



PEEL REGIONAL POLICE 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

**PEEL REGIONAL POLICE
AND
CONSTABLE PATRICK LUKASIK #3620**

ALLEGATIONS:

Count 1: Unlawful/Unnecessary Exercise of Authority

DECISION

Hearing Officer: **Superintendent Taufic Saliba #1796**
Peel Regional Police

Prosecutor: **Ms. Sharon Wilmot**
General Counsel

Inspector R. Berrigan #1999
Co-Prosecutor

Defence Counsel: **Ms. J. Mulcahy**

Case Number: **2022-PRS087**

Date of Hearing: **June 2, 2023**

Date of Decision: **August 9, 2023**

This decision is divided into four parts:

- PART I: OVERVIEW**
- PART II: THE HEARING**
- PART III: ANALYSIS AND FINDINGS**
- PART IV: DISPOSITION**

PART I – OVERVIEW

Background

- [1] Constable Patrick LUKASIK #3620 commenced his employment with Peel Regional Police in April 2010. Constable LUKASIK presently holds the rank of First Class Constable.

Allegations of Misconduct

- [2] It is alleged that Constable Patrick LUKASIK #3620, a member of Peel Regional Police, committed the following misconduct:
- [3] **Count One: Unlawful or Unnecessary Exercise of Authority**

It is alleged that Constable LUKASIK committed Unlawful or Unnecessary Exercise of Authority in that on September 25, 2021, he used unnecessary force against a prisoner or other person contacted in the execution of his duty constituting an offence against discipline as prescribed in section 2(1)(g)(ii) of the Code of Conduct, Ontario Regulation 268/10, as amended.

- [4] Constable LUKASIK appeared before me on June 2, 2023, in answer to a Notice of Hearing that was served on him through Peel Regional Police Association Member Representative Pierre Bernard on December 21, 2022.

Plea

- [5] On June 2, 2023, during an in-person appearance, Constable LUKASIK entered a plea of Guilty to one count of Unlawful or Unnecessary Exercise of Authority. An Agreed Statement of Facts (ASF) was tendered¹ and read into the record by the Prosecutor. Based on those facts and the confirmation by Defence that they were substantially correct, a finding of misconduct was registered.

¹ Exhibit #6

Positions on Penalty

- [6] Prosecution: 6-month demotion from 1st Class Constable to 2nd Class Constable
- [7] Defence: 5-days penalty

Decision

- [8] I have carefully reviewed the submissions and relevant information presented by both the Prosecution and Defence, as well as previous Tribunal decisions. In light of the mitigating and aggravating circumstances involved in this matter, the penalty for Constable LUKASIK imposed under Sec 85(1) of the *Police Services Act*:
- [9] For Unlawful/Unnecessary Exercise of Authority, in that he used unnecessary force against a prisoner or other person contacted in the execution of his duty constituting an offence against discipline as prescribed in section 2(1)(g)(ii) of the Code of Conduct, Ontario Regulation 268/10, as amended; will be
- [10] a reduction in rank from 1st Class Constable to 2nd Class Constable for a period of six (6) months, following which the officer will be returned to the rank of 1st Class Constable on the basis of satisfactory work performance to be determined by the officer's Divisional Commander.

PART II: THE HEARING

Exhibits

- [11] The following exhibits were tendered during the hearing:

Exhibit #1	Delegation to a Hearing Officer (Supt. T. Saliba)
Exhibit #2	Designation to a Prosecutor (Mr. K. Soles)
Exhibit #3	Designation to a Prosecutor (Insp. R. Berrigan #1999)
Exhibit #4	Designation to a Prosecutor (Ms. S. Wilmot)
Exhibit #5	Notice of Hearing
Exhibit #6	Agreed Statement of Facts (ASF)
Exhibit #6A	Video #1 – BWC Lukasik
Exhibit #6B	Video #2 – BWC Pinho
Exhibit #7	Prosecution – Brief of Authorities
Exhibit #8	Defence – Book of Materials
Exhibit #9	Defence – Book of Cases
Exhibit #10	Email to Training Bureau

Participants

[12] The Prosecution was represented by Ms. Sharon Wilmot (General Counsel) and Inspector Ryan Berrigan #1999, and the Defence was represented by Counsel Ms. Joanne Mulcahy.

Agreed Statement of Facts

[13] The facts in this matter are substantially agreed upon by the parties to this Tribunal. The Agreed Statement of Facts states:

[14] Constable Patrick LUKASIK #3620 has been a member of Peel Regional Police (PRP) since 2010. At the time of the incident, he was assigned to 12 Division "B" Platoon in an Acting Sergeant position. Constable Lukasik has no prior disciplinary history but instead has an exemplary employment history.

[15] On September 25, 2021, Acting Sergeant Lukasik ("A/Sgt. Lukasik") was working the night shift at 12 Division. He received a call regarding a suspected impaired driver at 3038 Haines Road, Mississauga. Constable Jose Pinho #4626 ("Cst. Pinho"), was also dispatched to this call.

[16] Upon arrival, A/Sgt Lukasik observed an older model Acura TL with a man, now known to be A.A, seated in the driver's seat. A.A appeared to be sleeping behind the wheel and the vehicle's engine was running.

[17] A/Sgt. Lukasik placed his service vehicle behind the suspect vehicle, and Cst. Pinho placed his service vehicle in front. Cst. Pinho told A/Sgt. Lukasik that he had placed stop sticks behind the wheels of the suspect vehicle.

[18] Cst. Pinho reached into the suspect vehicle, and turned off the engine off. He removed the keys from the ignition. Both officers then tried to wake A.A. by giving him verbal commands. A.A was drowsy, confused, disoriented, and his eyes were bloodshot red. At this time, the officers were not sure if he was impaired by drugs or alcohol.

