

ONTARIO PROVINCIAL POLICE DISCIPLINE HEARING

**IN THE MATTER OF ONTARIO REGULATION 268/10
MADE UNDER THE *POLICE SERVICES ACT*, RSO 1990,
AND AMENDMENTS THERETO;**

**AND IN THE MATTER OF
THE ONTARIO PROVINCIAL POLICE**

AND

PROVINCIAL CONSTABLE ROCH BELANGER, #10740

CHARGE: NEGLECT OF DUTY

DECISION WITH REASONS

Before: Superintendent Robin D. McElary-Downer
Ontario Provincial Police

Appearances:

Counsel for the Prosecution: Mr. Norm Feaver
Legal Services Branch, MCSCS and MAG

Counsel for the Defence: Mr. James Girvin
Ontario Provincial Police Association

Public Complainant: Ms. D [REDACTED] C [REDACTED]

Counsel for the Public Complainant: Ms. Leanna Farr

Hearing Dates: August 4, 5 & 6, 2015

This decision is parsed into four parts: PART I: OVERVIEW; PART II: THE HEARING; PART III: ANALYSIS AND FINDINGS FOR DISPOSITION; and, PART IV: DISPOSITION.

PART I: OVERVIEW

Allegation of Misconduct

Provincial Constable Roch R. Belanger, (PC BELANGER), #10740, being a member of the Ontario Provincial Police (OPP), faces one count of misconduct which alleges he committed neglect of duty, in that without lawful excuse, he neglected to promptly and diligently perform a duty as a member of the OPP, contrary to section 2(1)(c)(i) of the Code of Conduct contained in the Schedule to Ontario Regulation 268/10, as amended.

The edited particulars of the count state:

On or about September 4, 2013, while on-duty, he was neglectful in his duties as Acting Sergeant, (A/Sgt.), including that:

- He failed to ensure proper medical attention for a prisoner, D [REDACTED] C [REDACTED] (Ms. C [REDACTED]), who sustained a facial injury, while in the custody of himself and PC Mike Potter.
- He failed to ensure Ms. C [REDACTED] was taken to a physician for a mental health assessment:
 - knowing she was already flagged as suicidal and violent on CPIC;
 - observing her behaviour throughout the incident that demonstrated the risk of harm to herself and others; and
 - after having the opportunity to review her history of *Mental Health Act (MHA)* incidents within RMS, and the CAD dispatch comments on this particular incident, once back at the detachment.
- He failed to ensure the incident involving Ms. C [REDACTED] was recorded accurately within RMS as an *MHA* occurrence, by changing the dispatch type from 'Attempt or Threat of Suicide' to 'Prevent Breach of the Peace'.
- As the A/Sgt. in charge of the platoon that evening, he was neglectful in providing supervisory oversight of the incident.

He knew or ought reasonably to have known that his conduct was inappropriate and neglectful.

Plea

On August 4, 2015, PC BELANGER pleaded not guilty.

Decision

After reviewing and weighing the evidence presented, I find PC BELANGER not guilty. My reasons for this are as follows:

PART II: THE HEARING

Exhibits

The exhibits for this matter are listed in Appendix 'A'. To alleviate unnecessary repetition, all exhibits will be referred to by number without the preface of Appendix 'A'.

Representation

In this matter, Mr. Girvin represented PC BELANGER, Ms. Farr represented the public complainant and Mr. Feaver represented the OPP.

Evidence Called - *By the Prosecutor*

Witness Detective Staff Sergeant (D/S/Sgt.) Matt Watson (summary of testimony)

D/S/Sgt. Matt Watson has been posted to the Professional Standards Bureau (PSB), North East Region Unit, since 2012. He recently was promoted and posted to the Criminal Investigations Bureau. His evidence is summarized as follows:

The PC BELANGER matter came as a result of a public complaint received through the Office of the Independent Police Review Director (OIPRD). D/S/Sgt. Watson was assigned to assist D/Sgt. Parsley with the investigation, and later he assumed the role as lead investigator.

On November 15, 2013, D/S/Sgt. Watson and D/Sgt. Parsley interviewed the public complainant, Ms. C [REDACTED]. They learned that on September 4, 2013, Ms. C [REDACTED] was in her apartment when she suffered an emotional breakdown. PCs BELANGER and Potter attended. Ms. C [REDACTED] reported PC Potter administered several punches to her face and showed the detectives photographs of her injuries. D/S/Sgt. Watson consequently formed reasonable grounds an assault had occurred and the matter turned into a criminal investigation. Photographs of Ms. C [REDACTED] and her apartment were filed as exhibit 10.

The detectives received a copy of Ms. C [REDACTED]'s doctor's report dated September 5, 2012, authored by Doctor Sears. The report was tendered as exhibit 11.

On November 21, 2013, the detectives took a KGB statement from Ms. C [REDACTED] and interviewed several witnesses, including, Doctor Sears, PC Thibeault, T [REDACTED] M [REDACTED], R [REDACTED] M [REDACTED], and Hans Traimer.

On December 16, 2013, the detectives interviewed PC BELANGER and on December 18 they

determined insufficient evidence existed to continue with the criminal investigation. On January 20, 2014, PC BELANGER was re-interviewed.

The detectives collected the related reports concerning Ms. C [REDACTED]'s arrest. An audit revealed both PCs BELANGER and Potter completed different aspects of the reports and as A/Sgt., PC BELANGER approved them. The reports were tendered as exhibits 12 and 13. A CPIC audit revealed he queried Ms. C [REDACTED]'s name at 11:43 pm and it, along with the RMS incidents, had violent and suicidal flags attached.

D/S/Sgt. Watson reviewed the transcript of the Provincial Communication Centre's (PCC) dialogue with PCs BELANGER and Potter when dispatched to Ms. C [REDACTED]'s residence. The initial information relayed was, "Uh, there's a female on the line saying they're trying to kill me. And she says she needs help right away and then she hung up." On route, the officers were advised Ms. C [REDACTED] was flagged Victor (V) / Sierra (S) with the last entry dating back to 2009. The PCC transcript was tendered as exhibit 14.

