and plead guilty to Careless Driving under the HTA, and as a result, the criminal charge of Excess Blood Alcohol was withdrawn. There is no doubt that had the process been drawn out over a period of time, the potential for the matter to become a pronounced public record would absolutely be imminent.

g. Consistency of the Disposition:

- i. Consistency represent one of the "basic principles of the discipline process"(Ceyssens & Childs, Ontario Police Services Act, Fully Annotated, 5th Edition (2013-14), p. 328, as per Gregg and Midland Police {2001} 3 OPR 1522 at 1539 (OCCPS)) and internal consistency is an important factor to consider. There have been a number of internal discipline matters that involve members being convicted of driving offences while either impaired or having care and control, some of which have similarities to this matter before you.
- ii. There were no signs or indicators to the investigating officer that would indicate any signs of impairment of Detective Yuzefowich. The interaction occurred simply based on a routine spot check program.
- iii. Detective Yuzefowich was not criminally convicted of the criminal offence, but rather the non-criminal conviction of Careless Driving under the HTA. It is further known that the alcohol readings for Detective Yuzefowich are of lowest range in this type of investigation. I have included three (3) cases for your review that have differing level of similarities, all of which have aggravating circumstances that would suggest greater level misconduct not found in the case against Detective Yuzefowich. In this case against Detective Yuzefowich;

1. Detective Yuzefowich readings are lower than that of each of these cases presented before you, *save* and except Constable Hunter who failed to provide a sample.
 2. There is no driving evidence with Detective Yuzefowich, while in all three of the other cases there does exist.
 3. There is no signs whatsoever of impairment in the case of Detective Yuzefowich, while in the case of all of the others it does exist.
 4. There is a level of professionalism and cooperation, where in the case against Constable Hunter there is not.
- iv. In each case, the penalty consisted of a demotion, two of which were of rank officers going down to 1st class and one case of a 1st class going down to a 2nd class constable, all of which for a period of 9 months in duration. *(A copy of each decision has been provided in Tabs 8, 9 and 10)*
- v. Overall, I believe the penalty that has been proposed in a joint submission can be viewed as consistent with these previously mentioned cases. The penalty proposed here has been jointly agreed upon, giving due consideration to all the facts in issue and the details of this case.
- [34] Detective Yuzefowich is a valuable and well-respected member of the Peel regional Police Service, as well as the community in which he serves. His employment history speaks for itself, displaying a pattern of character and behaviour that is not consistent with the misconduct that is before you.
- [35] Detective Yuzefowich was showing no signs of impairment; therefore, believed to be within the legal limit. This incident comes by way of misfortune and lapse in judgement with no indications of deceitful or misleading behaviour. From the earliest interactions, Detective Yuzefowich displayed integrity and professionalism in the face of significant adversity. He abandoned any notion of trying to use his position as a police officer to gain favour in this incident, but rather provided collaboration and cooperation with his fellow officers, so much so, that had he cast any delay in his approach to the officers' requests, he would likely not be here in this position today.
- [36] The support from his peers and this Service is not lost on Detective Yuzefowich, he has pledged to repay his gratitude in the form of continued service in an exemplary fashion.

He has provided almost twenty (20) years of service that has mirrored this sentiment. I would suggest if we were to make any predictions on future behaviour, based on the past service record that debt will be paid and then some.

[37] The Association is confident you will find a penalty of demotion to 1st class Constable for a period of 9 months is not only adequate, but also more than fair. You may also find the penalty suggestion to be greater than that of the *level* of misconduct given all the factors; his *level* of professionalism, integrity, the lack of intent, *level* of remorse, his potential to rehabilitate and his continued dedication to service excellence.

[38] Detective James Yuzefowich was provided an opportunity to address the Tribunal. This was strictly voluntary and Detective Yuzefowich understood that he was under no obligation to make a statement. Detective Yuzefowich did, however, choose to make a brief apologetic statement:

- a. "Sir, on November 30th it's no secret that I failed the two most important things in my life, my family and this Service. And, I am struggling with that failure. Though I cannot apologise enough, I am here before you, as you see, to accept responsibility and begin repairing the damage that I have caused. I can safely assure you that I will not fail my family, or this Service, again. Thank you."

PART III: ANALYSIS AND FINDINGS

[39] The information before the Tribunal is limited to the Agreed Statement of Facts and the submissions made by the Prosecution and Defence. I have reviewed all of the information and evidence that was submitted.

[40] This matter involved an Agreed Statement of Facts and a Joint Submission in Regards to Penalty. The submissions made by the Prosecution and Defence, while not identical, were consistent with each other and have been recorded within this Decision.

[41] The Tribunal, after considering each on its merits, accepts both submissions as being reasonable and consistent with the facts as they were presented.

[42] Both the Prosecution and Defence in their submissions referred to the case law as recorded in the body of this Decision. Each highlighted key aspects of the specific case law and, in reviewing the submissions; I find that the presentations were accurate and relevant.

- [43] Specific note can be given to *Krug and the Ottawa Police Service (OCCPS, January 21, 2003)* in that it has led both submissions to address aggravating and mitigating factors to consider when determining the penalty:
- i. Nature of the misconduct;
 - ii. Public interest and damage to the reputation of the Police Service;
 - iii. Employment history;
 - iv. The ability to reform or rehabilitate the police officer;
 - v. Deterrence, both General and specific;
 - vi. Consistency of disposition.
- [44] While no one factor needs to be given more weight than another, both Prosecution and Defence provided ample information in regards to each factor to support the “Joint Submission in Regards to Penalty”.
- [45] While it is not the Tribunal’s intent to highlight any presented factors to the exclusion of others, the Tribunal would like to note that Detective Yuzefowich’s behavior does constitute serious misconduct and, but for proactive enforcement efforts, could have had a far more serious outcome. Given Detective Yuzefowich’s position within the Service, both formal rank and strong informal work reputation, his error in judgement negatively reverberates to those whom he serves as a role model.
- [46] It is also noted by the Tribunal that Detective Yuzefowich very quickly recovered from his error in judgment and his behavior following his transgression has been very positive. The Tribunal does have confidence in Detective Yuzefowich’s ability to reform and rehabilitate and, albeit now with a broader range of experiences to draw upon, to continue in being a positive role model for his fellow officers.

PART IV: DISPOSITION

- [47] Detective Yuzefowich has accepted responsibility by pleading guilty and has articulated that he appreciates the impact of his actions. After having reviewed all of the available information and, while a Hearing Officer is not bound by joint submissions, there is no clear and cogent reason before me to vary from the submission on penalty. It is the Tribunal’s position that the penalty appropriately addresses the factors discussed and is both appropriate and reasonable. I concur with the joint submission being suggested in this case as it is entirely appropriate.

Penalty

For the noted reasons, on the one (1) count of Discreditable Conduct, as the Hearing Officer I impose on Detective James Yuzefowich #2552 of the Peel Regional Police Service:

A reduction in rank from Detective to First Class Constable for a period of nine (9) months, following which the officer will be returned to the rank of Detective.

June 11, 2021

Robert Higgs, Superintendent #1603
Peel Regional Police – Hearing Officer

Date