[19] A/Sgt. Lukasik told A.A to get out of the vehicle, but he did not respond. A/Sgt Lukasik and Cst. Pinho observed that A.A. grabbed the steering wheel. Professional Standards investigators confirmed on review of the BWC footage that they believed A.A.'s right hand was in fact holding the steering wheel at some point. A.A was asked to exit the vehicle several times, but did not cooperate. A/Sgt. Lukasik and Cst. Pinho attempted to pull A.A from the vehicle.

[20] A/Sgt. Lukasik deployed his CEW to apply pain compliance on A.A as he believed this would assist in taking him out of the vehicle. Once the CEW was deployed, A.A was guided to the ground.

[21] A.A. was told to put his hands behind his back in order to place handcuffs on, but he did not cooperate.

- [22] At this time, A/Sgt Lukasik deployed his CEW again and performed a three-point contact on A.A., and he was eventually handcuffed.
- [23] After A.A was arrested, EMS personnel attended and removed the prongs. There were no serious injuries. He was transported to 12 Division. A.A was charged with one count of Operation while Impaired, and one count of Failure or Refusal to Comply with Demand.
- [24] The charges against A.A were withdrawn by the Crown after a review of the Body-Worn Camera footage, which showed the application of force by A/Sgt. Lukasik.
- [25] A/Sgt Lukasik fully cooperated with Professional Standards. A/Sgt Lukasik acknowledged to Professional Standards that on a review of the incident if he was faced with a similar situation he would slow down and use empty hand techniques in order to remove the male from the vehicle and effect the arrest.
- [26] The actions of A/Sergeant Lukasik constitute Unlawful or Unnecessary Exercise of Authority, pursuant to section 2(1)(g)(ii) of the prescribed Code of Conduct.

PART III: SUBMISSIONS

Submissions of the Prosecution – Ms. Sharon Wilmot

- [27] The Prosecution commenced their submissions by presenting two video exhibits in support of the ASF.
- Video #1 – BWC footage for Constable Lukasik²
 - Video #2 – BWC footage from Constable Pinho³
- [28] The Tribunal viewed both videos to gain context of the incident. I will provide my analysis of these exhibits in *Part IV: Analysis and Findings*.
- [29] The prosecution described the video exhibits as compelling in how the officer deployed an unnecessary amount of force on the driver of the vehicle, a young man who was semi-conscious. This was unwarranted in the circumstances as the man was not assaultive or resistive, nor was the situation dynamic or subject to urgency.
- [30] The Prosecution views this misconduct as very serious in nature because it impacts on public trust and accountability. As such, Ms. Wilmot proposed a penalty of demotion from First Class Constable to Second Class Constable for a period of six (6) months, followed by a re-instatement to First Class. The suggested penalty is deemed appropriate and reflects the factors of the incident.

² Exhibit #6a

³ Exhibit #6b

[31] The Prosecution provided a Brief of Authorities⁴ as a reference to the considerations that are laid out in the Police Services Act when determining the appropriate disposition for misconduct. The Prosecution then highlighted those considerations that it felt were most relevant to this matter:

Seriousness of the Misconduct

[32] The Prosecution asserts that excessive use of force by a police officer is one of most serious forms of misconduct. In this particular case, the misconduct was egregious enough that the assigned Crown Attorney withdrew the charges, and the Chief of Police was advised.

[33] The driver was intoxicated and semi-conscious in the vehicle, and he presented no threat or aggressive/assaultive behaviour.

[34] The responding officers were able to reach into the vehicle, remove the driver's seatbelt and keys with no resistance from him. It should have been clear to them that he was not presenting a threat.

[35] Prior to Constable Lukasik's arrival, another officer placed stop-sticks at the vehicle's tires and removed the keys from the ignition. Nonetheless, Constable Lukasik applied his CEW within seconds of arriving without making any attempt to deescalate the situation. His actions were contrary to PRP training and, in fact, actually escalated the situation.

[36] In adding context to this consideration, the Prosecution stated that agencies across North America are striving to regain public trust in the police. That trust has been eroded due to a number of excessive incidents of force used by police. This incident reflects poorly on the officer and the organization. The Prosecution feels that Constable Lukasik's actions fell well below the expected standards as they were serious and aggravating.

Public Interest / Damage to the Reputation of the Police Service

[37] The Prosecution stated that police officers are provided special privileges, including the use of a firearm and CEW. They have enormous responsibilities and as such, are held to a higher standard. They also have a duty to protect the public from harm, particularly during situations involving arrest. As this incident involved a member of the public, the reputation of the Service was damaged. This incident was captured on body worn cameras and the footage release to both Crown and Defence Counsel. The officer's misconduct was sufficient to cause the criminal charges against the driver to be withdrawn.

Employment History

[38] The Prosecution provided a summary of Constable LUKASIK's employment history with the Service. At this time of the incident, he was a 10-year member with an unblemished record and no history of misconduct. Constable LUKASIK was an experienced and trusted member of his platoon and, when required, was utilized as an Acting Sergeant. The Prosecution submits that this

⁴ Exhibit #7

incident appears to be out of character. It is because of these factors that the Service is not seeking a higher penalty.

[39] Nonetheless, Constable LUKASIK was assigned as an Acting Sergeant on the night of this incident and as such, there is a higher expectation to lead younger officers with his experience and skills.

Potential for Rehabilitation

[40] The Prosecution stated that there were no concerns with respect to Constable LUKASIK's potential for rehabilitation, and views this as a mitigating factor. He took responsibility for his actions and plead guilty. His actions in this incident are not viewed as a fundamental character flaw, hence the request for a demotion of only 6 months.

[41] The Prosecution feels that Constable LUKASIK will go on to be a productive officer.

Specific and General Deterrence

[42] In addition to specific deterrence, the Prosecution highlighted the requirement for general deterrence in this matter. Police officers are afforded significant powers. They must understand the importance of professionalism and the ability to deescalate situations in a manner that ensures public trust and confidence. These skills directly impact the reputation of the Service and policing in general.

[43] The Prosecution asks that penalty handed down in this matter sends the appropriate message regarding this conduct.

