Guelph Police Service Discipline Hearing

In the Matter of Ontario Regulation 268/10

Made Under the Police Services Act, R.S.O. 1990,

And Amendments thereto:
And
In The Matter Of

The Guelph Police Service

And

Constable Corey McArthur #65

Charge: Discreditable Conduct

Before:

Superintendent (Retired) M.P.B. Elbers
Ontario Provincial Police Adjudicator

Appearances:

Counsel for the Prosecution: **Ms. Jessica Barrow**
Guelph Police Service

Counsel for the Defense: **Mr. Joseph Markson**
Ms. Madeline Ross
Guelph Police Association

Penalty Disposition with Reasons

The Hearing:

Constable Corey McArthur #65 was found guilty of One (1) Count of Discreditable Conduct pursuant to Section 2 (1) (a) (xi) of the Code of Conduct contained in the Schedule to Ontario Regulation 268/10 as amended on September 01, 2020, in Guelph, Ontario before Retired Deputy Chief Terrance Kelly. On October 26, 2022, the Hearing Officer ordered Constable McArthur to resign from the Guelph Police Service within seven days or be dismissed. As a result of an appeal by the Appellant before the Ontario Civilian Police Commission the Disposition was overturned and a new Hearing for the penalty of dismissal was ordered.

This new Hearing commenced in Guelph, Ontario on July 24, 2024, before a new Adjudicator as ordered by the Ontario Civilian Police Commission.

The guilty plea was entered on September 01, 2020, was read into the Hearing and marked as Exhibit #3.

Ms. Barrow representing the Guelph Police Service has asked for a penalty of dismissal from Constable McArthur.

Ms. Ross representing Constable McArthur has asked for substantial demotion, together with strict conditions tailored to public safety and continued accountability, would achieve the purposes of police discipline here. Those conditions can include continued treatment as directed by treating professionals, compliance with any appropriate return-to-work recommendations, monitoring, training as required, and a phased return-to-work plan as recommended by Dr. Rootenberg and Dr. Douglas.

In Williams and the Ontario Provincial Police, the Commission identified three key elements a Hearing Officer must consider when imposing a penalty. These include: the nature of the seriousness of the misconduct, the ability to reform or rehabilitate the officer and the damage to the reputation of the Police Force that would occur if the officer remained in the Force.

Twenty-five (25) exhibits were tendered by Counsel during the Hearing.

Counsel in total has provided the Tribunal with one hundred and fourteen (114) cases to assist in determining an appropriate disposition.
They are found in Exhibits # 22 and #22(a) for the Defense and Exhibits #24, #24 (a) and (b) for the Prosecution.

I will not recite the cases in their totality; however, I have read and considered the cases that I was provided by Counsel. As learned Counsel have stated, there are no cases found which parallel the case that is before me at present. There are cases with some similarity. The cases provided are for guidance to the disposition penalty that Counsel has sought to be appropriate for the finding of guilt on the Discreditable Conduct count rendered on September 01, 2020.

Evidence:

Dr. Jonathon Rootenberg was the first witness for the Defense and was declared as an expert witness in the First Hearing and is accepted to be a medical expert in this Hearing for the Defense as well. His curriculum vitae is contained in Exhibit #6 at Tab seven and there is no need to review same. He testified to completing five reports for Constable McArthur as it relates to his criminal and Police Services Act Hearings. After the Appellant was successful in his appeal he was asked by Mr. Markson to reassess the officer in relation to the new Hearing. I will not restate the evidence from the first Hearing. It is contained in Exhibit #3. Tab one of Exhibit #3 contains the most recent assessment by Dr. Rootenberg which includes collateral information from Doctors Mendonca, Douglas and Ekblad along with Constable McArthur's wife and Mom.

Rootenberg commented that he has interviewed Constable McArthur for sixteen hours and has never done that before with a patient. He opined that McArthur is making remarkable progress from his acute symptoms of PTSD. He is responding to the treatment processes, and the officer has been quite diligent in attending to his care. He stated he has done a lot of work with police officers, and he has not seen a patient as diligent and committed in his attendance and participation in the treatment process.

He stated that McArthur received a low score on the tests that were conducted. HCR-20 and the PCL:SV. Dr. Rootenberg after conducting these two risk assessment inventories, considered him a low risk to re-offend.

As the Trier of Fact in this Hearing and due to the extensive medical documents, it is not my intention to regurgitate the information from this witness or from Doctor Collins. Counsel for both the Prosecution and the Defense have supplied the Tribunal with extensive submissions to the Tribunal where they have isolated the issues for each side.

I will confirm to the Tribunal that I have re-read the transcripts, my notes, the video and all the exhibits on more than one occasion for the twelve-day Hearing. They are extensive. I will review the character witness testimony in this disposition. I find it would be more efficient to give my reasoning and analysis on my assessment of the expert witness testimony later in my disposition.

On Monday October 07, 2024, a virtual Hearing was conducted to hear the testimony of the two-character Defense witnesses.

Constable Corey McArthur was not in attendance for these witnesses.

The first witness to testify was Mary Ellen McEwen (Jones) a Detective Constable #53 for the Guelph Police Service. She testified she was hired by the Service in May of 2004. She worked on "A" Platoon after leaving the Police College. She worked in Court Services, high school Resource Officer, Court Liason officer and in the Recruiting Unit. She testified it was from August 2004 through June of 2008 that she worked with Constable McArthur.

She testified it was 'A" platoon where she worked East zone and McArthur was West zone. She testified they never answered calls together, however she saw him at the beginning and the end of shift. Their work intersected for 3.5 years in the general office area where phone calls and prisoner checks were conducted. She estimated they may have made two hundred calls together. She testified that Constable McArthur was always there to help answer the phone and assist on calls as she was a new officer.

She observed interacting with the public. He was always professional, a good listener and had that quiet tone of voice. On one call in the south end McArthur assisted her in dealing with a young female and he was professional and patient. She never saw him being overly aggressive. He was calm, patient and did not jump to conclusions.

She described him as a teacher to her. She advised Mr. Markson that she had read the reasons for Judgement on the criminal charge, Police Board minutes, Family Court Reasons, Mc Mullin and the video of the actions at Guelph Hospital. She reviewed these documents and advised the Tribunal that they were troubling to her, however that is not the person that she knows as Corey McArthur.

She advised in 2020 their daughters played hockey together and she also knows Corey's wife. They are friends. She stated she has no bias. And has never attended any aggressive calls with McArthur. She stated she never had any issue with working with him. She would welcome him back to the Service and advised other officers to have been accommodated by the Service.

She advises he loves his family and would be a valued employee to the Service.

Under cross examination by Ms. Barrow, she testified they go out on shift separately and have overlapped on some calls. She has never attended a tense call with him. She agreed that the police service must have public trust and when you commit criminal offences that will impact on that public trust.

Police officers have a higher standing than the public and they can use force however if not used appropriately it will affect the public trust.

She testified that she had seen the video and the agreed statement of fact concerning this proceeding. She advised that the Service has a close relationship with the hospital and agreed that the hospital staff would be concerned about improper behaviour.

She agreed with Ms. Barrow that being found guilty of the criminal offence, the performance of duty charge and the previous 2008 incident that the public trust may be harmed.

The second witness to be called by the Defense was Mr. Bryan Stevens. He testified he had been a paramedic for thirty-two years. He retired and in 2019 he opened a business. The business he operated is called Health and Wellness Centre in Guelph for First Responders. His business assists clients with coping and managing systems. He advised that McArthur and his family attended the Grand opening and he won the draw for free membership. He knows him through attending the location for five years. He has a professional and social relationship with McArthur.

He states McArthur is a caring and giving person with strong values. McArthur shared his journey with Stevens and has never shown anger. He states he is frustrated by how long the process takes. He stated he is aware of the hospital incident, and he and McArthur have spoken openly about that day. He testified that he was quite open and forthcoming about the incident and has taken responsibility for his actions.
He states he has battled with his PTSD. Stevens had suffered PTSD as well on the job. They have spoken about similarities, isolation, not working and socialization issues.

They have spoken on how to work through the issues to recovery which takes a lot of hard work. He stated that McArthur is a popular figure at the complex. He is supportive and converses with the members.

Stevens had received the documents for this Hearing and the video. He received the critical statements from the Judges. He related to the tribunal that he sees these actions as "Moments in time". He stated that McArthur is remorseful and is in a better place today. He stated he does not see any issue with McArthur returning to policing duties. He believes that McArthur would be an outstanding addition to the Service. He stated that McArthur is a resource for others that have PTSD.

He stated that McArthur is commendable, person who is forthcoming, is remorseful and has strong family values. He stated he is eager to get back to work.

In cross examination by Ms. Barrow, Stevens agreed that police officers are special and they must be trustworthy. He stated that he has never worked with McArthur.
He met McArthur after McArthur was suspended. He has not seen him in an active role as a police officer and knows only info that McArthur has supplied to him. Stevens has no knowledge of the use of Force options for police officers or actions of a police officer in volatile situations.