D/S/Sgt. Watson reviewed the Prisoner Report which had been completed by PC Potter and signed off by PC BELANGER. He pointed to the area where PC Potter flagged Ms. C [REDACTED] as suicidal and a flight risk. The report was filed as exhibit 15.

D/S/Sgt. Watson reviewed in detail the OPP policy on Prisoner Care and the Prisoner Care Manual. The documents were tendered as exhibits 16 and 17.

D/S/Sgt. Watson advised Ms. C [REDACTED] was a threat to herself and others under section 17 of the *MHA* and there was no indication either officer called EMS. She was not kept under constant supervision after her arrest, despite the need to do so. D/S/Sgt. Watson believed PC BELANGER's efforts in this regard fell far short of his duty, which constituted misconduct.

The tribunal relied on *Erskine and Ontario Provincial Police*, the *Police Services Act*, Fully Annotated, Paul Ceysens, page 264, and *Nason and Hamilton-Wentworth Regional Board of Commissioners Police*, (filed as exhibits 18, 19 and 20) and allowed PC BELANGER's duty report and interview transcripts to be tendered as exhibits 21, 22 and 23, respectively.

In cross-examination, a copy of the Notice of Hearing was filed as exhibit 24. D/S/Sgt. Watson advised

he drafted the Professional Standards Investigative Report and it represented an accurate summary of his investigation. The report was tendered as exhibit 25.

Specific to exhibit 10, D/S/Sgt. Watson agreed it appeared someone assisted Ms. C [REDACTED] in photographing her injuries. He never considered it before, but agreed a witness likely existed that he never interviewed.

D/S/Sgt. Watson believed PCs BELANGER and Potter had grounds to lay criminal charges against Ms. C [REDACTED] but did not. The focus of D/S/Sgt. Watson's investigation was the care or non-care they provided Ms. C [REDACTED]. The fact she was intoxicated did not negate the fact she needed medical attention. She was suicidal and they should have taken her to the hospital. He agreed officers have discretion, but they need to articulate their discretion and neither were able to do so. D/S/Sgt. Watson believed sufficient information was before them to make an informed decision pursuant to the *MHA*.

D/S/Sgt. Watson did not inquire about Ms. C [REDACTED]'s mental health with her doctor. When the doctor was interviewed there was no mention he treated her for mental health on September 5, 2013.

D/S/Sgt. Watson agreed PC BELANGER told him that Ms. C [REDACTED] resisted arrest, assaulted the officers and committed mischief on the cruiser's emergency lighting system the night she was arrested. Ms. C [REDACTED] freely admitted the knife incident to D/S/Sgt. Watson and said she can be a handful when she is in that state. He believed if an officer wrestles someone to the ground, handcuffs and strikes them, they need to follow-up with a charge or under the *MHA*; PCs BELANGER and Potter did not. He advised Ms. C [REDACTED] was reported to be suicidal initially and identified on the Niche system for an attempt suicide.

D/S/Sgt. Watson agreed the officers were not privy to all the telephone calls and multiple hang-ups between Ms. C [REDACTED] and the PCC. He believed the fact the officers did not Form 1 and take Ms. C [REDACTED] to the hospital was suggestive they were trying to downplay what happened before they got her back to the office.

D/S/Sgt. Watson advised that PC Thibeault could not recall releasing Ms. C [REDACTED], therefore could not say whether she was injured. A transcript of his interview was filed as exhibit 26. D/S/Sgt. Watson advised that the guard, Hans Traimer, documented she had swollen eyes and scratches.

D/S/Sgt. Watson agreed officers can make changes in Niche provided they are accurate. He believed

when Ms. C [REDACTED] smashed her head against the cruiser's plexiglass and the fact she had a knife was evidence of self-harm. He believed the officers had a lot of information before them which warranted further investigation.

D/S/Sgt. Watson agreed PC Potter said he erred when he indicated Ms. C [REDACTED] was suicidal on the Prisoner Report, and actually had intended to score her as an escape risk. D/S/Sgt. Watson found this odd because there was no indication Ms. C [REDACTED] was an escape risk.

Witness Ms. Charette (summary of testimony)

Ms. C [REDACTED] is fifty-three years old and the mother of six adult children. She describes herself as a stay at home mom, but has held a variety of jobs in the past. She lives a pretty normal existence, but has struggled with mental health issues all her life.

On September 4, 2013, she and her children's father, T [REDACTED] M [REDACTED], and friend, R [REDACTED] M [REDACTED], had some beers outside around the fire starting around 3 pm. She had taken a Demerol around 6 am so she thought she was okay to have a beer. It was the only medication she was on at the time for pain and back problems.

R [REDACTED] went home and T [REDACTED] put the fire out, and this pissed her off. She and T [REDACTED] went into her apartment and she started making supper. She was holding a paring knife when she got an overwhelming desire to stick it in her throat. T [REDACTED] told her to calm down when she told him. She placed the paring knife down, called 911, asked for an ambulance, and hung up.

The phone rang and it was 911. She said she was going to be all right and hung up. She was fine and was going to talk to T [REDACTED]. They called back and she said, "Look, I told you I am going to be all right." She hung up, and when she returned to the living room the officers were standing there. PC Potter asked "What's the problem?" She started to explain her bad feeling and grabbed the knife to show him and from there he attacked her. He spun her around and she ended up on the floor.

PC Potter put his knee on her spine and she told him to get the fuck (sic) off. When PC Potter lifted her up, he pulled her by the handcuffs, which were behind her, and she screamed. He tried to put her into the cruiser, but because she figured they were not there to do her any good, she grabbed the door frame on the way out. She believed PC BELANGER was still talking to T [REDACTED] when PC Potter attacked and tried to get her into the cruiser.

The cruiser was right in front of her front door. She was shoved forward and entered it head first. She may have resisted getting into the cruiser, but she doesn't remember. PC Potter walked around her building after this, and PC BELANGER was still in the apartment.

In the cruiser Ms. C [REDACTED] was pretty upset. She kicked the back seat and asked, "Is that the way you treat your sister?" She put her foot through the little window and PC BELANGER twisted and pushed it back and slammed the window shut. She kicked the seat maybe one more time and said, "Oh you son of a bitch, it's probably your daughter you beat up". PC Potter slammed on the brakes and she flew forward a bit. He got in the back seat, hit her face and before she could say anything he hit her two more times. He screamed, "Are you going to be nice now?" After that, Ms. C [REDACTED] just sat there, scared for her life.