Consistency of Disposition

[44] The Prosecution provided overviews of several cases for the Tribunal's consideration⁵. In addition to the information provided during submissions, I have included comments from my subsequent review:

[45] Constable Norman Groot and Peel Regional Police 2002 (Tab 2):

Constable Groot was convicted in a criminal court for Assault, whereby he applied force to a handcuffed prisoner causing him to fall and strike his head, resulting in stitches. The sentence was 3 days (time served) and 18 months of probation. Subsequent to the criminal proceeding, Groot was found guilty of Discreditable Conduct at Tribunal and dismissed from the Service. It was determined that a single count of misconduct can result in dismissal, particularly when it involves an unprovoked and unwarranted application of force. The case was upheld by the Ontario Civilian Commission on Police Services.

[46] The Prosecution agreed that, comparatively, Constable LUKASIK was required to take A.A. into custody. This mitigating factor falls below the level of seriousness in the Groot matter.

⁵ Exhibit #7 – Prosecution Book of Authorities

[47] Constable Glen Turpin and Durham Regional Police 2016 (Tab 3):

Constable Turpin was charged in relation to two separate incidents where he arrested individuals. He was convicted in a criminal court for Uttering Threats. Subsequent to the criminal proceeding, Turpin faced a discipline Tribunal at the end of which he was found guilty of Discreditable Conduct (X2) and Unlawful or Unnecessary Exercise of Authority (X1) for “grounding” a suspect. The penalty was dismissal, which was then appealed to and upheld by the OCPC. The Commission found the penalty to be appropriate and reasonable considering Turpin’s previous discipline issues and lack of potential for rehabilitation.

[48] London Police Service and Constable Jordan Thomas 2023 (Tab 4):

Constable Thomas was dealing with a handcuffed male who was arrested for domestic assault. The male became belligerent at which time Constable Thomas slapped him with an open hand. The officer pled guilty to Assault and was given a conditional discharge along with 12 months of probation and 40 hours of community service.

[49] Subsequent to the criminal proceeding, Constable Thomas was found guilty of Discreditable Conduct and Unlawful or Unnecessary Exercise of Authority. The Hearing Officer viewed the Prosecution’s request for a 6-month demotion reasonable, however due to other mitigating factors, he imposed a penalty of forfeiture of 80 hours.

[50] Hamilton Police Service and Constable Ian Milburn 2022 (Tab 5):

Constable Milburn attended a landlord and tenant call. As he was speaking to the tenant, he lunged at her and the door was slammed in his face. The tenant feared for her safety. Constable Milburn pled guilty to Assault and was given a conditional discharge and 18 months of probation.

[51] Subsequent to the criminal proceeding, Constable Milburn pled guilty to Discreditable Conduct. In light of the incident not including physical contact, Constable Milburn not having any prior discipline and his voluntary participation in anger management training, he was given a 6-month demotion.

[52] Peel Regional Police and Constable Sunny Mukhi 2022 (Tab 6):

(Same incident as Tab 7)

Constable Mukhi was found guilty of Assault in a criminal proceeding related to an interaction that he had with a suspect during arrest. He subsequently pled guilty to Discreditable Conduct at a Tribunal, resulting in a penalty of demotion for 6-months. The Hearing Officer agreed that the force used during the arrest was excessive. Constable Mukhi pled guilty, took responsibility for his actions and had an otherwise unblemished work record spanning 10 years. The Tribunal accepted that Constable Mukhi will be rehabilitated to be a productive officer.

[53] Peel Regional Police and Constable Roman Marchyshyn 2023 (Tab 7):

(Same incident as Tab 6)

Constable Marchyshyn was found guilty of Assault in a criminal proceeding related to an interaction that he had with a suspect during arrest. He subsequently pled guilty to Discreditable Conduct and took responsibility for his actions. However, his misconduct was deemed to be more serious than that of Constable Mukhi's, resulting in a penalty of demotion for 12-months.

[54] In concluding their submissions, the Prosecution felt that the penalty can range from Counselling/reprimand to demotion or dismissal. It asked the Tribunal to consider more recent case law as it reflects today's social context.

[55] Further, the Prosecution put forward that a 6-month demotion is fair and recognizes both Constable LUKASIK's unblemished work history and that this was an isolated case of misconduct. It also demonstrates to other officers that this conduct will not be accepted.

Submissions of the Defence – Ms. Joanne Mulcahy

[56] The Defence began their submissions with the view that every day, police officers in Peel Region and across Canada have to use force. It is a judgement call that they have to make. They are provided with a Use of Force circle to use as a reference however, they are human and they make mistakes. They could make the wrong decisions.

[57] Constable Lukasik made a decision that day. On reflection, he acknowledged that he made a mistake, however there was no maliciousness. His decision was made in heat of the moment.

[58] Defence asked that the Tribunal consider Constable LUKASIK's exemplary work record and the fact that he has no prior discipline.

[59] Defence pointed out that the Prosecution presented cases that included criminal code offences. In contrast, this matter did not. People make mistakes. Constable LUKASIK has learned from this experience; he was remorseful and pled guilty. As such, the appropriate penalty would be 5 days, which would have a financial impact on the officer.

[60] Although the Crown withdrew the criminal charges against the driver, this does not suggest that the force used was excessive. Rather, it is a consideration.

[61] Defence suggested that the Tribunal's real consideration should be Constable LUKASIK's recognition and acknowledgement of his actions, along with his understanding that he should have handled things differently. There should have been a greater effort made to get the driver out of the vehicle.

[62] Defence then asserted that the use of the CEW is a systemic issue due to the Service's Training Bureau advising the Peel Regional Police Association that it is utilized too much.

[63] Although the CEW is a helpful tool, Constable LUKASIK shouldn't have used it in this incident. Since that day in 2021, Constable Lukasik has been on active duty and hasn't used his CEW again.

[64] A demotion in this matter would send the wrong message to other officers because a penalty is about correcting behaviour and not just about punishment.