In Ontario, Legal Aspects of Policing (pages 6-14) provides that a police officer commits an offence against discipline by acting "in a disorderly manner prejudicial to discipline or likely to bring discredit upon the reputation of the police force".

The most recent application of the test for discreditable conduct in Ontario confirms that the test is "primarily an objective one" and that the conduct must be measured against the "reasonable expectations of the community".

The Ontario Civilian Commission on Police Services has articulated the following approach regarding the meaning of "likely" to bring discredit upon the reputation of the police force:

The measure used to determine whether conduct has been discreditable is the extent of the potential damage to the reputation and image of the service should the action become public knowledge.

Dr. Collins was the expert for the Prosecution. He testified for several days as well. He was also declared an expert as he was in the original Hearing. Again, I will not recite his evidence as it will be utilized in my disposition considerations as will Dr. Rootenberg's. It should be noted and stated by the Prosecutor, Ms.Barrow, Dr. Collins was retained for a file review only. The defence refused to provide him an opportunity to meet with Constable McArthur. The scope of his task, and of his evidence, could only be limited to essentially a second opinion on whether the conclusions of Dr. Rootenberg made sense based on his expertise and what he saw in the file. He concluded that the opinion of Dr. Rootenberg did not make sense.

It is clear and convincing through the agreed statement of facts that the Prosecutor in conjunction with Defense Counsel and the subject officer that Constable McArthur is guilty of this indiscretion.

In considering a proper disposition the Tribunal must consider several issues. The Disposition should agree with the purpose of affecting a proper discipline process where it meets the standard for the Service in employing discipline in the workplace and the responsibility to treat the respondent officer fairly and the actions incurred if a public complainant is involved to assist in their reconciliation of the matter.

The overall purpose of the discipline process is to apply corrective measures to correct improper behaviour according to the standards of the discipline process and that of the affected Police Service in accordance with their policies and procedures that all officers are to adhere to in their policing duties.

Through disciplinary jurisprudence, several mitigating and aggravating considerations have emerged that affect disposition.

These include:

- Public interest.
- Seriousness of misconduct.
- Recognition of the seriousness of the misconduct.
- Handicap or other relevant personal circumstances.
- Provocation.
- Procedural fairness considerations.
- Employment history.
- Potential to reform or rehabilitate the police officer.
- Effect on police officer and police officer's family.
- Consistency of disposition.
- Specific and general deterrence.
- Employer approach to misconduct in question.
- Damage to the reputation of the police force.

It may be that not all these factors are relevant to the present case before the Tribunal. Many of these factors stem from the decision of Williams and Ontario Provincial Police (1995), 2 O.P.R. 1047 (OCCPS)

Aggravating Factors

a. ***Public Interest-*** *It is common knowledge that the public holds police officers in a position of high trust and accountability. Constable McArthur is a police officer and as such the public expects him to obey the Policies and Procedures of the Guelph Police Service. General Orders of the Service are expected to be adhered to forthwith as policy dictates. Reports need to be filed properly and accurately. There was no report or incident highlighted in either notebooks or a general occurrence/incident report for this action at the Guelph Hospital by Constable McArthur. Attending occurrences by police officers must be completed in a thoughtful and professional manner keeping you and the citizens of the community affected in a safe domain.*

b. **Seriousness of the Misconduct**- Un*acceptable behavior displayed by a police officer in any Service is extremely serious. This situation is compounded when the member is expected to be trusted by the community and his fellow officers. Constable McArthur betrayed the trust of his fellow officers, the community and the Guelph Police Service.*

c. **Need for Deterrence**- *The Guelph Police Service must send a message to all members of this organization that officers of this Service will act professionally, conduct themselves appropriately when off or on duty and will adhere to the Policies and Procedures of the Service with whom they are employed.*

Further, there must also be specific deterrence for Constable McArthur to send the message that this type of behavior is unacceptable. The assaultive behaviour exhibited by this officer is deplorable. No reports were submitted with what transpired on the actions taken towards this handcuffed juvenile in the hospital room strapped to a hospital stretcher. Constable McArthur's notebook lacks a fulsome description of his actions and that of others on the scene at the time of the assaultive behaviour towards the handcuffed juvenile in the hospital room.

d. Damage to the Reputation of the Police Service- *The credibility of the Guelph Police Service as police agency is of paramount importance. The credibility of officers that conduct investigations professionally and act accordingly to the organization's Policies and Procedures can have an adverse effect on other officers who may be called to investigate other occurrences that may be like this incident. Further, this incident was reported in the media, resulting in embarrassment to the Guelph Police Service*

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e. Management Approach to Misconduct- *The Guelph Police Service is a professional, disciplined organization. The Service considers the actions of Constable McArthur to be serious*.

f. **Recognition of Seriousness of Misconduct**- *Constable McArthur through this Hearing and his Criminal proceeding has recognized his inappropriate actions however I do not believe he has accepted responsibility for his behavior. He has commented on this to medical staff and associates that he believed he did nothing wrong. I can only hope that after his medical sessions and after these two processes the Criminal Trial and this Tribunal that he now knows his actions were wrong.*

g. Employment History- *To date Constable McArthur has one previous disciplinary record. He has a prior assaultive incident in 2008 which he received forfeiture of hours.*

<u>Mitigating Factors</u>

h. **Effect on the Police Officer and his Family**- *There is no doubt that Constable McArthur and his family will suffer from the penalty position to be imposed. A penalty such as dismissal, demotion or forfeiture of hours will have a significant impact on Constable McArthur and his family*.

Accountability, ethical behaviour and conduct are at a standard much higher than the public we serve. It is generally known and an accepted fact that the law requires a higher standard of conduct with Police Officers in their private lives than the ordinary citizen.

Credibility, honesty, and integrity are characteristics that are earned. As one elevates him / herself through the ranks of this proud organization, those characteristics are more revered and treasured. It helps to create the professional image and excellence that the Guelph Police officers strive to maintain.

The public must be confident that the police will strive to set an example for those in the community. Anything short of this will be seen as a contradiction and serve no other purpose but to undermine the efforts of all serving officers and the explicit goals of the Guelph Police Service.

You are accountable for your actions and any deviance from those actions; the Guelph Police Service will hold you accountable. This is what the public expects of the management of this Police Service.

Much of this Hearing rests on the expert opinion of two qualified and extremely intelligent Doctors who specialize in the fields of PTSD. As I have stated earlier in this disposition their qualifications are not in dispute. Their separate analysis and ultimate conclusions are in dispute by Counsel representing each of their clients. The one agreement on this file in relation to Constable McArthur is that he does have PTSD. No issue.

The question and the issue to be determined at this Hearing is whether PTSD affected Constable McArthur's behaviour on September 19, 2016, in the hospital room at Guelph Hospital while acting in his capacity as a Guelph Police Service police officer.

Ms. Ross in her submissions to The Tribunal has stated the following:

Dr. Rootenberg's evidence establishes four central propositions.

1. **First** – Constable McArthur suffers from PTSD. • The prosecution has never truly disputed that *diagnosis. • At the start of this hearing, on July 24, 2024, the prosecution expressly stated that the Service has never disputed PC McArthur's PTSD diagnosis, and that the real dispute concerns the influence of that diagnosis on the misconduct and the weight it should carry on penalty in terms of mitigation.*

2. **Second** – *Dr. Rootenberg's formulation of that PTSD is nuanced and clinically realistic. He does not reduce the diagnosis to one single event or impose an artificial bright line. His evidence is that there were traumatic occupational exposures before 2013, but that the tragic death of PC Kovach in March 2013 was the major exacerbating and triggering event in the development of full-blown chronic PTSD. That formulation appears in his reports and is reflected in his testimony. It is also reflected in Dr. Douglas' reports and the CAMH report that Dr. Collins told us he places more weight on. Dr. Rootenberg testified that the medical*

understanding of PTSD has evolved "from this idea that you had one singular event, to this idea that you can have cumulative traumatic incidents" and used the analogy of "a cup filling up and then one day it just spills over.

When discussing Dr. Douglas' report that notes the difficulties had been building up over 9-10 years, Dr. Rootenberg explained that often police officers may point to one event as the triggering event "but it may just be the most acute event." Dr. Rootenberg testified that the issue should not be treated in a "black and white, cut and dried way", and that earlier exposures made PC McArthur "more vulnerable to the full-blown manifestation of PTSD", while 2013 was the triggering event for acute, full-blown symptoms. Dr. Rootenberg clarified that his 2018 report should be read as saying that the 2013 death exacerbated symptoms, not that it was necessarily the first moment of any post-traumatic symptoms. Dr. Rootenberg interpreted Dr. Douglas and CAMH consistently as showing that symptoms had been building up before 2013 and that the 2013 death exacerbated / intensified them.