Ms. C [REDACTED] thinks the officers took her to the New Liskeard office. They put her in a pink cell. She noticed an old man and talked to him. She began praying and the old man asked what language she was speaking.

Ms. C [REDACTED] could not understand why the officers did not take her to the doctors. Instead she got thrown into a cruiser and punched out by a cop. She explained that while in the cruiser, she told the officers she wanted to speak with Doctor Sears. She told them to take her to the hospital. She didn't tell the officers why she wanted to speak to the doctor, because they did not give her a chance to say anything.

Ms. C [REDACTED] identified exhibit 10. She advised Robert took the pictures the next day as soon as she got home from seeing Doctor Sears. She explained the cut on her leg was from when PC BELANGER slammed the window on it. The wrist pictures showed how tight the handcuffs were and how they ripped her skin. She explained that the bruises on her upper arms were caused when she was taken from the pink cell to the white cell. She does not bruise easily.

After she was released, she was walked to the front. The old man was still there and she recognized PC Thibeault. She said, "Hey pretty nice what your colleagues did here last night". As soon as she got home, she made an appointment to see Doctor Sears at 1 pm. She called the 1-800 OIPRD line and the lady sent her a package which arrived two weeks later. Ms. C [REDACTED] identified exhibit 9 as the OIPRD complaint form she completed.

Ms. C [REDACTED] advised she has had involvement with the police in the past. She shared intimate details of her life's challenges.

Ms. C [REDACTED] advised that when PC Potter punched her, she thinks PC BELANGER remained in the front seat. She doesn't know why he didn't stop him. He punched her from the right side and she saw white lightening after she was hit.

The night Ms. C [REDACTED] called 911 she was pissed off and upset at herself because she had been doing so good for so long. By the third call to 911, the feeling had passed and she did not feel suicidal anymore. She did not feel suicidal the next day.

Over the course of the evening she may have had six to seven beers and no drugs other than Demerol. After getting upset with T [REDACTED] for putting the fire out, her emotions started.

In cross-examination, Ms. C [REDACTED] agreed she was active in her cell and she had not slept all night. She climbed the bars to see if the cameras were covered. She threw water at the cameras to blur the view. She kept calling out names of officers she knew hoping she could get help. She was in a lot of pain and needed pain medication.

Ms. C [REDACTED]'s intent, when she grabbed the knife, was to show the officers she had it in her hand cutting vegetables when her terrible feeling came over. But she never had a chance to explain her situation.

In cross-examination, Ms. C [REDACTED] agreed she is suing the OPP for \$420,000 and a Statement of Claim has been filed. She agreed the claim does not make reference to the knife and her resistance with police. The Statement of Claim was filed as exhibit 27.

Ms. C [REDACTED] does not recall her face slamming the floor in her apartment. Rather she remembers her breast and knees hitting the floor when she went down. It was PC Potter who put her on the floor. When she looked up she saw PC BELANGER still over with Terry. She thinks it was only PC Potter who handcuffed her. She does not recall the officers telling her the reason for her arrest.

Ms. C [REDACTED] never told the officers about feeling suicidal because there was no chance for her to say anything. The seat kicking was directed toward PC Potter because of the way he treated her in the apartment. The only talking after she was arrested was about how abusive he was to women in his life. She said she was definitely beaking off and venting. She did not bang her head against the plexiglass.

Ms. C [REDACTED] advised she had a bit of a beer buzz, but did not consume marijuana. She had taken puffs in

the past, but not on this occasion.

She never had a chance to say anything to T [REDACTED] about opening or not opening the door for the police. T [REDACTED] knows she is not a liar. She is aware T [REDACTED] has said she has lied and bad mouthed him to her kids. T [REDACTED] is a habitual liar, but he is still their dad.

Ms. C [REDACTED] advised if she is pushed she will defend herself. She does not recall if she was on or off her mental health meds the night of September 4. It was right around that time she had gone off them, so she was not positive.

She said she did not resist going into the cruiser – it was not like she had a choice. She was a bit wobbly when she walked to the cruiser because she was shaken up. Only PC Potter took her to the cruiser. The cruiser door was open when she got to it. She was bent forward and he pushed her in. When she looked up, PC BELANGER was still in the apartment talking to T [REDACTED]. She sat alone in the cruiser for maybe ten minutes before the officers got in and as soon as they did, she immediately started yelling at how rough PC Potter was.

Ms. C [REDACTED] said she was not being nice in the back of the cruiser. After she kicked at the seat, PC Potter hit the brakes hard. Then he punched and hit her with all his force. She cannot say she saw all his motions. He was there, the door to her left opened and she was yelling, “You sons of bitches”. PC Potter punched her in the face three times. She could not explain how the right side of her face got punched, but he got into the back seat and over top her and punched. He had no reason to do this.

The PCC Audio recording, filed as exhibit 28, was played for the tribunal. Ms. C [REDACTED] agreed it was her voice talking to 911. She said she was upset, but not angry. She agreed she told the call taker to fuck (sic) off. She may have been annoyed because 911 called back so many times. She was not in the right frame of mind. She expected to go the hospital that night to get her medication back in order.

Ms. C [REDACTED] does not remember banging her head or hands against the cruiser’s plexiglass. She was in a lot of pain when she was placed in the cells. She climbed on the bars to see if the camera was sealed. She figured if she could blur the lens by throwing water on it, she could have a pee in privacy. She may have pulled her top up at one point.

Ms. C [REDACTED] had no further contact with PC Potter after she got moved to the white cell. She does not know why she was moved other than she may have been pissing off the guard.

Witness PC Mike Potter (summary of testimony)

PC Potter testified he was working midnight shift on September 4, 2013, and PC BELANGER was the supervisor. He received a call from the PCC and learned of a 911 call reporting unknown trouble in Cobalt. The 911 caller was female, very belligerent and sounded intoxicated. The line belonged to D [REDACTED] C [REDACTED]. She said something to the effect, "They are trying to kill me", and there were some voices in background. He and PC BELANGER attended the residence in the same unit arriving at 2308 hours. On route they received very little information other than Ms. C [REDACTED] was flagged V and S dating back to 2009.