[65] Defence then addressed the considerations they felt were relevant in this matter:

Public Interest

[66] Constable LUKASIK was served a Notice of Hearing in this matter. He recognizes the impact of a discipline hearing on himself and others. However, Defence stated that there was no deceit or malice on the part of the officer. It was not gratuitous. Rather, it was a heat of the moment decision over a period of a few seconds – an honest and good faith mistake that is not indicative of his character.

[67] Constable LUKASIK acknowledges that he used the wrong method (CEW) to handle the situation. He has learned from it and suffered the consequences. A penalty of 5 days would send a message to other officers that it is not enough for a suspect to be simply resistive in order to use a CEW. This penalty would also take into account that further training is required in the use of the CEW.

[68] Defence then presented an email⁶ that was initiated by Constable LUKASIK to the Training Bureau requesting “refresher or remedial” training in the use of the C.E.W. Constable Lukasik was advised by the Training Bureau that any remedial actions would come after the completion of the internal process and potential recommendations.

Recognition of the Seriousness of the Misconduct

[69] Defence noted that Constable LUKASIK took ownership for his actions and plead guilty. The OCPC is of the view that a guilty plea is a mitigating factor when assessing a penalty.

[70] Ms. Mulcahy then highlighted Constable LUKASIK's apology that was offered to the Tribunal⁷.

Attn: Peel Regional Police

[71] *I am writing this letter to sincerely apologize for my actions. I understand that the taser is a use of force tool that is to be used on subjects that show assaultive behaviour. During this incident, I used it to assist myself in effecting the arrest. I deeply regret my actions and acknowledge that alternatives could have been used. I understand that it is very important to treat all individuals regardless of the circumstances with respect and understanding.*

⁶ Exhibit #10

⁷ Exhibit #8 – Tab 3

- [72] *I understand the challenging nature of this job, and I understand that I have to ensure the safety and well-being of everyone.*
- [73] *I recognize that my behaviour was unacceptable and does not reflect the values I uphold. I treat everyone with the utmost respect, and this isolated incident does not reflect my norms. I always plan to resolve issues by way of communication. I do not enjoy using force as I do not like not cause harm to myself or anybody I am dealing with.*
- [74] *I have used this incident in educating my colleagues on the proper use of the taser and alternatives in this situation. I do not wish for anybody to ever be in this spot, as I never wish any extra stress on anybody. I am viewing this in a positive way where hopefully I can stop someone from making a similar mistake I did.*
- [75] *Please accept my sincere apologies once again. I am committed to learning from this incident and ensuring this will not happen again in the future. Thank you for your understanding and I look forward to providing, and service the community and the Region of Peel for years to come.*
- [76] *Yours sincerely,
Patrick Lukasik*

Employment History

- [77] Defence provided a detailed overview of Constable LUKASIK's 13-year unblemished employment record and considers this a mitigating factor. He is currently assigned to the Criminal Investigations Bureau. In the past, he has been utilized as an Acting Sergeant and viewed as an informal leader with positive performance appraisals.
- [78] Ms. Mulcahy reviewed for the Defence – Book of Materials⁸ for the Tribunal, which includes among other items; Constable LUKASIK's Employee Profile Report, Resume, Performance Appraisals, Commendations, Awards and reference letters.
- [79] The Defence conceded that the misconduct before this Tribunal resulted in damage to the Service's reputation, however requested that Constable LUKASIK's otherwise many contributions and support to the Service be taken into account.

Deterrence

- [80] Defence suggested that the several letters of support that were provided for Constable LUKASIK highlight that the penalty does not need to address specific deterrence, and as such need not be considered in this case. In fact, this entire process has served as deterrence to Constable LUKASIK. He has been open with his colleagues about this experience.
- [81] With respect to general deterrence, Defence suggests that a 5-day penalty will send a significant message to others that the CEW is a great tool - but not the only tool.

⁸ Exhibit #8 – Defence Book of Materials

Potential to Reform or Rehabilitate

[82] Defence took the position that rehabilitation occurred in this case through Constable LUKASIK's interview with Professional Standards Bureau, along his subsequent discussions with colleagues and supervisors. He has provided an apology and contacted the Training Bureau for refresher training. Further, rehabilitation is not a concern as this was an isolated mistake.

Systemic Failure and Organizational/Institutional Context

[83] Defence put forward that in the past, CEWs were issued only to the Emergency Task Force (ETF) units, then later to patrol Sergeants. Front line officers have not carried the CEW until recently, suggesting that there is a training component associated with an increased reliance on this tool.

Damage to the Reputation of the Service

[84] Ms. Mulcahy advocated that as it relates to penalty, this factor should be weighed more in favour of Constable LUKASIK's positive accomplishments throughout his career. He personally never wants to be in this type of position again.

Consistency of Disposition

[85] Ms. Mulcahy put forward that consistency is a hallmark of fairness, and that a 5-day penalty is well within the range for this matter. Conversely, the Prosecution's request for a 6-month demotion is not only outside of the acceptable range, but historically reserved for misconduct involving benefits fraud.

[86] Defence then referenced the Prosecution's cases⁹ in order to provide another perspective for each:

[87] Constable Norman Groot and Peel Regional Police (Tab 2):

Groot had a criminal conviction and a less than exemplary career that was marked by a poor attitude, supervision issues, lack of team play, carelessness, overzealousness, and prior discipline.

He took a drunk male to the wrong room (not CIB), put him in the room where he lost control and fell onto the desk causing an injury. Groot did not plead guilty. His notebook was not accurate, he fabricated his story and offered no apology.

[88] Constable Glen Turpin and Durham Regional Police (Tab 3):

Turpin had a criminal conviction and conditional discharge. There was a Police Act hearing alleging Unlawful Use of Authority for a "vicious" takedown by grounding the person improperly. He had a significant discipline history (neglect - unlawful entry).