3. **Third** – *Dr. Rootenberg's evidence is that the acuity of PC McArthur's post-traumatic symptoms played a significant role in the September 19, 2016 misconduct. That is a point that you will recall from his evidence and from the reports. In his clinical psychiatric opinion, the misconduct is linked to the documented symptom pattern: guilt, self-blame, hypervigilance, heightened arousal, anxiety when another officer called for help, and an overprotected reflex toward colleagues after PC Kovach's death. That is the defence position on nexus, and it is grounded in the actual symptomology documented throughout the clinical record.*

4. **Fourth** – *Dr. Rootenberg's evidence is that PC McArthur is low risk and fit, from a psychological standpoint, to return to policing duties. Dr. Rootenberg conducted an actuarial risk assessment, and reassessments over time. In his clinical psychiatric opinion, PC McArthur can return to work as a front-line police officer and assume all duties and responsibilities in a manner that will not compromise fellow officers or members of the public. Dr. Rootenberg did not retreat from his core conclusions. After reviewing Dr. Peet's records, Dr. Mendonca's records, and Dr. Collins' reply report, he maintained his overall opinions. His formulation did not collapse when new material was considered.*

Dr. Rootenberg's evidence should be accepted for five reasons:

1. It is based on thorough assessments over many years.

2. It is grounded in a broad evidentiary foundation, including treatment records, psychometrics, collateral interviews, occupational materials, and later medical records.

3. It transparently explains the reasoning process.

4.It is clinically nuanced.

5.It considered new material and remained stable. Dr. Rootenberg's evidence is reliable psychiatric evidence. It should be accepted and afforded significant weight.

In addition to the evidence of Dr. Rootenberg, Ms. Ross states the following in relation to the evidence of the Prosecution Expert witness, Dr. Collins.

> Respectfully, there are many issues with Dr. Collins' evidence and ultimately, the defence position is that portions of Dr. Collins evidence are inadmissible, portions should be rejected under gatekeeper discretion, and portions should be given little, if any, weight.

Ms. Ross does not accept the opinions of Dr. Collins. She perceives him as an older medical professional who still maintains the old way of assessing PTSD and is not up to date like Dr. Rootenberg.

She states in her submissions that Dr. Rootenberg's formulation is conceptually stronger for four reasons:

1. First, it is consistent with the DSM-5-TR that hypervigilance may relate to potential threats both related and unrelated to the traumatic event.

2. Second, it recognizes that hypervigilance can be activated without factual mirroring of the original trauma.

3.Third, it recognizes that perception of threat, not merely objective danger, is operative.

4. Fourth, it is grounded in the evidentiary record: the documented guilt, the protectiveness toward female colleagues, the hypervigilance, the trauma history, and the broader symptom pattern.

By contrast, Dr. Collins' formulation is conceptually weak because it is anchored to an older and narrower understanding of PTSD requires too close a factual link between the original trauma and the later event, overemphasizes objective threat, and under-recognizes the way hypervigilance can be activated by perception, context, and emotionally parallel circumstances. For all those reasons, Dr. Collins' PTSD formulation is out of step with the modern diagnostic framework and must be given less weight than Dr. Rootenberg's evidence

I have spent a considerable amount of time reviewing the video of the incident which occurred on September 19, 2016, at the Guelph Hospital which is the reason why we are at this Tribunal today. I believe that Ms. Barrow has a very detailed and broken-down time of the incident and I will place her analysis and information into this Disposition including the lead up to the call by the Guelph Police to the group home.

Ms. Barrow stated the following:

On September 19, 2016, officers were dispatched to attend a local group home in Guelph for a Cause Disturbance complaint. And this is important for a couple of reasons: first, we know that we're dealing with a group home where vulnerable young people are being housed and are under the care of the state. A highly vulnerable group. A group that often lacks the type of resources, advocacy, and support that other children and youth may have. And for that reason, a group for which empathy and respect and support should be at the forefront.
The second reason is relevant: this was a cause of disturbance complaint. Obviously not a situation where police are being called to respond to reports of a serious criminal offence, or threats of violence.

When police arrived, they are told that the youth – which we've called NS in the ASF – was throwing property around, had damaged a vehicle and was stating that he wanted to harm himself. So, again, this is obviously a troubled youth who for which there are no reports of him being a risk to anyone but himself, and perhaps to property. Because of these reports, and the fact that NS was continuing to make comments about self-harm to the officers, NS was apprehended under the Mental Health Act. So, he was not charged with anything, he's not dangerous, they're sufficiently worried that he may harm himself that they need to take him to the hospital for proper psychiatric care. And another very important point: always, NS was cooperative with attending police officers. So, we have a cooperative, 17-year-old boy from a group home being transported to the hospital to prevent him from harming himself. Very important to keep that in mind.

At the hospital, NS was admitted. His handcuffs were transferred from the rear to the front for greater comfort – so obviously they did not view him as a risk – and he was processed in triage without incident. He was placed in a Safe Room and we, of course, have the video footage from that room for the entirety of his time in that room. As we know, there is no audio from that footage. While alone in the examination room, NS starts acting suspiciously. And to be clear, he's not acting violently or aggressively. He's raising alarm bells, yet again, about the prospect of self-harm. He is observed reaching into his shorts, removing something and examining it. And we know that he later admitted to having consumed drugs and so obviously this type of behaviour raises alarm bells from that perspective.

NS then becomes sick in the room and vomits beside his bed. Constable Lalonde gives NS a plastic bag since he's vomiting and then the room is cleaned up by hospital staff. At one point, NS tears apart the plastic bag and starts using it to attempt to cut his wrist. Constable Lalonde then goes back in to take the bag away and there is a brief struggle for the bag, and ultimately Constable Lalonde is able to retrieve it. NS was continuing to repeat self-harm commentary.

For fear of NS's safety, given his actions and his comments of self-harm, Constable Lalonde determined that the safest option would be to handcuff NS to the bed. And so this is when Constable McArthur comes in. He was already in the ER for another unrelated matter and Constable Lalonde asks him to help her with that task.

<u>And so, let's pause here and just summarize the facts:</u>

- *We have a young 17-year-old boy who lives in a group home that was agitated and was continuously threatening self-harm. So, he's apprehended under the MHA.*
- *He's cooperative throughout his interactions with police. There are no allegations whatsoever of any kind of aggression, violence or danger to anyone other than himself.*
- *He is at the hospital for his own protection, and every step police are taking is for his own safety.*
- *A decision is made that NS needs to be handcuffed to the bed because that's likely what will keep him safest. Not because he might hurt someone else. Not because he's being uncooperative or aggressive towards police. But because they're worried about his safety.*
- *And so, this is the premise under which Constable McArthur is being brought in. There is no threat whatsoever to Constable Lalonde's safety. At any point in her dealings with NS. There isn't even any kind of emergency. Emotions aren't heightened. There are no threats. No one is worried for their safety. Constable Lalonde is just asking Constable McArthur to help her handcuff this boy to the bed so he doesn't harm himself.*

- I paused here to summarize this because we heard all kinds of evidence about how Constable McArthur's assaultive behaviour is because he was in a hypervigilant state and felt the need to protect his female colleague. And frankly, on the face of these facts, that suggestion is absurd. My friend disputes what was clearly Dr. Collins' evidence to that effect and disputes the suggestion that simply because perceived risk was not objectively reasonable that this does not mean that through the trauma response lens it could still not have been felt by Constable McArthur. And I'll walk through this in more detail when we talk about the medical evidence but effectively what we heard from Dr. Rootenberg is that because Constable McArthur was experiencing PTSD symptoms throughout that general time period, that therefore his reaction was caused by PTSD. That's not how nexus works and it doesn't make sense. There is no evidence anywhere in the record – not in the video, not in the way Constable McArthur even described his own feelings or actions in that moment – that explain how and to what extent this hypervigilance was supposedly triggered in that moment.

NS becomes agitated and what we see is NS trying to strike himself on the right side of his face and head with his cuffed hands multiple times. As he has continued to threaten throughout this entire incident, NS is trying to harm himself. For this reason, Constable Lalonde, Constable McArthur and we now have Constable Moulton – enter the room. And, of course, the entire purpose of their entry is to save NS from himself. To keep him from harming himself. To keep him safe. And so that's why what happens next is so concerning.

The officers take steps to secure NS to the bed to keep him safer – collectively they fasten his left hand to the left handrail and the right hand to the right handrail. The handcuffs were then double locked to prevent over-tightening and any injury to NS's wrists. Throughout this time, NS is calm and compliant. There are no injuries to NS at this time – that's obvious in the video. Constable Lalonde then leaves the room to request restraints for him due to his behaviour.