They knocked on the door and heard a raised female's voice from inside say, "Don't let them in." After a second knock, a male opened the door. PC Potter was the first to enter and he saw Ms. C [REDACTED] sitting on the floor cross-legged. There was a smell of alcohol in the residence and he saw several empty beer cans on the table where she was seated. PC BELANGER stayed near the door with the male.

Ms. C [REDACTED] was yelling and upset. Her words were slurred and when she asked his name, he said, "Mike". He gave her a hand to stand up and asked her how they could help. Ms. C [REDACTED] was concerned her adult children living in Cobalt were involved in the drug trade and the drugs were killing them. She was not satisfied the police were doing enough.

PC Potter directed her attention to the pictures in the room and Ms. C [REDACTED] said they were her kids. He smelled an odour of booze on her, and noted her eyes were watery and glossy with dark bags. Ms. C [REDACTED] said, "Oh and I have a knife" and stepped forward too fast to stop. PC BELANGER grabbed her right bicep and he, PC Potter, grabbed her wrist. Ms. C [REDACTED] dropped the knife and they directed her to the ground. She started complaining about her back and he and PC BELANGER agreed to handcuff her at the front. She was helped to her feet, handcuffed and PC Potter told her she was under arrest for breach.

Ms. C [REDACTED] took weight off her feet to fall down. As they moved her to the door she tried to walk backwards. She put her right foot up to brace herself against the front door. They eventually got her to the cruiser and she slumped down on the Tahoe's running board. As PC BELANGER bent down to pick her feet up, she tried to bite and kick him. PC Potter went to the driver's rear passenger door, leaned across the seat and pulled her in by putting his hands under her shoulders. She was kicking and flailing, but he managed to pull her in. She put both her legs through the plexiglass window and began kicking where the C8's barrel was protruding. PC BELANGER tried to get her legs back.

PC Potter considered his use of force options; he knew he had to do something to prevent her from hurting PC BELANGER and herself and damaging the cruiser. None seemed appropriate so with an open hand he slapped or cuffed her in the head, all the time telling her to stop kicking. After about the third or fourth time, she pulled her feet back and the officers were able to secure the doors and clear the scene. On route, Ms. C [REDACTED] called them names. He could not see her, but she managed to bend the cruiser's strobe lights in the back. They did not stop until they got to the detachment.

Once they got Ms. C [REDACTED] out of the cruiser she was apologetic. She was given a glass of water and PC Potter was able to bend the strobe lights back in place.

PC Potter asked Ms. C [REDACTED] to remove her necklace and she was very reluctant to do so. From that point on she never settled down. She was switched to another cell and she tried to flood it with toilet paper.

PC Potter advised he had a different opinion than PC BELANGER, in that Ms. C [REDACTED] should have been charged with mischief and resist. After a discussion PC Potter agreed they did not know Ms. C [REDACTED]'s intent with the knife, and there was no permanent damage to the cruiser. PC BELANGER did not believe it was beneficial to charge Ms. C [REDACTED] since she was so intoxicated. They decided to let her sleep it off and a guard was called in.

PC Potter advised his notes started at 2308 hours and were completed sometime between 2335 and 0445 hours. He mentioned in his notes he used physical force on Ms. C [REDACTED]. He has used physical force on people a number of times and he never breaks down a blow by blow account of the force used. He did not recall ever having to do something like to this to a person who was handcuffed. He agreed he did not specifically note he applied force to Ms. C [REDACTED] while they were attempting to get her into the back seat of the cruiser.

PC Potter explained the reason behind moving Ms. C [REDACTED] from one cell to another was she was being so disruptive to the guard. He did not believe he saw her again after she was moved to the new cell.

PC Potter advised they never actually handcuffed Ms. C [REDACTED] behind the back. Their decision to handcuff her in the front was made before the cuffs were placed on her. He did not ask what her intent was with the knife because they just could not talk to her.

On October 12 and 29, 2013, PC Potter submitted duty reports. He was interviewed on January 20, 2014. In his first duty report, he reported he used verbal commands and soft hand techniques against Ms. C [REDACTED]. He did not mention the cuffing because he knew at some point he would be asked to expand during an interview. In his second duty report he expanded on the soft hand techniques because he was asked to do so.

PC Potter advised Ms. C [REDACTED] was active resistant and the little force he used was well within the realm of his training.

PC Potter did not believe Ms. C [REDACTED] had 'intent' to stab him. He was concerned he was going to get stabbed as she tried to yank away from PC BELANGER's grip. Had she been successful, her hand with the knife would have hit his face because of the momentum.

PC Potter has no clear recollection of seeing Ms. C [REDACTED] hit her head on the plexiglass other than hearing PC BELANGER telling her to stop banging her head. There was nothing that drew his attention to believe Ms. C [REDACTED] needed medical help. She asked to go the hospital and she asked to speak with Doctor Sears, but there was no obvious reason to take her. Ms. C [REDACTED]'s decision to grab the knife was heavily impaired by alcohol.

PC Potter completed the Prisoner Report. He intended to score Ms. C [REDACTED] as an escape risk and violent, but in error he scored her as suicidal and an escape risk. She was an escape risk because she resisted arrest. PC Potter advised the guard did not have a direct line of sight of Ms. C [REDACTED] when she was placed in the second cell.

PC Potter is familiar with the Prisoner Care policy, but has never read the manual.

PC Potter advised that Ms. C [REDACTED]'s body was extended across the back seat with her feet out one end and head at the other. It was after she put her feet through the plexiglass that he applied force to her. PC BELANGER was near the front pushing her feet back through the window. PC Potter could not say whether the rear passenger door on PC BELANGER's side was closed at that point.

PC Potter believed it was PC BELANGER who told the PCC Ms. C [REDACTED] was *MHA*.

In cross-examination, PC Potter advised he has been with the OPP since January 1999 and became a regular member in June 2000.