⁹ Exhibit #7 – Prosecution Book of Authorities

[89] London Police Service and Constable Jordan Thomas (Tab 4):

This case supports the Defence request for a 5-day penalty rather than demotion. The Hearing Officer felt that a criminal conviction elevates the seriousness of the discipline assessment. He also took into account the officer's remorse and employment history. Defence highlighted the Hearing Officer's comments on page 19, which recognized Constable Thomas' remorse, positive reference letters, subsequent counselling, and guilty plea. Defence also referred to a similar case (*Johnson v. Durham Regional Police*) with respect to the misconduct and penalty. Defence found the Thomas case to be most similar with Constable Lukasik's matter.

[90] Hamilton Police Service and Constable Ian Milburn (Tab 5):

A criminal conviction for Milburn elevates the seriousness of the behaviour and moves the needle with respect to penalty. This doesn't exist in Constable Lukasik's case. The distinguishing factors here, in addition to the conviction, are that Milburn stated, "Man that was fun", he was gratuitous, malicious and hid the incident.

[91] Peel Regional Police and Constable Sunny Mukhi (Tab 6):

This matter involved two criminal charges against the officer, resulting in a conviction for Assault. Defence reviewed that decision in that matter (pages 9 – 11) to highlight that a penalty of demotion was not in the range for Constable Lukasik.

[92] The Defence reiterated that a review of the Prosecution's cases suggests that a penalty of demotion is not applicable in Constable LUKASIK's case.

[93] The Defence then offered a brief overview of several cases for the Tribunal's consideration¹⁰:

[94] Constable Paulo Batista and Ottawa Police Service 2007 (Tab 1):

Constable Batista was found guilty during a discipline hearing with a penalty of Reprimand, which he appealed to the OCPC. The Commission found that the penalty was reasonable

- OCPC - lack of malice - good reputation, reference letters
- CEW involved

[95] Thunder Bay Police and Constable Kyle Kehler and Constable Kyla Rutherford 2018 (Tab 2):

Officers were dealing with a male under the Mental Health Act. The male raised his hands to his chest and both officers punched him in the face. Both officers charges with Discreditable Conduct, plead guilty and were given a penalty of 8-hours.

¹⁰ Exhibit #9 – Defence Book of Cases

[96] Peel Regional Police and Constable John Drummond 2005 (Tab 3):

Officer was dealing with a civilian who caused a disturbance at the front desk. The officer escorted the civilian to his vehicle and an altercation resulted in the officer punching him in the face. The officer was charged with Unlawful or Unnecessary Exercise of Authority and given a penalty of 8-hours.

[97] Peel Regional Police and Joel Mazzotta 2017 (Tab 4):

The officer shoved a male with two hands, resulting in a fractured wrist. After a criminal finding of guilt and a conditional discharge, he plead guilty at Tribunal, was remorseful and understood the seriousness of the misconduct. The Tribunal found the fact that the male was a youth as an aggravating factor. The officer received a penalty of 16 hours.

[98] Ontario Provincial Police and Constable Glen Hollett 2017 (Tab 5):

The officer used his C.E.W. as a joke in front of members of the public. He was charged with Discreditable Conduct and plead guilty, resulting in a penalty of 24 hours.

[99] Ontario Provincial Police and Constable P.J. Van Den Diepstraten 2015 (Tab 6):

The officer deployed his C.E.W. on a male operating a ATV with two children on board. He pled guilty at Tribunal and was given a penalty of 24 hours.

[100] Peel Regional Police Informal Discipline Review Committee 2021 (Tab 7):

The officer kicked a citizen who was under arrest. The Committee issues a penalty of 24 hours.

[101] Toronto Police Service and Constable John Mills and Constable Dwight Stoneman 1985 (Tab 8):

Two officers dealt with three members of the public. They used excessive force on one of them, a male, which included kicks to his face. They received a penalty of 3 days.

[102] Toronto Police Service and Constable Brian Roy 1994 (Tab 9):

Officer was convicted in criminal court for Assault after slapping a shoplifter twice in the head. The officer received a penalty of 4 days at Tribunal.

[103] Toronto Police Service and Constable Kerr 1981 (Tab 10):

The officer was charged with Unlawful or Unnecessary Exercise of Authority after slapping a prisoner in the face 2 – 3 times. His Tribunal penalty of 4 days was upheld on appeal to the Commission.

[104] Toronto Police Service and Constable Walker 2007 (Tab 11):

Officer was involved in an unlawful arrest of a male that resulted in a fractured cheekbone. There was a criminal conviction of Assault Causing Bodily Harm with a conditional discharge and a 12-month probation. There was later a finding of guilt at a Tribunal with a penalty of 32 hours.

[105] Toronto Police Service and Constable A. Flis and Constable P. Grande 2008 (Tab 12):

Two officers from separate police agencies were off duty happened on an incident involving a stolen vehicle. They effected an arrest of a male they thought was involved in the crime. Both were charged with assaulting the male. At a Tribunal, the officers received a penalty of 5 days and 6 days, respectively.

[106] Toronto Police Service and Constable A. Racette 2011 (Tab 13):

The officer was involved in a stolen vehicle and pursuit incident. He kicked the suspect who was being arrested by other officers. The officer pled guilty to assault in criminal court. He received a 5-day penalty at a Tribunal.

[107] Halton Regional Police and Constable V. Couce 1997 (Tab 14):

The officer was convicted criminally of Assault Causing Bodily Harm and received a conditional discharge. This was for grabbing an arrested male by the head and smacking it on the pavement. He later received a penalty of 5 days and anger management counselling at a Tribunal.

[108] Toronto Police Service and Constable S. Kellock 1984 (Tab 15):

Officer arrested a male jumping a fence to enter the Canadian National Exhibition. He assaulted the male with his night stick. He later received a penalty of 5 days.

[109] Toronto Police Service and Constable B. Andalib-Goortani 2010 (Tab 16):

A male was arrested by numerous officers, including the subject officer, during the G20 demonstrations. The officer assaulted the male with his baton and later charged by the SIU. He was convicted in criminal court. At a Tribunal, he received a 5 day penalty which was upheld on appeal to the OCPC.