When the three officers begin to exit the room, NS immediately proceeds to strike the right side of his head on the steel bed rail four times. And so, Constable McArthur starts to intervene.
So, let's situate ourselves again: NS has been calm and compliant with police at every single stage of this incident. He has not shown, or threatened, any kind of aggression or violence to anyone. The one and only reason he's apprehended, and the motivation behind every action taken at the hospital, is to keep him safe from himself. He is now handcuffed to the bed with one hand fastened to one bedrail and the other hand fastened to the other handrail. Not only has he not given any indication whatsoever that he's a risk to any of the police officers, but it would be virtually impossible, physically, for him to pose a risk since he's handcuffed to a bed.
*Notwithstanding this, Constable McArthur reacts by placing his right hand on NS's chin and issuing verbal directions to him. You can see on the video that it looks like Constable McArthur's hand is around NS's throat or front of his chin aggressively and hospital staff hear NS yelling "**don't choke me**". And, clearly in response to the feeling that he's being choked, NS raised his right leg, which was unsecured, toward Cst. McArthur. Cst. McArthur – let's remember – is in full gear. And all he and everyone else would have to do if they're feeling threatened – is take a couple steps back from the bed. That feeling of being threatened wouldn't make sense in the first place when NS has been 100% cooperative throughout the entirety of this incident.*

In response to NS's knee making contact with Constable McArthur – although it is apparent on the video that it's not a forceful blow and while my friend suggested some kind of special expertise would be required to come to that conclusion, I would argue that any person viewing the video would easily come to that conclusion – Constable McArthur immediately responds by delivering a very aggressive strike to NS's upper chest and neck/face area.

Seconds later, the officers begin to remove their hands and proceed to exit the room. You can then see in the video that a pool of blood from NS's face is found on the bed and there is blood all over NS's face.
After this, restraints are applied by security guards and NS is then treated by hospital staff for his injuries.
NS's injuries included a laceration approximately 3.5 centimeters in length under his right eye which required stitches. He also had bruising and swelling in the same area of the face, and marks that resembled petechia in both eyes and the left side of the victim's neck. And while I concede that we don't have a clear agreement on the facts as to which injuries were caused by self-harm and which were caused by Cst. McArthur, what is evident on the video is that there is no blood or visible injury to NS until after the assault. And the trial judge concluded that at the very least Cst McArthur's actions exacerbated any injuries.

Notwithstanding that, Cst. McArthur tells hospital staff that the injuries were entirely self-inflicted and says nothing at all about the use of force he utilized. And so, the only reason this obvious assault comes to light to law enforcement is because the hospital staff were concerned and reviewed the video of the incident and reported the assault to the police service.
We've watched the video now several times and I don't propose to play it again today. But for days we heard testimony about how Cst. McArthur acted out of concern for the safety of his female colleague, that he was hypervigilant and reacting – ultimately admitting he was overreacting – to the threat posed by NS, and that it was the circumstances that triggered a PTSD response.

And, with respect, none of that makes any sense. And it's obvious when you watch the video that none of that makes any sense. So, while we're not going to watch it again now, I would ask that you spend time with the video and I want to give you some comments about the video to sit with when you do so.

As you can see from the chart, you should start the video at 20:00. And so, what we'll see is three calm officers operating with no sense of urgency as they handcuff NS to the bed. NS is entirely cooperative, calm and is just lying on the bed as he gets handcuffed. Everyone around him has a very casual demeanor – clearly no one had anything to worry about. They look very unconcerned and unbothered.
Starting at 22:04 is when we see the boy hitting his head against the bed rail. He's able to do it four times before McArthur grabs him by the neck or bottom of his face and pushes him very hard into the bed. At this point, we have this boy being very aggressively held down by two male police officers, he's never acted with, or threatened, any kind of violence or aggression, he's no doubt scared and we know he's yelling "don't choke me". And, notably, the female officer isn't even in the room. The female officer slowly walks in – with no sense of urgency – and stands back – she's not within reach of NS or even assisting with what Constable Moulton and Cst. McArthur are doing. At 22:21 we will see Cst. McArthur be kneed by NS and then we see the strike.

And so, in the lead up to the strike – nobody is even remotely in any kind of danger. Specifically – the female officer – isn't even a part of the equation. There is no urgency, there is no imminent risk of any kind of harm, the only person in any kind of danger is NS. And Cst. McArthur – an imposing police officer with full gear, and extensive training in use of force, de-escalation and dealing with persons in crisis – doesn't help NS, he violently assaults him.

At page 39 of Ms. Barrows submissions, she states the purpose of the medical evidence:

1) Dr. Rootenberg is the sole medical expert put forth by the defence to substantiate the submission that there is a nexus between the PTSD diagnosis and the misconduct. It is incumbent on the defence to prove that fact. It is not the prosecution's burden in this case. My submission will be that the nexus issue remains very much in question when you look at the medical evidence as a whole.

2) Dr. Collins on the other hand was retained for a file review only. The defence refused to provide him an opportunity to meet with Constable McArthur. The scope of his task, and of his evidence, could only be limited to essentially a second opinion on whether the conclusions of Dr. Rootenberg made sense on the basis of his expertise and what he saw in the file. He concluded that the opinion of Dr. Rootenberg did not make sense.

From pages 40-45 Ms. Barrow outlines her concerns for the Trier of Fact to consider.

Upon the conclusion of her assessment, she states the following as a summary for the trier of fact to consider.

Conclusion:

You cannot conclude that disability and the related rehabilitative efforts serve to substantiate rehabilitative potential unless you conclude that there is a nexus between the misconduct and the disability. I submit to you that the evidence is not only deficient on that point, it lacks credibility. It fails to address clear red flags:

- *The prior misconduct in 2008 prior to the onset of PTSD symptoms*
- *The varied other indicators from a multitude of sources indicating issues with anger management, volatility and aggression prior to the onset of PTSD symptoms*
- *The objective absurdity of perceiving a threat in the circumstances of this case and the lack of subjective evidence as to perceived threat*
- *The complete disregard of the various references in the medical evidence to not only pre-existing anger management issues but also the prospect of other causal factors for anger such as the use of steroids*

All of this was dismissed without credible explanation by Dr. Rootenberg. And I submit to you that it is not possible to reconcile these issues with a credible finding on nexus. It was the defence's burden and they have not met it.

I would also submit to you that even if you accept that there may have been some relationship between the misconduct and the disability, and while Dr. Rootenberg and the defence may have ignored the various other references in the record to pre-existing anger management and aggression concerns, you cannot ignore these references. Even if you accept there may have been some causal relationship, you surely must also find that Constable McArthur's actions are still also attributable to a pre-existing concern around managing anger – a pre-existing concern which exists entirely outside the PTSD diagnosis. And if that's your finding, it could not then logically follow that disability carries anywhere near the weight that has been suggested to you.

Disposition Considerations:

Several issues must be considered in Police Act disciplinary matters.

1. **<u>Public Interest</u>**

It is important to consider the public interest. It is common knowledge that the public holds police in a position of high trust and accountability. Constable McArthur was found Guilty of Discreditable Conduct. At the time of this indiscretion, Constable McArthur had fifteen years' police experience.

As noted in the agreed statement of fact, NS was assaulted by Constable McArthur when he attended the hospital room in Guelph, Ontario to assist other Guelph Police officers to secure NS to the hospital bed to keep him safer from striking himself. There were no safety concerns and NS had been cooperative from the time he was taken from the group home to the hospital setting. This was a seventeen-year-old young boy. The officers restrain his left hand to the left rail and his right hand to the right rail. The handcuffs are double locked so they would not tighten. Constable LaLonde leaves the room to request restraints for NS. There are no injuries to NS.at this points in time. NS was compliant and cooperative during this process.

He poses no risk to anyone but himself. That was the purpose of bringing him to the hospital in the first place. It is visible in the video that NS upon the officers leaving the hospital room that he begins to strike his head against the side rail of the bed. He strikes his head four times before Constable McArthur grabs him by the neck/face area and pushes him down into the bed.
The other officer also assists in holding NS by grabbing the body/leg area of NS to restrain him. NS yells "**Don't choke me**" ostensibly I believe to Constable McArthur due to his hand position on NS face, neck area. There was no aggression shown by NS prior to the officers grabbing him to restrain him. It was his face that was hitting the bed rail. The female officer returns to the doorway and observes the actions of McArthur and Moulton. There does not appear to be any appearance of an issue with LaLonde stopping at the doorway to observe.

A short time later NS raises his leg towards Constable McArthur to what would appear to strike McArthur. It is unknown why NS did this, but it may have been due to the restraint of his neck/ face area by McArthur as he stated he was choking.

Nonetheless the officers were not in any danger and easily could have moved away from the bed and waited for the hospital restraints to arrive. Instead, Constable McArthur delivers an aggressive strike to the chest/ face area of NS.

The officers leave the room, and it is apparent there is blood on the sheets and face area of NS. Hospital security staff attend to apply restraints to NS with no apparent issue. The injuries are noted by hospital staff who were advised that the injuries were self-inflicted by NS to himself.

NS was treated for a 3.5-centimeter gash under his right eye which required stitches. Constable McArthur advised hospital staff that the injuries were self-inflicted and only after the hospital staff reviewed the tape in the room was it observed that NS was assaulted by Constable McArthur and it was reported to police.

Constable McArthur did not make an occurrence report or make notes regarding his actions at the hospital with NS.

Justice Allen at the criminal trial stated the following about Constable McArthur's actions on September 19, 2016:

"NS was very young. He was in the midst of a significant medical and mental health crisis. His hands had been restrained. It is difficult to think of someone who was in a more vulnerable position.