PC Potter advised that anytime he has attended a call where there is concern for suicide he takes the person to the hospital. If Ms. C [REDACTED] had posed any concern in regard to suicide, they would have taken her to the hospital.

PC Potter advised he did not note in his notes the disparaging names Ms. C [REDACTED] called them, such as, fucking asshole, pigs, fat and cocksucker. PC Potter did not discuss his notes with PC BELANGER when he wrote them.

In re-examination, PC Potter advised he has made involuntary apprehensions under the *MHA* and taken people to the hospital against their will.

Witness T [REDACTED] E [REDACTED] M [REDACTED] (Mr. M [REDACTED]) (summary of testimony)

Mr. M [REDACTED] is fifty-four years old and was married to Ms. C [REDACTED] for three and one half years. They still interact.

On September 4, 2013, Ms. C [REDACTED] asked him down for a beer. They sat around a fire talking and everything was good. Mr. M [REDACTED] put the fire out and this made Ms. C [REDACTED] really mad. She went into the house and called 911. Both R [REDACTED] and Mr. M [REDACTED] went into the house with her, but Ms. C [REDACTED] asked R [REDACTED] to go home. He and Ms. C [REDACTED] have three kids together so they were just going to sit around and talk. He did not recall Ms. C [REDACTED] not feeling well.

Mr. M [REDACTED] can remember things from day to day, but he has a health issue that affects his memory. He does not remember Ms. C [REDACTED] wanting to commit suicide and he did not know she called 911 until they started calling her back. She was in the kitchen when he told her the phone was ringing and she said, "Oh fuck them bastards". They kept calling her back, and she kept hanging up on them. He did not understand why she called 911.

The officers came to the door and Ms. C [REDACTED] said, "Don't let them in". He let them in and PC BELANGER called him out while the other officer calmed her down. The officer took her to the ground fast, but it was not hard. He had to do it because she was trying to fight back.

The officer handcuffed her behind her back. They pulled her up real gentle and then handcuffed her to the front. They were pulling her out the door and she wanted to show them what she wanted to commit suicide with. They got the knife away from her. She has a bad temper and she was fighting back. They

had a hard time getting her in the cruiser. They finally got the door shut and she started kicking the back door. He did not see any officer strike her before they drove away.

Mr. Matton had three beers and he was not sure how much Ms. C [REDACTED] drank. He thought she may have smoked a joint or two that evening, but he did not see her do it. She takes it for pain.

In cross-examination, Mr. M [REDACTED] said Ms. C [REDACTED] did not want to get handcuffed. When he was interviewed by the investigators later, he told them Ms. C [REDACTED] also took some swings at him that night. He also told them she had a bad temper.

Mr. M [REDACTED] recalled Ms. C [REDACTED] talking that day about their children being on drugs. He agreed the police were good with Ms. C [REDACTED] and they tried to calm her down. From the time they arrived, to when they put her in the vehicle, Ms. C [REDACTED] struggled.

Mr. M [REDACTED] has observed Ms. C [REDACTED] use marijuana in the past. The way she was acting, made him believe she had used it that day. He agreed Ms. C [REDACTED] has lied about family matters in the past.

In re-examination, Mr. M [REDACTED] advised he is very nervous when he is at Ms. C [REDACTED]'s place because one minute she's good and the next minute her attitude changes just like that.

Mr. Feaver filed as exhibit 30, a transcript of Mr. M [REDACTED]'s interview.

Evidence Called - *By the Defence*

Witness PC BELANGER (summary of testimony)

PC BELANGER has been a police officer for twenty-six years. He served nine years with the Toronto Police Service and two and one half years with the New Liskeard Police Service before it became the OPP. All of his OPP service has been spent in Temiskaming other than two years in Kirkland Lake.

On September 4, 2013, PC BELANGER was working midnights, 3 pm to 3 am, as the A/Sgt. PC Potter received a call from the PCC concerning unknown trouble in Cobalt and they proceeded together in PC Potter's police vehicle. They knew the person who called in the complaint said, "They are going to kill me". Based on the information from the PCC, they knew there were people in the apartment and PC BELANGER believed they were attending a domestic. They arrived at 2308 hours.

PC BELANGER knocked on the door and a female yelled, "Don't let them in". The door was locked and

after a second knock, a male opened the door. At the time he believed the male was E [REDACTED] C [REDACTED], but he now knows it was T [REDACTED] M [REDACTED]. PC Potter entered the house, while he remained at the door with Mr. M [REDACTED] and kept an eye on his partner. Mr. M [REDACTED] was very cooperative and after talking with him, he was satisfied the call was not domestic related.

PC BELANGER observed beer cans on a table and it was obvious to him Mr. M [REDACTED] was intoxicated. PC Potter talked with the female who was sitting on the floor and she was getting upset. Her eyes were swollen and glossy and she was slurring her words. She stated something about drugs were killing her kids. PC BELANGER went over to speak with PC Potter when Ms. C [REDACTED] picked up a knife and said, "I have a knife".

PC BELANGER grabbed her arm and could feel her trying to break free. She was combative and ignored his commands to drop the knife. PC Potter grabbed her and together they disarmed her and took her to the ground and handcuffed her. This all occurred within a couple of minutes of first arriving at the apartment.

Ms. C [REDACTED] yelled and screamed and continued to be combative. He believes she complained about a herniated disc, but despite this she still tried to get away. He could smell a strong odour of an alcoholic beverage on her breath. He told her she was under arrest for breach of the peace. Ms. C [REDACTED] agreed to quit struggling if the officers switched her handcuffs to the front. They assisted her to her feet and made the switch. As they began moving her toward the door, she began struggling and tried to break free. She locked her knees, and dropped her weight and then used her legs to brace against the door frame.

PC BELANGER considered himself a fit individual. He advised Ms. C [REDACTED] was very strong and he used all his strength to control and get her to the cruiser. They finally got her foot away from the door and she continued to resist. She refused to get into the police vehicle. They eventually turned her around so they could push her back onto the seat. PC BELANGER stayed at her feet on the passenger side and PC Potter pulled her across the seat from the other side. He could not get her door closed because of her feet. At one point, Ms. C [REDACTED] put her foot through the middle window where the C8 is stored. PC BELANGER went into the front, twisted her foot and pushed it back through and closed the window. He knows when he closed the rear door, both of Ms. C [REDACTED]'s feet were there, so he pushed the door closed onto her feet first and then used force to shut it. Looking back, he wished he had left her handcuffed to the rear.