[110] Ontario Provincial Police and Constable T. Smith 2013 (Tab 17):

Officer convicted for Assault regarding an incident in the cell while restraining a prisoner. At a Tribunal, the officer received a penalty of 5 days.

[111] Ottawa Police Service and Constable G. Thompson 2018 (Tab 18):

The officer, while guarding a male at the hospital, responded to the male's disruptive behaviour by grabbing him by the neck and choking him. The officer received a penalty of 40 hours and emotional intelligence training at a Tribunal.

[112] Thunder Bay Police and Constable D. Boer 2018 (Tab 19):

The officer punched a young person in the back of the head during an arrest. The Prosecution sought demotion while the Defence sought a penalty between reprimand and 5 days. The officer received a penalty of 5 days.

[113] Peel Regional Police and Constable Ryan Andrews 2018 (Tab 20):

The officer was off duty in Pittsburgh, Pennsylvania with friends when he became involved in an altercation with another male. Local police officers tried to break up the fight and used a CEW on the officer in the process. The officer soon after pled guilty in district court and paid a fine. He also pled guilty at a Tribunal and received a penalty of 5 days.

[114] Peel Regional Police and Constable B. Holmes 2016 (Tab 21):

Officer slapped arrested party in response to being spat on. The officer received a penalty of 48 hours.

[115] Niagara Regional Police and Constable Nathan Parker 2006 (Tab 22):

The officer pepper sprayed a handcuffed prisoner. The officer received a penalty of 6 days.

[116] Durham Regional Police and Constable Christopher Partridge 1998 (Tab 23):

The officer received a criminal conviction for Assault on a prisoner. This included a slap and a kick. He received a penalty at Tribunal of 48 hours.

[117] Toronto Police Service and Constable Ron Shirley 1993 (Tab 24):

The Officer received a criminal conviction for Assault. He was subsequently charges with Discreditable Conduct at a Tribunal and received a penalty of 7 days.

[118] Ottawa Police Service and Constable J. Maseruka 2016 (Tab 25):

The officer threw a suspect down two stairs onto the sidewalk, struck him and swung him around. He also struck the suspect in the face. The officer received a penalty of 7 days in addition to 1 day of use of force training.

[119] Ottawa Police Service and Constable N. Boldirev 2018 (Tab26):

The officer twice struck a suspect who was resisting entry to the rear seat of a police cruiser. The officer received a penalty of 56 hours in addition to 1 day of use of force training.

[120] The Defence concluded their submissions by assuring the Tribunal that Constable LUKASIK has tried to act as a role model. As a result of this incident, he understands that he should go “hands on” rather than taking the easy route.

[121] Defence also suggested that if the penalty is excessive in this case, there would not be respect for the decision and morale would be impacted. This is the type of incident that will be taught during use of force training and serve as scenario example of when not to use a CEW.

[122] Defence reiterated that the organization wants the officer to do well moving forward.

Follow-up Submissions of the Prosecution – Ms. Sharon Wilmot

[123] The Prosecution advised the Tribunal that they received 26 cases from the Defence that morning without an opportunity to review them. Ms. Wilmot noted that some of the cases were from 1985, when a 5-day penalty would have been appropriate.

[124] Regarding the case of Constable Paulo Batista and Ottawa Police Service (Tab 1), the Prosecution stated that a penalty of demotion was considered. The Hearing Officer’s decision to apply a reprimand was appealed to the OCPC. The OCPC, while not suggesting a reprimand was appropriate in this case, upheld the penalty. The Prosecution further noted that demotion is not excessive under the circumstances, nor would it be “a kick” at the officer.

[125] The Prosecution concluded by stating that the lack of a criminal conviction in this matter does not make it less serious. Nonetheless, the Prosecution fairly acknowledging that Constable LUKASIK is a good officer who can come back from a demotion.

PART IV: ANALYSIS AND FINDINGS

[126] I have reviewed and carefully considered the information provided during this hearing, including the Agreed Statement of Facts, the submissions made by the Prosecution and Defence, and the accompanying supportive documents.

[127] I have also reviewed the 26 references letters that were provided by Constable LUKASIK’s colleagues, supervisors, and civilian friends. I will refer to excerpts from the letters throughout my analysis.

[128] As the Adjudicator for this matter, I must make an objective, dispassionate assessment of the evidence presented during this Tribunal with respect to the appropriate penalty. This ensures procedural fairness to the officer and the Service’s accountability to the public.

[129] Discipline in police misconduct matters should take into account and balance the interests of;

- the public,
- the employee,
- the Service, and
- the involved member of the public (when applicable).

[130] Another primary consideration in the discipline process is the officer's culpability as it relates to an incident. As such, the penalty must reflect the unique circumstances of the case surrounding the misconduct.

[131] The principle of proportionality is key to arriving at a fair and effective disposition. It provides considerations that are referenced in almost every police discipline proceeding, some of which were touched on to varying degrees in the Prosecution's and Defence's respective submissions. The considerations that I find relevant to focus on in assessing Constable Lukasik's misconduct are:

- Public Interest
- Seriousness of the Misconduct
- Recognition of the Seriousness of the Misconduct
- Employment History
- Potential to Reform or Rehabilitate the Police Officer
- Consistency of Disposition
- Specific and General Deterrence
- Systemic Failure and Organizational Context
- Damage to the reputation of the Police Service

[132] Where appropriate, I have addressed two considerations together due to similar factors and relevance.

Public Interest

Damage to the Reputation of the Police Service

[133] I agree with the Prosecution's view that police officers are held to a higher standard due to their enormous responsibilities, along with their access to specialized tools in order to fulfill them. An officer's primary consideration is the safety and wellbeing of those with whom they interact, particularly in situations that do not present immediate danger or risk to the police officer(s) or members of the public.

[134] I have no information that awareness of this incident extended beyond the police service and court staff. Nonetheless, I must bear in mind that general public awareness is always possible and will surely result in negative publicity and erosion of public trust in the police.