Dealing with someone in crisis would be incredibly stressful. The chaos, unpredictable and often violent behaviour would test anyone's patience. The public has enormous respect and admiration for those who accept this challenge. Mr. McArthur was trained to react appropriately. He was trusted to do so. He had a duty to protect NS Instead he assaulted him."

On September 27, 2018, Constable McArthur pled guilty in Criminal court and received a conditional discharge with three (3) years' probation and two hundred and forty (240) community service hours.

Constable McArthur at the time of this indiscretion had fifteen years' police experience. It should also be noted that Constable McArthur in 2008 was charged with a criminal assault charge and pled guilty to that charge in 2010 and to a Police Disciplinary charge which he forfeited several hours. At the time of that indiscretion he had seven years' police experience. When I reviewed his Performance evaluations from 2001 through 2007 Constable McArthur received excellent reviews. From 2007 through 2010 this officer was on special review due to his work ethic and conduct issues with the public due to aggressive behaviour both physically and verbally.
Constable McArthur did not exhibit in the hospital the skills and knowledge that a member with his seniority and experience ought to have shown to his team members and to NS.

Police officers have a higher standard than the public. When a member of the public is under arrest as NS was the police officer has enormous powers over that individual. NS was arrested at his group home for Cause Disturbance and for his safety. This was home housed by juveniles. Those that do not have the benefit of a true home living with their family. They ought not to be abused or treated unfairly especially by the police officers who are there to protect them.

It is my belief and I do find that Constable McArthur overreacted to the situation. Policemen are to always be in control of their actions. This does not always apply to civilians. Policemen are trained. If people shout obscenities and create disturbances police officers are trained to deal with these situations. In this situation the arrested party was compliant, handcuffed to the bed rails, banging his head against the side rails. The police officers present were clearly in no danger. This action was the first aggressive action taken by NS while he was in the company of the police officers and this action was taken to himself.
Only after Constable McArthur grabbed him in the neck/face area did NS show any retaliation. This was done with his leg which McArthur could have easily got out of the way and stepped back. Instead, he aggressively struck NS in the face, chest area causing injury to NS.

Constable McArthur is a police officer and as such the public expects him to investigate criminal activity in a professional and thorough manner. General Orders of the Service are expected to be adhered to forthwith as policy dictates. This type of behavior displayed by Constable McArthur on the day in question is not tolerable.

The community has an interest in knowing that its police officers will act in accordance with the laws they are sworn to uphold. There has been much media attention to this file as is evident in Exhibit 23 submitted to the Tribunal. The media has focused on the criminal trial and the Police Disciplinary proceedings for this officer.

I must consider the Public Interest in this file as an aggravating factor in my disposition consideration process.

It is therefore extremely important that the Guelph Police Service demonstrate that members will be held to that standard.

2. Seriousness of the Misconduct

Any deceptive or abhorrent behaviour displayed by a police officer in any police service is serious. This situation is compounded when the member is expected to be trusted by the community and his fellow officers. Constable McArthur betrayed the trust of his fellow officers, the community and the Guelph Police Service.

Public confidence in the police is one of an expectation that the law will be upheld.

Constable McArthur's conduct was unprofessional and he abused his authority. He performed an Assault on a compliant arrested person which culminated in minor injury to the head and eye of the complainant. The eye required stitches to close the 3.5-centimeter gash. The officer was dealing with a seventeen-year-old male juvenile who was compliant throughout his dealings with the police from the group home to the hospital setting. He was handcuffed to the hospital gurney. There was no danger to anyone except himself. For some unknown reason he began to hit his head against the side rails of the bed and his handcuffs as the officers Moulton and McArthur were about to leave the room. As we see in the video Constable McArthur grabs him in the head/neck area and forcefully pushes him down into his gurney. Why I ask myself, "would you do that? Restraints from hospital staff were requested by Constable Lalonde. The vulnerable juvenile yells "**Don't choke me"** which is followed by his leg rising and contacting Constable McArthur. At this point I can only believe that the NS was scared and could not understand what was happening or why the officer was acting in such a violent manner. McArthur then quite aggressively applies a strike to the head chest area of the helpless juvenile causing the injuries which were reported earlier. I am aware that Counsel has stated it is unknown if the injuries were caused by NS or was it, McArthur. There did not appear to be any blood on the bed, sheets or face of the juvenile until after the strike from McArthur. Moulton and McArthur held NS down until the restraints arrived and the injuries were observed by hospital staff. Constable McArthur stated that the injuries were

self-inflicted. No notes were made by him or the other two officers in attendance that day. The review of the tape was done by hospital staff who observed the actions of McArthur and a police complaint was filed.

That brings us to the difference of the opinion from the two medical experts, Dr. Rootenberg and Dr. Collins.

Dr. Rootenberg has advised in his reports and in his testimony before the Tribunal that the actions of Constable McArthur were because of a diagnosis of PTSD. It related to numerous traumatic issues that McArthur faced in policing but the predominate issue was an incident in 2013 where a Guelph female police officer was killed in a tragic car accident when she was enroute to assist another Guelph officer namely Constable McArthur. A full picture of Ms. Ross's position I have copied on page nine through eleven of this disposition which does not need to be repeated.

Doctor Collins on the other hand disputes this analysis. He agrees that Constable McArthur has PTSD, however the causation of the strikes in the hospital does not lead to a nexus of the harm McArthur initiated on NS. Ms. Barrow's comments are on pages eleven through fifteen.

Ms. Ross indicates to the Tribunal that the PTSD which Constable McArthur suffers should be a significant mitigating factor for the Tribunal to consider. Ms. Barrow argues that the PTSD has no nexus to the hospital incident and should not play a role in mitigating consideration.

I have reviewed the medical evidence, exhibits, tape of the incident, transcripts and submissions from Counsel numerous times since the Hearing was completed. They contain a lot of medical information. Some I have found helpful in my decision process and other factors clarified the process.

Dr. Rootenberg completed numerous reports throughout the entire process. By this I mean the two Hearings and additional information that was provided to him. He observed Constable McArthur in person and was able to ask questions to assist him in his findings and completion of his reports.

Dr. Collins on the other hand was not provided with the same consideration. He was denied the opportunity to see Constable McArthur. He made his reports based on the review of the files that were provided to him by the Prosecution including the medical reports of Dr. Rootenberg and other medical personnel.

Dr. Rootenberg's evidence is that the acuity of Constable McArthur's post-traumatic symptoms played a significant role on September 19, 2016, misconduct. In his clinical psychiatric opinion, the misconduct is linked to the documented symptom pattern: guilt, self-blame, hypervigilance, heightened arousal, anxiety when another officer called for help, and an overprotected reflex toward colleagues after Constable Kovach's death. That is the Defence position on nexus, and it is grounded in the actual symptomology documented throughout the clinical record.

Dr. Collins on the other hand believes their must be a nexus to the incident to create the outburst caused by the PTSD. Ms. Ross believes this is outdated psychiatry and Dr. Rootenberg operates under a newer system which is not as black and white.

I find that both could be correct. The difficulty I have with the reasoning of Dr. Rootenberg is that he relies on the guilt, self-blame, hypervigilance, heightened arousal, anxiety when another officer called for help, and an overprotected reflex toward colleagues after PC Kovach's death. Dr. Rootenberg relates it to the protectiveness of McArthur to females due to the death of Constable Kovach.

Dr.Rootenberg does not provide direct evidence towards the conduct of Constable McArthur which would lead him to act out as he did on September 16, 2016. There is no evidence from the interviews the views of Constable McArthur to medical staff outlining what he was feeling on that day or in that timeframe where he acted out and caused the Assault on NS. What he has provided to the Tribunal is the symptoms of PTSD. The overarching consideration Dr. Rootenberg opines is the assistance that Constable McArthur provides to female officers due to the death of Constable Kovach. Constable LaLonde the female officer who arrested NS was not present in the room when Constable McArthur acted out in the assaultive fashion he exhibited to NS.

He opined in his evidence as well to a nurse that Constable McArthur assisted in the Guelph hospital who was pregnant and was having difficulty with a patient. Constable McArthur assisted and she was very appreciative due to her pregnancy.

Dr. Collins has stated in testimony from his review of the numerous files provided to him that Constable McArthur has PTSD. The issue that he presents to the Tribunal is that there must be a triggering mechanism present for Constable McArthur to act out in the way that he presented himself on September 19, 2016. He testifies in his experience there is no triggering mechanism for McArthur at that moment.

Ms. Ross was unable to change Dr. Collins from this opinion. She states he is old school.

There is no doubt and it is mentioned in his performance evaluations until 2010 that he does assist other people and officers. There are no performance evaluations after 2010. In fact, after 2007 Constable McArthur was on special review by the Guelph Police service for the following reasons:

- *Unsuitability*
- *Incompetence*
- *Insufficient or careless work*
- *Personal appearance*
- *Failure to adhere to service policies and procedures*
- *Reliability*
- *Fitness for duty*
- *Involvement in activities that are unsuitable to the member's position*
- *A pattern of failing to cooperate with colleagues and/or supervisors*
- *Attendance problems*

This officer was relegated to the office or with a supervisor when on patrol. These are contained in Exhibit #10 supplied by Defence Counsel.