Once Ms. C [REDACTED] was secured in the vehicle, she continued to yell and scream. PC BELANGER spoke

briefly with Mr. M [REDACTED] and learned Mr. Mu [REDACTED], who was Ms. C [REDACTED]'s boyfriend, lived upstairs. He went upstairs and awoke Mr. Mu [REDACTED]. He did not get too much information, other than Mr. Mu [REDACTED] said he knew nothing about a domestic. Mr. Mu [REDACTED] looked like he had been sleeping and was less under the influence than Mr. M [REDACTED] and Ms. C [REDACTED].

PC BELANGER was not injured when Ms. C [REDACTED] kicked at him, because he managed to move away. He completely forgot she tried to bite his hand until he heard PC Potter testify. She was not successful in biting him.

They cleared the apartment and headed to the detachment. Ms. C [REDACTED] insulted them from the time they left until they arrived. She kicked the metal plate on the seat and banged her hands and head on the plexiglass. She referred to the women in their lives, using the words 'fucking pigs' and screamed constantly.

When they arrived at the detachment at 2338 hours, Ms. C [REDACTED]'s demeanour changed for the good. They escorted her to the guard table and began to process her property. Ms. C [REDACTED] got upset when they asked her to remove her necklace and the fight was on again. She became combative and yelled and screamed. She did not want the officers to touch her. She was lodged in the pink cell and the guard, Mr. Traimer, was called in.

Mr. Traimer kept him updated in regard to Ms. C [REDACTED]'s activities. She yelled, screamed and threw water in the cell. After a few hours, Ms. C [REDACTED] was moved to another cell. Mr. Traimer could watch her on his monitor and there were cell monitors in the sergeant and constable offices. They eventually turned the water off in her cell.

PC BELANGER said PC Potter did not stop the cruiser or punch Ms. C [REDACTED]. He would not allow that to occur. There was nothing to make him believe Ms. C [REDACTED] needed medical attention. He did not see her with a black eye, nor was there a complaint she had a black eye. All she complained about was her back, which she said was a prior injury.

PC BELANGER advised Ms. C [REDACTED] asked to speak with Doctor Sears. There are a lot of people who would rather spend the night in a hospital rather than a cell. When there is a legitimate reason to go to the hospital they go. He did not know why she wanted to see Doctor Sears.

PC BELANGER believed it was prudent to arrest Ms. C [REDACTED] for breach due to her state of intoxication. He did not think it was appropriate to leave her in her residence.

PC BELANGER advised Ms. C [REDACTED] could have been charged with mischief, weapons and assault and that PC Potter wanted to lay charges. Specific to the weapon, PC BELANGER did not think Ms. C [REDACTED] was trying to harm them. Specific to the mischief, they managed to bend the strobe lights back into position and the cell can be cleaned.

PC BELANGER reviewed the Prisoner Report and stated he did not see the errors when he approved it. Both he and PC Potter completed the RMS arrest and occurrence report. They cannot change the dispatch call type, but officers do enter their own occurrence type in the report.

PC BELANGER confirmed he cleared the incident as a *MHA* call with the dispatcher. He did so to let her know it was not a domestic and no one was getting killed.

Back at the detachment, PC Potter advised him he used soft hand techniques with Ms. C [REDACTED]. PC BELANGER did not ask for an explanation; to him soft hands are when you are hands on with a person. He did not know how Ms. C [REDACTED] got the black eye, but suggested it may have been self-inflicted when she was hitting her head on the plexiglass.

In cross-examination, PC BELANGER agreed that at no point in time did he see PC Potter cuff Ms. C [REDACTED]. The cruiser never stopped and PC Potter never got out and punched Ms. C [REDACTED]. When PC Potter said he used soft-hand techniques, he understood that to mean he was controlling Ms. C [REDACTED]. He later looked up soft hand techniques and learned it meant using pressure points and controlling joints. PC BELANGER was not concerned because he saw nothing to concern himself about.

PC BELANGER was shown the Use of Force Model, filed as exhibit 32. He advised he did not know the difference between soft physical control and hard physical control technique. He attends BLOCK training every year, but for him to explain it, he could not. He does not know where the physical striking of a person would fall within soft and hard.

PC BELANGER admitted he got the names Mr. M [REDACTED] and E [REDACTED] C [REDACTED] confused. He believed Ms. C [REDACTED] was on speed and alcohol the night she was arrested.

PC BELANGER has not read the Prisoner Care policy or manual. He agreed that despite Ms. C [REDACTED] kicking and attempting to bite him, he chose not to charge her. He agreed there was no notation on the Prisoner Report that Ms. C [REDACTED] threw water at the guard. PC BELANGER has since been educated that prisoners flagged suicidal must be under constant and direct observation. PC BELANGER knew at the time Ms. C [REDACTED] was flagged V and S.

PC BELANGER agreed Ms. C [REDACTED] wanted to talk to Doctor Sears and said they get a lot of requests to do things. At the time, he felt the speed was the reason for her mental health behaviour. He did not believe banging her head against the plexiglass was to endanger herself.

Submissions

Defence counsel (summary)

Mr. Girvin began by pointing to the Notice of Hearing and submitted the allegations of neglect of duty are narrow. Nowhere is it alleged PC BELANGER violated the Prisoner Care policy or manual.

He submitted the medical evidence supports the officers' version. Doctor Sears documented Ms. C [REDACTED]'s injuries and was under the belief they were sustained at the scene. Nowhere in his report did he document any treatment for mental health issues.

Mr. Girvin submitted D/S/Sgt. Watson's evidence was hearsay in that PC BELANGER changed the occurrence type. PC BELANGER testified he could not change that information. He advised the occurrence and arrest reports were consistent with the officers' testimony.