Employment History

- [135] I accept the Defence's submissions regarding Constable LIKASIK's unblemished employment history and echoed by the Prosecution. His positive employment history is well presented throughout the numerous tabs in the Defence's Book of Materials. He is a dedicated employee who has spent his career building a reputation that is rooted in trust and professionalism.
- [136] I have carefully reviewed Constable LUKASIK's employment profile¹¹. As described by several colleagues in their reference letters, Constable LUKASIK's role on the platoon, either as a Constable or an Acting Sergeant, has made a positive impact on his coworkers. His contributions include volunteering to work during the 2021 Christmas period in order to fill vacancies due to the COVID pandemic.
- [137] I also note that Constable LUKASIK completed two college diplomas and received a Commendation and a Chief's Management Group Challenge Coin. He is a high performer who has amassed considerable experience handling a variety of routine and critical incidents.

Seriousness of the Misconduct

- [138] This proportionality consideration is particularly important when weighing a penalty. I must assess the relationship between the misconduct and the officer's subsequent understanding of their actions and the impact that they had on others and the Service.
- [139] The Prosecution correctly stated that excessive force is one of the most serious forms of misconduct. In this case, it was deemed serious enough to result in the withdrawal of criminal charges against the driver.
- [140] In addition to the Prosecution's oral submissions, the Tribunal was presented with evidence in the form of Body Worn Camera (BWC) footage. There was no evidence offered that the driver presented any real or potential threat to the safety of the responding officers or the public. In fact, his physical state appeared to be semi-conscious. I note from the video evidence that Constable LUKASIK and the other officer had a brief conversation before the latter reached into the vehicle and over the driver's body to remove an item from within. This action reinforces the lack of a perceived threat from the driver.
- [141] Constable LUKASIK then frees the driver's seatbelt from around his left arm and immediately draws his CEW and points it at the driver. He then announces that the driver is under arrest and gives a command to "get out". The driver, in a clearly disoriented state, is told again to get out or he will get tasered. A few seconds later, he is cautioned that if he resists, he will be tasered.
- [142] Shortly thereafter, Constable LUKASIK directs the other officer to pull the driver out of the vehicle. While that is occurring, Constable Lukasik positioned himself behind the driver and delivered the first "drive stun" to his upper left back area. The driver goes to the ground beside the vehicle at which time he is directed to put his hands behind his back and turn around or

¹¹ Exhibit #8 – Tabs 1, 2, 4, 5, 16

“...gonna zap you again”. Within 1 second, Constable LUKASIK applies another drive stun to the driver’s lower right back.

[143] The driver rolled onto his back at which time another CEW application is made to what appears to be his right lower calf. The officers continue to make attempts to control and handcuff the driver while issuing verbal commands.

[144] As the driver is finally being handcuffed, another CEW charge is applied to his lower right back area. He was directed to surrender his other hand to be handcuffed or he would be “zapped again”.

[145] Once the driver is handcuffed, Constable LUKASIK advised the dispatcher that the driver was in custody.

[146] In viewing the video closely, it appears that Constable LUKASIK applied the C.E.W. on the driver at least 5 times.

***Recognition of the Seriousness of the Misconduct
Potential to Reform or Rehabilitate the Police Officer***

[147] As the Adjudicator, I must carefully assess Constable LUKASIK’s recognition of his actions and the impact that it had on him.

[148] Constable Lukasik’s guilty plea, along with his apology to the Tribunal, demonstrate his clear recognition of the seriousness of his misconduct. I note that 14 of the 26 personal reference letters specifically cite Constable Lukasik’s expression of remorse to his colleagues since the incident, along with his admission that he could have handles things differently that night.

[149] In light of this, I am confident that rehabilitation is not a concern in this case.

[150] In this section, I would also like to address the email presented by the Defence regarding Constable LUKASIK’s inquiry to the Training Bureau about; “*refresher or remedial training on the appropriate use of the Taser CEW*”¹². Absent of any further context, I am uncertain as to the purpose of this inquiry, which was made approximately 19 months after the incident and only 8 days after his annual Use of Force and C.E.W. annual requalification on March 27, 2023.

Consistency of the Disposition

[151] The Prosecution requested a penalty of demotion for a period of 6 months.

[152] The Defence requested a penalty of 5 days forfeiture.

[153] Ms. Mulcahy suggested that the Prosecution’s request for a 6-month demotion is outside of the range and historically reserved for other types of misconduct like benefits fraud. I have considered this position and concluded that my determination of an appropriate penalty cannot

¹² Exhibit #10

be guided solely by the type of misconduct. Rather, I must consider each case based on its unique factors and answer the important question; *Does the misconduct warrant a demotion?*

- [154] Determining a fair and effective disposition in this matter requires careful consideration of the previous discipline cases that were submitted by the Prosecution and Defence.
- [155] The Prosecution presented 6 cases for my consideration, each of which included a criminal conviction against the involved officer. On this point, I agree with the Prosecution's view [par 125] that the lack of a criminal conviction in this matter does not make it less serious.
- [156] Two of the cases resulted in dismissal, two cases resulted in a 6-month demotion, one case resulted in a 12-month demotion, and one case resulted in a forfeiture of 80 hrs. Five of the cases involved empty hand contact by the involved officer, and one case involved a single application of a C.E.W.
- [157] I found the matter involving Constables Mukhi (6-month demotion) and Marchyshyn (12-month demotion), the latter involving the application of a C.E.W., to be of value in my assessment of this case.
- [158] The Defence presented 26 cases for my consideration, 3 of which involved the deployment or demonstration of a C.E.W. Although I reviewed each case carefully, I note that 14 case decisions were from 1981 to 2012. The remaining 12 cases within the last 10-years provided more recent perspective and context.
- [159] I note that in almost every case presented by the Prosecution and the Defence, there was one incident of force applied by the officer. In the matter before this Tribunal, Constable LUKASIK applied the C.E.W. no less than 5 times in order to affect the arrest of the driver.