There were issues raised by Ms. Ross that Dr. Collins spoke about negative comments in the performance reviews.
I will state that I have read these documents. There is no doubt that up until 2007 Constable McArthur had excellent reviews from 2001 through 2006. The Service had great expectations for this officer.

In 2007 the Supervisor noted that Constable McArthur had to be spoken to by his supervisor in relation to his handling of calls utilizing force. He noted that he has been able to articulate his reasoning but was cautioned over that force. In late 2007 it was also noted in his second special review he was cautioned again for his excessive use of force. It does not matter that he was not charged. He was cautioned and warned before a situation develops that could lead to a charge criminally or internally through the Police Services Act. Five special review forms were completed on Constable McArthur for the above noted reasons, and five Supervisors reports were submitted to the Inspector for review.

Constable McArthur was charged criminally in 2008 for Assault and charged with Excessive Force internally through the Police Services Act for his conduct.

He was found guilty of the Assault and received an absolute discharge. He forfeited ten days' pay for the Excessive Use of Force. This was concluded in 2010.

This incident before the Tribunal occurred in 2016. Constable LaLonde is a female officer. She had requested assistance from McArthur and Moulton who were in the hospital for separate issues to assist in restraining NS. NS was cooperative and she felt it would be in his safety to be restrained. They assisted in placing the handcuffs through the handrails of the bed to secure NS. This was completed with no issue. This keeping in mind is a seventeen-year-old male youth from a group home.

Constable Lalonde is away from the room and returns after the strike is delivered to NS and observes from the doorway.

When I assess the issues raised by Dr. Rootenberg: guilt, self-blame, hypervigilance, heightened arousal, anxiety when another officer called for help, and an overprotected reflex toward colleagues after Constable Kovach's death I have difficulty in the rational for the actions of Constable McArthur.

The female officer was not present; the juvenile NS was handcuffed to the gurney and only raised his leg after he was assaulted by McArthur by driving his face to the gurney. There was no danger to anyone except NS. To equate this to PTSD is a large leap which is not rational in my opinion. As I said also, I find and am convinced by the evidence and the testimony of the medical doctors that Constable McArthur has PTSD, but I do not find it resulted in his actions displayed on September 19, 2016. Dr. Collin's evidence seems to be on point with the actions displayed by McArthur. No nexus exists at this point to tie the PTSD to the conduct displayed by McArthur.

The performance evaluations of this officer up to 2006 are excellent. In 2007 there are issues raised with his performance, attitude at work and his use of force becoming a problem. This is followed up in 2008 with his Assault charge and the PSA convictions which took place in 2010. Constable McArthur then blames the Service for his actions. He does not believe he has done anything wrong and that has continued through the 2016 incident.

I did not receive any information from Constable McArthur either at this Tribunal or his number of contacts with medical personnel regarding his PTSD where he states what in his mind caused him to act the way he did on September 19, 2016. The reason has come from Dr. Rootenberg.

It is also raised by Counsel that Constable McArthur has not been totally correct when he answered questions about his steroid use, Pristiq medication and his alcohol consumption. These are issues that you do not forget. I am not saying he was dishonest however it was proven he lacked total confirmation in his answers to Dr. Rootenberg.

Only after it was observed and Constable McArthur knew it was in the medical records did he confirm with Dr. Rootenberg that he was mistaken. Dr. Rootenberg stayed with his original analysis. That is the danger in self-reporting.

The previous evaluations 2007-2010 containing use of force issues, culminated with the 2008 charge of Assault, the denial of Constable McArthur that he did anything wrong in 2008 with the Assault charge, lack of remorse for these incidents lead me to believe that he had anger issues. The Pristiq was prescribed for these mood issues. He changed drastically from 2007 through 2010 in his work performance. The 2013 incident for Constable McArthur was horrible.

I cannot assess any work performance after 2010 as there is no documentation provided.

Constable McArthur`s conduct was unprofessional and he abused his authority. He in my mind performed actions totally against all the morals, principles and integrity of a police officer. His misconduct is serious as he now has placed himself in the position of being found guilty in a criminal court of Assault. There were no notes made of this occurrence or notebook entries. The video from the hospital room captures the entire incident. I must ask the question *"Why was this action not documented?"*

I can only suspect as to why it was not noted, however that is not proper for this Tribunal to assess. What it does reveal is a lack of transparency not only by Constable McArthur for his actions but also that of the other two officers in attendance as well. I must deal with the evidence submitted to this Tribunal and that is what the trier of fact is considering in this disposition.

This certainly creates an issue for the Service in assigning this officer to a position within the organization.

Given this betrayal to the community and the Service, which is fundamental to his effectiveness as a police officer with the Guelph Police Service, it further tarnishes the images of the active members who wear the uniform of the Guelph Police Service.

The nature of the behaviour is such that without significant mitigating circumstances, his dismissal would be the most appropriate cause of action.

This is a significant action against him by the Guelph Police Service.

I must consider this as an aggravating factor in my disposition consideration process.

3. Recognition of the Seriousness of the Misconduct

The actions of Constable McArthur in 2016 have affected his career. I am under the firm belief that Constable McArthur does not fully understand how his actions have affected himself and the organization to this day.

I say this because he believes he has done nothing wrong and his use of force was justified. He has stated to character witnesses, medical personnel and others that he believes he has done nothing wrong. The excessive force utilized against NS at the hospital was justified and he blames the Guelph Police Service for "*going after him."*

It is only recently and this may be because of his ongoing medical treatment that he has softened his position against the Guelph Police Service.

Abhorrent behavior displayed by a police officer in any Service is extremely serious. This situation is compounded when the member is expected to be trusted by the community and his fellow officers. Constable McArthur betrayed the trust of his fellow officers, the community and the Guelph Police Service.

It is my hope that this officer sees clearly how his actions and lack of professionalism have dictated the shortcomings that brought him before this Tribunal today. The public observes and evaluates the Police 24-7. As individuals and as a professional organization we must be mindful of this fact. Police officers whether you are on the Guelph Police Service or some other policing jurisdiction, while on patrol and off duty, must always conduct themselves in a professional manner and in all situations that they may be confronted with while donning the uniform of your department.

I must consider this as aggravating issue in dealing with the disposition.

4. Employment History

Constable McArthur began his career with the Guelph Police Service in 2001. Constable McArthur is a senior member of the Guelph Police Service. He served in front line duties as a patrol officer. During his initial six years of his policing career, this officer has demonstrated that he can be and was a hardworking member of the organization. He has worked primarily in front-line capacity for the Service.

He has received two commendations for his work performance in 2007 and two for 2015 for his assistance to the Special Olympics basketball program. In 2012 he received the ten-year Long Service Award from the Guelph Police Service. They are contained in Exhibit # 10 which shows his work commitment and dedication to the Service. Constable McArthur's Performance Management appraisals from 2001-2007 exhibit that he meets the standards in all categories.

In 2007 this officer was placed under Special Review for his Unsatisfactory Work Performance. The last report was submitted on November 01, 2010. There are no further work performance reviews contained in Exhibit #10. We are aware that the officer was suspended from duty because of his actions at the hospital on September 19, 2016. He has been absent from the Service for the past ten years in an operational mode while this matter is before this Tribunal and the previous Tribunal which began in 2020.

This officer has been found Guilty of criminal Assault on two occasions while on duty in a Guelph Police Service uniform. He received an absolute discharge in 2010 for an Assault committed in 2008 and a conditional discharge for the Assault which occurred in 2016 in the Guelph Hospital room.

The Police Services Act file for the 2008 incident Constable McArthur received a disposition of ten days forfeiture of pay and pled guilty to that charge.

He has been found guilty of two criminal Assault charges. He has no criminal record.

The totality of work performance acts as an aggravating factor in my decision.

5. Need for Deterrence

It is necessary to consider a general deterrence for all members. The penalty must reflect that the Guelph Police Service will not tolerate unacceptable behaviour. The Guelph Police Service must communicate the message to all members that officers of this Service will act professionally, conduct proficient investigations and act accordingly in the presence of other officers and members of the public when engaged in the performance of their duties.

General deterrence in this situation offers the Adjudicator in this matter the opportunity to remind all members of this organization that engaging with a member of the public in a physical manner is a significant action against that person and it cannot and should not be exercised or performed casually or with undo harm to an individual. The rule of an investigation is to provide the Community with investigations with the utmost of policing excellence, diligence and thoroughness. A quality investigation is warranted. Nothing else can be accepted or tolerated.

This disposition must indicate to the policing community that individuals who contemplate this type of behaviour do so at their own considerable peril and preclude any significant leniency in dealing with matters of this nature. As a result, the disposition in this matter ought to leave no doubt as to probable consequences of misconduct in this regard.

There must also be specific deterrence for the member to send a message that individuals will be held accountable for their conduct. While considering the mitigating factor, such as generally positive work record for his first seven years on the Service and the aggravating factors of the criminal Assault guilty pleas on two occasions and the two Police Services Act findings of guilt the Guelph Police Service must deliver a penalty that not only prevents recurrence, but also adequately protects the public.