Mr. Girvin acknowledged Ms. C [REDACTED] honestly believes what she says. Any assessment of creditability must be broad. He pointed to *Pitts and Director of Family Benefits Branch of the MCSS*, [1985] O.J. No. 2578 for guidance concerning creditability. Ms. C [REDACTED] was very emotional when she testified. She had memory problems and downplayed her level of resistance. He submitted her interest in the outcome of this matter was due to her pending civil suit. Mr. M [REDACTED] thought the officers treated Ms. C [REDACTED] very well. Most of the time, Ms. C [REDACTED] was belligerent and referred to the police as the mafia.

Mr. Girvin suggested that had PC Potter been on top punching her as she has testified, her injuries would have been much more severe.

Mr. Girvin advised both officers made statements against their own interests. He acknowledged

inconsistencies with their notes and testimony. PC BELANGER provided a duty report and two interviews and people generally do not have perfect memories. He acknowledged PC BELANGER did not correctly follow the Prisoner Care policy and both officers admitted to their errors on the LE204. The tribunal should rely on the oral evidence of the officers and view the transcripts and duty report as guides.

He pointed to *Hill v. Hamilton-Wentworth Police Services Board*, [2007] S.C.J. No. 41, which addressed the standard of care and negligent investigation. In *Hill*, the officer did not conduct the investigation properly. The reality of this matter is PCs BELANGER and Potter got a call for service that persons were trying to kill Ms. C [REDACTED]. Her CPIC flags related to S and V. Both officers believed they were attending a domestic, but other than this, they had limited information. PC BELANGER's actions fell within the range of reasonable conduct.

Mr. Girvin advised there was no corroboration in regard to Ms. C [REDACTED]'s evidence. The guard did not indicate injuries on his report. The mere fact she told her doctor, does not make it more or less believable. Even on Ms. C [REDACTED]'s evidence, she asked to speak to her doctor or go to the hospital, but never said she was going to kill herself. Police deal with belligerent people, but that does not mean it warrants a mental health assessment. He suggested the officers did their investigation with perfection when held against the standard.

Mr. Girvin reviewed section 17 of the *MHA* and the legislated need for an officer to form an opinion before an individual is apprehended pursuant to the *Act*.

Mr. Girvin acknowledged the officers used their discretion not to charge Ms. C [REDACTED]. It may have been in their best interests to charge her if they knew she incurred a black eye when arrested. Second guessing is not helpful and misconduct cannot be assessed through the lens of hindsight. Police are often placed in difficult positions. He suggested the officers conducted a proper and sufficient investigation. The approach to persons with mental health issues is less stringent than domestic violence incidents. The standard of their investigation should not be judged to perfection.

Mr. Girvin submitted the prosecutor has not met the burden of proof.

Mr. Girvin tendered the following as exhibits:

- Exhibit 33: Book of Authorities

Hill v. Hamilton-Wentworth Police Services Board, [2007] S.C.J. No. 41

Stevenson and York Regional Police Service, November 7, 2013, OCPC #13-12

R. v. DaCosta, [2015] O.J. No. 1235

Pitts and Director of Family Benefits Branch of the MCSS, [1985] O.J. No. 2578

Mousseau and Metropolitan Toronto Police Force, July 6, 1981 OCCPS #81-07

Gill v. Canada (Attorney General), [2007] F.C.J. No. 1241

By the prosecutor (summary)

Mr. Feaver advised he had nine issues to address, the first being some of Mr. Girvin's comments.

Mr. Feaver pointed to the medical report and submitted it is not clear in his mind Doctor Sears believed the injuries sustained by Ms. C [REDACTED] occurred at the scene.

Mr. Feaver submitted Ms. C [REDACTED]'s litigation is a neutral factor. She complained and just because she took another step does not mean she is not credible. The fact Ms. C [REDACTED] has brought a claim against the officers demonstrates she is sufficiently concerned.

The fact Mr. Girvin speculated Ms. C [REDACTED]'s injuries should have been more severe is absolute speculation. Ms. C [REDACTED] said, "I don't bruise easily" and she was clearly bruised in this incident. Despite Mr. Girvin suggesting there was no evidence of mental health, PC BELANGER said there was a mental health issue, which was combined with speed.

Specific to the Notice of Hearing, Mr. Feaver submitted the case is not complex. It has been alleged PC BELANGER failed to ensure Ms. C [REDACTED] was taken to a mental health unit and this has been established on the officers evidence. It was also established by Mr. M [REDACTED] who said Ms. C [REDACTED] has mental health issues.

Mr. Feaver summarized the evidence of the five witnesses and twenty-five exhibits. Based on PC BELANGER's own testimony, he was neglectful. This case is not whether Ms. C [REDACTED] intended to commit suicide; in fact the suicide is a red herring and unfortunately the two officers failed to understand this. This matter is about PC BELANGER's failure to understand his duties pursuant to the *MHA*.

Mr. Feaver submitted it is likely the PCC tape does not have all the conversation. When a person calls 911, the first thing they are asked is, 'Police, fire or ambulance?', and this is not reflected on the transcript. It is fairly clear on the recording she was suicidal and a portion of this was communicated to the officers. They attended her home, and there is no doubt she made a move towards a knife and they

placed her in custody. She was taken to the ground and handcuffed. Only PC Potter suggests he never handcuffed her in the back.

There is nothing controversial about her being combative with the officers. PC Potter testified he possibly struck her in the face three times. Mr. Feaver, however, struggles with where the assault took place. Ms. C [REDACTED] said it happened on the road. PC BELANGER said he didn't see anything, and PC Potter said it happened in the yard. Ms. C [REDACTED]'s clarity of the incident is unwavering. Mr. Feaver struggled to believe it happened in the yard.

Mr. Feaver believed both officers knew of the assault since PC BELANGER was only a few feet away.

Mr. Feaver submitted Ms. C [REDACTED] received only minimal supervision when she was lodged into her cell during her first hour before the guard arrived. She was later moved to a cell where only indirect supervision was possible. There is no possible explanation for her black eye.

The underlying issue is there was no proper investigation – in fact there was no investigation. No one interviewed Ms. C [REDACTED] to determine why she was behaving the way she was. Other than assuming she was high on speed or intoxicated, no one was interviewed. Basically she was written off to sleep off the drugs and alcohol.