I find this to be an aggravating factor in my assessment of a penalty.

Specific and General Deterrence

- [160] I have carefully considered the Prosecution's and the Defence's submissions with respect to deterrence.
- [161] Constable Lukasik pled guilty at a relatively early stage and apologized to the Tribunal. Further, the Defence suggested that the several letters of support that were provided for Constable LUKASIK highlight that the penalty does not need to address specific deterrence, and as such need not be considered in this case. In fact, this entire process has served as deterrence to Constable LUKASIK, as he has been open with his colleagues about this experience.
- [162] In examining Constable LUKASIK's file, I view this isolated incident as a glitch in an otherwise commendable career. I must emphasize here, the shared view by the Prosecution, the Defence, and the numerous character references, of Constable LUKASIK's value as a member of the Service. I am confident that he will continue to contribute to the success of his coworkers and the Service.

[163] I find the above factors mitigating and, as such, I am confident that specific deterrence has been properly addressed.

[164] I am mindful however, of the need to also ensure that general deterrence is appropriately addressed. On this point that I rely on the OCPC decision in Constable Paulo Batista and Ottawa Police Service¹³, whereby the Commission states; “*Police officers are authorized by law, equipped, and trained to use force. The improper use of force is conduct that must be deterred.*”

[165] The Service’s position with respect to use of force and its application on members of the public is well-defined. I am aware of *Peel Regional Police Directive I-B-102(F) Incident Response*, which provides officers with clear direction on their authority to use force, including using no more force than is justified and reasonable, in the lawful execution of their duties.

[166] The policy authorizes the use of force in situations where the subject is “resistant”, either through passive or active means.

[167] I do not believe that Constable Lukasik was acting in a vindictive manner or with ill intent, but rather due to a misinterpretation of what his authorized options were. Nonetheless, I am obligated to delve further into the policy in order to accurately assess his actions during this incident.

[168] The policy also outlines the Use of Force Response Options Model, stating that; “the application of force is for the purpose of controlling the subject, or in defence against an assault...a member authorized to use force shall always be cognizant of the circumstances of the situation, and adopt the appropriate level of force at the time.”¹⁴

[169] In the interest of objectivity, I must also consider Constable LUKASIK’s rationale to use the C.E.W. as it relates to Sec J.22.b(i) &(ii), which states:

22. *When considering the deployment of a C.E.W., qualified Officers shall:*

(b) *ensure that the device:*

(i) *is used based on the level of resistance and the circumstances surrounding the encounter;*

Note: *A C.E.W. is intended for use in situations where a subject is threatening or displaying assaultive behaviour. A C.E.W. may also be considered in other situations, taking into account the totality of the circumstances and the imminent need for control of the subject.*

(ii) *is **not** deployed when the subject is compliant, or when a subject poses no physical threat;*

¹³ Exhibit #9 – Tab 1 – Page 13

¹⁴ Directive I-B-204(F) Sec F 3 & 5

[170] There must be no doubt in any officer's mind that the Service's well-established incident response policy must be adhered to.

[171] After careful review, I find that Constable LUKASIK's use of the C.E.W. in this situation did not align with the authorizations provided by the Service's policy.

Systemic Failure and Organizational/Institutional Context¹⁵

[172] I am including this section in order to reference the Defence's suggestion [Paragraph 83] that in the past, the CEW was issued only to emergency response units and Sergeants. Further, now that it is being issued to all front-line officers, there are associated training issues with the increased reliance on this tool.

[173] I was not presented with evidence to either support or contradict this statement.

Conclusion

[174] The powers afforded to police officers, particularly with respect to use of force, are to be executed with great care and consideration. Applying force to a member of the public is one of the most consequential decisions that a police officer can make. Hence, it must occur only when other alternatives have either been exhausted or are not reasonable in the situation.

[175] The Defence stated that Constable LUKASIK did not act maliciously. Rather, he responded in the "heat of the moment". Although I agree with the first statement, I do not agree with the second.

[176] From the evidence presented, I find that the situation unfolded in a manner that provided officers with enough time to position their cruisers at either end of the vehicle, place a stop-stick at the wheels, turn the vehicle engine off and remove the keys. The driver was in a semi-conscious state and posing no perceived threat to the responding officers. Further, Constable LUKASIK issued two verbal warnings to the driver that he will be tasered prior to any attempt to remove him from the vehicle. There was no consideration given to an alternative option to affect the arrest.

[177] I have considered Constable LUKASIK's level of competence as it relates to the situation that was presented to him. On the date of this incident, he was an 11-year member of the Service who was regularly utilized as an Acting Sergeant. He was not a junior officer who was still learning the job. Rather, his vast experience and trustworthiness placed him in the role of acting as a supervisor to junior officers. With that role comes the expectation to abide by the Service's policy with respect to incident response and more specifically, the use of a C.E.W.

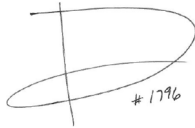
[178] As such, the penalty in this matter must ensure the appropriate general deterrence regarding this type of misconduct, while also recognizing Constable LUKASIK's previously unblemished record and his continued value and potential as a member of Peel Regional Police.

¹⁵ Submissions specifically related to this consideration were not made during the hearing.

Penalty

[179] For Unlawful/Unnecessary Exercise of Authority, in that he used unnecessary force against a prisoner or other person contacted in the execution of his duty constituting an offence against discipline as prescribed in section 2(1)(g)(ii) of the Code of Conduct, Ontario Regulation 268/10, as amended;

a reduction in rank from 1st Class Constable to 2nd Class Constable for a period of six (6) months, following which the officer will be returned to the rank of 1st Class Constable on the basis of satisfactory work performance to be determined by the officer's Divisional Commander.

A handwritten signature in black ink, consisting of a stylized 'P' with a vertical line through it, and the number '#1796' written below it.

Superintendent Taufic Saliba #1796
Hearing Officer
Peel Regional Police