It is my opinion that dismissal/demotion is a viable conclusion in this regard.

6. Ability to Reform or Rehabilitate the Officer

Constable McArthur acted in a manner that is clearly unacceptable of a Police Officer. Discreditable Conduct is a serious offence. Excessive force cannot and will not be tolerated in this organization. Constable McArthur has been charged criminally on two occasions with Assault and has been found guilty on both occasions with fifteen years on the job. The possibility of recurrence must clearly be examined.

The character references submitted at this Tribunal do not address the extent of what the witnesses know of the Police Services Act offences he is charged with and convicted of today. Both witnesses have testified they are aware of the charges. To what detail it is unknown.

Constable McEwen is an active police officer with the Guelph Police Service. She worked with Constable McArthur on “A” platoon. She stated they have worked on the same shift for 3.5 years. McArthur in West Zone and McQueen in East zone. She has attended on some calls with McArthur and found him to be professional and calm on those occasions. She never attended a call with him in any high stress, volatile situation. She agreed that the relationship with the Guelph Hospital and the Service needs to be of high standard and the actions of McArthur have affected that and the relationship with the public through the cross examination of Ms. Barrow.

Mr. Bryan Stevens, a retired paramedic, also testified on behalf of Constable McArthur. He advised he met McArthur through his business. He runs a Health and Wellness Center for First Responders and McArthur attended the grand opening and was the winner of a free membership. The business specializes in assisting clients in coping and managing systems. He has discussed the incident with McArthur and advises that McArthur accepts responsibility. He also states that McArthur is a popular client with many other clients at his establishment.

Medical personnel associated with the McArthur file that have treated him over the last number of years have indicated that Constable McArthur could return to work under special parameters.
Dr. Rootenberg conducted an actuarial risk assessment, and reassessments over time. In his clinical psychiatric opinion, Constable McArthur can return to work as a front-line police officer and assume all duties and responsibilities in a manner that will not compromise fellow officers or members of the public. Dr. Rootenberg did not retreat from his core conclusions.

Constable McArthur has not worked for the service in ten years. Policing policies, procedures, and attitudes towards the policing profession by the public have changed drastically since Constable McArthur last wore the uniform of the Guelph Police Service. In Constable McArthur's last Hearing it was described that through additional training and a gradual return to work it would be a benefit for this officer.

Dr. Rootenberg in his testimony indicated that perception can also trigger an event.
He explained that whether there was an actual threat, PC McArthur's perception was one of protecting others, particularly female officers, and that this perception was shaped by guilt over how Constable Kovach died. He then said, again, that context is key. That evidence directly answers Dr. Collins' insistence that there was "no risk" and "no threat". The point is not that there objectively was a grave threat in the room. The point is that psychiatric analysis of hypervigilance is not limited to objective threat. It includes perceived threat, context, prior trauma, guilt, protectiveness, and the way trauma can alter one's vigilance and responses.
Here, Dr. Rootenberg speaks about a trigger to explain someone's action.

Dr. Collins on the other hand disagrees with this point as he observed there was no trigger to activate the actions that Constable McArthur exhibited on September 19, 2016. The nexus to a female is not there. Constable LaLonde was not present. Hyper arousal guilt, self-blame, hypervigilance, heightened arousal, anxiety when another officer called for help, and an overprotected reflex toward colleagues after Constable Kovach's death I have difficulty in the rational for the actions of Constable McArthur. I find that these characteristics are real for a medical diagnosis for PTSD. In my mind I return to the cause of the actions displayed by Constable McArthur, the actions of the leg by NS towards Constable McArthur after he had grabbed the young, handcuffed juvenile by the neck/face area making him believe he was choked by Constable McArthur. This would appear to be a normal reaction from anyone to assist themselves with this unexplained danger. This resulted in the aggressive action displayed by Constable McArthur. There was no danger. NS was handcuffed to the bed rails and had been cooperative and compliant with the police. He acted out banging his head against his handcuffs and the bed rails for some unknown reason. The officers present in the room could have stepped back and waited for the restraints that were being supplied by hospital staff. They could have restrained him in a more appropriate manner. They did not. The actions exhibited by Constable McArthur caused the situation.

This is further troubling when no notes or occurrence reports were completed on his actions. It is also troubling that the other two officers were complicit in this regard as well.

Again, in the assessment of Dr. Collins, the actions portrayed by Constable McArthur do not show a nexus for his actions.

An issue that must also be considered is what position Constable McArthur can be assigned to in the organization?

The credibility of this officer is in serious doubt and if left employed by the Service may at some point jeopardize an investigation. The question that must be asked is **"Do we place the burden of the Misconduct on the Service by this officer to absorb until his retirement?"**

Short of dismissal, it is unknown to this Tribunal or the Guelph Police Service whether this conduct will continue by this officer.

7. Damage to the Reputation of the Force

The Conduct exhibited by this officer while on duty in Guelph is deplorable and will cause damage to the reputation of the Guelph Police Service.

The credibility of Guelph Police Service as police agency is of paramount importance.

The credibility of officers that conduct investigations and act inappropriately can have an adverse effect on the officer and those in attendance. Further, this incident was reported in the media, resulting in embarrassment to the Guelph Police Service.

As was shown in Exhibit #23 the media coverage on this file has been extremely reported by the various press organizations. It has been covered and televised by CBC and CTV. Newspaper coverage is extensive as well. Radio has also made numerous reports on each of the criminal and the Police Act charges.

Members of the press have been in attendance on almost all days of this Hearing.

The utilization of force on a handcuffed compliant juvenile teen person does not reflect a positive image for the officers conducting the work in a small community for the Guelph Police Service. Policing is a difficult job and instances such as this do not project that positive, helpful, caring image the organization wishes to project to their citizens.

When considering this aspect of the disposition, I am left with a very firm conviction that if Constable McArthur were to remain a member of the Guelph Police Service, the damage to the reputation of the Service would be high indeed.

The publicity that this officer has garnered over the years is detrimental in every aspect to the Service. The articles can be seen as not complimentary to the Service or the men and women of this Service that wear the uniform of the Guelph Police Service and work hard every day.

Not only is it disheartening to listen to or read the comments by the press towards the Guelph Police Service officer, but it also directly affects every officer that wears the uniform for their respective community. The comments are very detrimental to this officer, and I must consider them as aggravating in my decision-making process.

It is the commitment and the Public's expectation that the Guelph Police Service conduct themselves 24-7, three hundred and sixty-five days of the year with a degree of professionalism and commitment for policing excellence. Nothing less is acceptable.

The credibility of this officer is in serious doubt and if left employed by the Service may at some point jeopardize an investigation or cause further risk management issues for the Service.

8. Handicap and Other Relevant Person Circumstances

There is no doubt that Constable McArthur suffers from PTSD. He has had years of therapy, and the conclusion is that he is making progress. This is wonderful for Constable McArthur. He has been working hard towards this goal through all his therapeutic programs.
It has been noted by Ms. Ross that Dr. Rootenberg has indicated that Constable McArthur has encountered numerous traumatic events in his career with the Kovach incident being the principal action resulting in his diagnosis of PTSD.

I must also say that first responders in any organization meet with traumatic events daily. Some can deal with the situations and others seek support. All these organizations have support programs and expertise in handling these situations.

To my knowledge no issues were reported by Constable McArthur. The Service offered counselling and support after the Kovach tragedy. It is unknown if this officer took advantage of this support.

It was after the hospital incident and before the criminal trial for Assault and his first Police Services Act Hearing on this file that he sought medical assistance and was diagnosed with PTSD.

9. Effect on the Police Officer's Family

There is no doubt that Constable McArthur and his family will suffer from the penalty disposition to be imposed. Dismissal, Demotion, forfeiture of hours will have an impact on Constable McArthur.

I have given this situation serious consideration in determining an appropriate disposition.

10. Management Approach for Misconduct

The Guelph Police Service has a clearly defined Performance Management Program and Disciplinary Process. The Guelph Police Service is a professional, disciplined organization. The Service considers the actions of Constable McArthur to be serious.

Due to the serious nature of this misconduct, while on duty, I have not given undue consideration for this issue. The Guelph Police Service does not condone or accept this type of behaviour from its officers.

There is truly no flexibility in this way management of the Guelph Police Service could approach or condone this type of behaviour by a member of their Service.

11. Provocation

NS the arrested juvenile teen party was under the control of Constable Lalonde who made the arrest at the group home where the Guelph Police service was dispatched. He was arrested for his safety under the Mental Health Act. He was compliant and cooperative with the Police throughout his arrest and transport to Guelph Hospital.

This was a seventeen-year-old vulnerable young man. He was taken into custody for his own safety to prevent self-harm to himself. He was handcuffed and was eventually placed in a hospital room with no issues.

The police officers decided to put his handcuffs through the handrails for further protection for NS. Again, this was completed without any issue. For some unknown reason NS started to bang his head against the handcuffs and bedrails. Restraints were ordered from the hospital staff. Constable Lalonde was absent and Moulton and McArthur were in the room.

McArthur grabbed NS by the neck/face area and NS can be heard saying "***Don't choke me".*** Constable McArthur then strikes NS in the face/chest area when NS raised his leg towards him for some unknown reason. It may have been in fright as he was choking.

There was absolutely no need for this action by McArthur as he was dealing with a seventeen-year-old vulnerable teen who was acting out by striking his head against his handcuffs and bed rails. There was no place for him to go. Two male officers were in the room. He could have easily backed away as NS was not going anywhere and could have waited for the restraints. The other method could have been to hold his hands and his legs until the restraints arrived. Police officers are trained to deal with this type of issue and more importantly to de-escalate the situation, not to escalate the situation by creating a 3.5-centimeter gash to his eye by striking NS in this aggressive manner.

Again, I must repeat this is a vulnerable youth, a young seventeen-year-old boy handcuffed at the bed at this point. There is no place to go. NS was not attempting to escape. He was harming himself. He was there ultimately for his protection, and it resulted in injuries to himself by the police who had arrested him for his protection.

There was absolutely no provocation at all at the scene to warrant the actions of Constable McArthur and these actions warrant serious aggravating factors to be considered in my disposition.

12. Procedural Fairness Considerations

This file was adjudicated at an earlier date and OCCPS ordered a new Hearing. The deficiencies and errors were noted in their decision which resulted in this new Hearing on Disposition.

There are no further considerations before this Tribunal that are apparent or give cause for consideration**.**

13. Consistency of Penalty

I have considered the one hundred and fourteen (114) cases presented to me by Counsel. As I communicated earlier in this disposition the cases presented to me are not on point, however they were instructive for disposition considerations.

In Schofield vs. Metro Toronto Police (1994) the Commission stated:

"Consistency in the discipline process is often the earmark of fairness. The penalty must be consistent with the facts and consistent with similar cases that have been dealt with on earlier occasions."

It is my opinion that all the issues raised by Counsel are fair play when assessing an appropriate penalty disposition. As I have stated earlier, I have received several cases from Counsel to assist me in determining a just disposition. The cases supplied by Counsel are for the most part dated. Several of the cases submitted were quite outdated and considering this is 2026, times have changed and so have penalties in Police Services Act cases. I still looked at the cases as instructive in my disposition considerations.

Yes, we have assaultive behaviour conducted by police officers that have been because of provocation. There are cases that police officers have assaulted an arrested party with no criminal charges. We also have cases that result in dismissal and demotion. I find that these positions for disposition are quite appropriate. The cases as presented by Counsel have been extremely helpful.

Constable McAthur's conduct was unprofessional and he abused his authority. He performed an Assault on a compliant arrested person which culminated in injury to his face, eye and head requiring stitches of the compliant young juvenile who was handcuffed at the time of the assault on a hospital gurney. He had been brought there by the Guelph Police for his protection for his conduct at the youth home.

This type of conduct cannot and must not be exhibited by a police officer in the performance of their duties. It is not accepted by any police organization, and it is certainly not appreciated by members living in the community.

The question that this Tribunal must consider is whether this exhibition of force by Constable McArthur is a trait that will continue or has he learned from his criminal court experience and this hearing process.

As we all know, all cases are different in substance and fact. In this case it addresses the power a Police Officer possesses and the use or improper use of this power can affect the Officer and tarnish the image and reputation of the Service for whom he/she is employed. In this circumstance it is the Guelph Police Service. That to me is the issue that I must focus and address the Disposition considerations that both Counsel have asked me to consider. The cases provided are unlike this case. There are salient pieces that I have been able to extract and implement into my decision-making process.

We have had two expert medical personnel called by the Defence and the Prosecution. They are undoubtedly experts in their field.

I find that Dr. Rootenberg has spent countless hours in person with this officer reviewing medical information from all his medical contacts. He has been able to question McArthur on the medical information for further clarification if required as well as the medical doctors who had McArthur as a patient. It was noted that an abundance of information was self-generated by McArthur in questions asked by his medical team. Not all the answers were honest. I make note of the steroid use, Pristiq and of his alcohol consumption. Dr. Rootenberg discounted these answers made by McArthur.

He also discounted the prior information contained in Performance reviews and McArthur's special reviews that he had some prior inappropriate conduct with community members both physically and verbally. He also had a prior finding of guilt on a criminal charge for Assault in 2008. He did not believe this was relevant to the 2016 incident nor were the other points raised as well.

On the other hand, Dr. Collins, in his file review, as he was not allowed to see Constable McArthur in person, did accept the issues raised in the previous paragraph. He saw the points that Rootenberg discounted as relevant to the issue of the event on September 19, 2016.

Two separate Doctors as experts in their field with different opinions.

The major issue I believe must be considered is whether PTSD affected the actions of Constable McArthur on September 19, 2016. There is no doubt or controversy by the experts at this Hearing that Constable McArthur has PTSD.

Dr. Rootenberg indicates and testifies that PTSD was the cause of the behaviour of Constable McArthur. He does not outline a specific issue as to why he states this opinion. He stated that guilt, self-blame, hypervigilance, heightened arousal, anxiety when another officer called for help, and an overprotected reflex toward colleagues after Constable Kovach's death caused the PTSD. This is an expansive approach to the actions of Constable McArthur without any specific analysis as to why he acted in the manner that he did. He also has indicated the perception of the characteristics could cause the actions of Constable McArthur.

If I agree that perception could also create this issue for McArthur, I find it difficult to understand why Dr. Rootenberg would state that McArthur could return to work.

This would be an officer in full uniform with several items of Use of Force equipment attached to his belt including a firearm. The hospital situation with a handcuffed young juvenile creating an issue of self-harm to himself would be drastically different than the high risk, volatile situations that police officers face daily. In addition to that thought process Constable McArthur has not been in the field for ten years and times have changed drastically since that hospital incident for police officers in the field. Policies, Procedures of the Guelph Police Service, Criminal Code laws and regulations and the Police Services Act have all changed since 2016 when Constable McArthur last wore a Guelph Police Service uniform. Many other provincial laws and regulations have changed as well.

Dr. Collins also has testified and has expressed the opinion in his observations of the information received that there must be a trigger to activate the response for PTSD. We do not have that analysis from Dr. Rootenberg and Dr. Collins advises there was no trigger to activate the response that Constable McArthur displayed in the hospital.

I also find the actions by McArthur were further complicated when he falsely advised hospital staff that the injuries to NS were self-inflicted.

Notes are important to relate to an occurrence after a period has elapsed. Constable McArthur`s are non-existent. No notes to the actions taken by him at the hospital room, no Use of Force report submitted. His answer to the situation was that the injuries were self-inflicted. He may have gotten away with these answers if it was not for the video which was taken by the Hospital and reviewed before they called the Guelph Police. This is very disheartening for the Guelph Police Service. Constable McArthur intentionally lied to the hospital staff about his actions. His deceptive behaviour in this regard would also account why no notes were made of the incident. I find it also disappointing that the other two officers were on scene and did not note McArthur's actions or report his actions to his supervisor.

Constable McArthur had a previous Assault finding in criminal court. He was found guilty in a Police Services Act Hearing for his assaultive behaviour in 2008. He has been cautioned and his inappropriate actions both physically and verbally have been addressed in previous performance evaluations, and he has been on Special Review for a lengthy period. He did not accept the actions of the Guelph Police Service in relation to the Assault on NS in September of 2016. He does not believe and I am still not sure today he accepts the proceeding that he has pled guilty to in this file. His credibility in court if he were to remain may jeopardize investigations of the Guelph Police Service if he were to remain on active duty as they would be subject to disclosure.

Honesty, integrity and accountability are characteristics a police officer must possess to conduct his/her work. Without this, you make it nearly impossible or just plain impossible to do your job.

The disposition of this matter must reflect the serious nature of Constable McArthur's actions, and it must hold the officer accountable for his indiscretions.

Striving for consistency in a disposition is a balancing act, involving several considerations that speak to the specifics of the misconduct, the environment in which the misconduct occurred, the action or inaction of the management of the service and other issues.

The Guelph Police Service through its community invests a great deal into hiring, training and equipping the men and women to whom they entrust their protection. The community and the police service have a right to expect that when their officers are on duty, they will be performing at a high level of competence and perform their duties in a professional manner.

In Williams, in confirming the penalty of resignation within seven days or dismissal, the Commission described Constable Williams conduct as follows:

"These actions, afforded the opportunity of reasoning, indicate a serious lack of moral and judgmental qualities required in a police officer. It is doubtful that an opportunity for rehabilitation would correct what would appear to be a fundamental character flaw."

This statement might well be echoed for the behaviour exhibited by Constable McArthur in my opinion.

Disposition

Considering the seriousness of these allegations, and bearing in mind all the evidence before me, it is the decision of this Tribunal that Constable Corey McArthur #65 shall be dismissed from the Guelph Police Service in seven days unless he resigns before that time.

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M.P.B. Elbers, Superintendent (Retired)

July 17, 2026
Date