Mr. Feaver submitted that anyone who looked at section 17 of the *MHA* would have determined Ms. C [REDACTED] needed to be assessed at the hospital. She tried to harm herself by banging her head against the screen in the cruiser. Mr. M [REDACTED] said he was concerned about her. She demonstrated a lack of competence to remain on her own. Only one criterion needs to be established in the *MHA* before an apprehension can be affected.

Mr. Feaver tendered the following exhibits:

- Exhibit 34: *Mental Health Act* excerpt (section 17)
- Exhibit 35: *Turgeon and Ontario Provincial Police*, August 4, 2011

Defence's reply

Mr. Girvin provided a thorough response to Mr. Feaver's submissions.

PART III: ANALYSIS AND FINDINGS FOR DISPOSITION

Summary of misconduct

On September 4, 2013, PCs BELANGER and Potter attended Ms. C [REDACTED]'s apartment after she called 911 and reported "They were trying to kill her" before hanging up. Shortly after arrival, Ms. C [REDACTED] in an intoxicated and emotional state, grabbed a knife. The officers disarmed her, grounded and handcuffed her, and arrested her for breach of the peace. After a struggle, the officers managed to secure Ms. C [REDACTED] in the cruiser and transport her to the detachment. PC Potter stated he cuffed her in the head area three times during the struggle in the cruiser; Ms. C [REDACTED] alleges PC Potter stopped while on route to the detachment and punched her three times; and, PC BELANGER claimed he did not see the cuffs/punches, and they did not stop on route.

PC BELANGER faces one count of misconduct, neglect of duty. Specifically it is alleged that as the A/Sgt., he failed to ensure Ms. C [REDACTED] received medical attention for her black eye and further failed to take her to a physician for a mental health assessment. He also changed the dispatch type from 'Attempt or Threat of Suicide' to 'Prevent Breach of the Peace'. As the supervisor, he was neglectful in his duty to provide oversight of the incident.

Issues that needs to be decided

Over the course of three days, five witnesses and twenty-five exhibits, two themes of misconduct emerged; The first being the general lack of care PC BELANGER provided Ms. C [REDACTED] when taken into custody; and, the second, his lack of oversight of the investigation as a supervisor.

In order to make a finding of neglect of duty, the burden of proof, meaning clear, cogent and weighty evidence must be met. I have identified five issues to guide me through this analysis.

1. It is alleged Ms. C [REDACTED] received a black eye the night she was arrested and incarcerated. As the A/Sgt., what action should PC BELANGER have taken in light of this facial injury?
2. Ms. C [REDACTED] felt suicidal when she called 911. As the A/Sgt., was PC BELANGER neglectful when he failed to ensure she was taken to the hospital pursuant to the *MHA* for an assessment?
3. Knowing her erratic behaviour and knowing she was flagged 'suicidal' on CPIC/RMS, was PC

BELANGER neglectful when he failed to ensure Ms. C [REDACTED]'s mental state was assessed by a physician?

4. Did PC BELANGER wrongfully enter the occurrence type as 'Prevent Breach of the Peace' in light of the fact the dispatch type was recorded as 'Attempt or Threat of Suicide'?
5. As the A/Sgt., did PC BELANGER provide proper supervisory oversight of the incident involving Ms. C [REDACTED]'s arrest and incarceration?

Analysis and Findings

My analysis and findings will be captured under the above noted issues. Before moving forward it is important to share my assessment of the testimony concerning the key witnesses, Ms. C [REDACTED] PC Potter and PC BELANGER.

Ms. C [REDACTED] delivered her testimony in a frank and candid manner. She shared with the tribunal some very personal challenges and difficulties in her life and I credit her for doing so. Notwithstanding, I found her evidence confusing and contradictory on several points. Some examples include:

- She said after her call to 911 she was fine and she was just going to sit with T [REDACTED] and talk. On the PCC audio¹, however, she is heard yelling angrily at him and he testified she had taken swings at him.
- She said after she hung up from 911, she walked into her living room and the officers were there, which contradicted the officers' testimony she was seated cross-legged on the floor when they entered. I found this pointed to the distortion alcohol was playing on her mind.
- By her tone and mannerism, Ms. C [REDACTED] led me to believe her use of marijuana was in the past and it had only amounted to a few puffs. According to Mr. M [REDACTED] her use was more recent and frequent. Although she may have not intended to do so, I realized Ms. C [REDACTED] had the ability to convincingly downplay an issue.
- Ms. C [REDACTED] testified it was PC Potter who disarmed and grounded her and took her to the cruiser while PC BELANGER stood by and watched. In contrast, her OIPRD complaint stated both officers grounded her and took her to the cruiser. This pointed to her distorted memory of the facts.
- She said she did not resist getting into the cruiser and yet admitted to grabbing the door frame as

¹ Exhibit 28: PCC audio

she was led out. She admitted she may have resisted a little, then admitted she can be a handful when she is in that state. This illustrated multiple contradictions.

- Ms. C [REDACTED] is adamant they had left the scene before PC Potter stopped, entered the back seat and punched her several times. This was consistent with her testimony and complaint to OIPRD. The most troubling part of this is five hours after she was released from custody, she indicated to Doctor Sears ‘the officers were outside when PC Potter came around and punched her’². Without the benefit of canvassing the doctor, his notes suggest the incident happened before they left the scene.

At no point did I find Ms. C [REDACTED] intentionally misled this tribunal. To the contrary, I found her creditable because I truly believe she believed in her version of events. Unfortunately, however, it seems the level of alcohol she consumed that night left her memory corrupted on some salient points. For this reason I have difficulty accepting her as a reliable source of information.

PC Potter delivered his testimony with a mix of candidness and guardedness. He admitted he cuffed Ms. C [REDACTED] in the head area. I found it particularly odd he did not articulate this in his notes or first duty report³, but other than this I found his evidence reliable. Of note, PC Potter testified to things that were not in his best interest. He erred on the Prisoner Form; and, his rationale for moving Ms. C [REDACTED] to another cell, the fact she was disruptive, did not negate the breach of Prisoner Care policy. I note in the guard’s statement⁴, the other reason he did this was so Ms. C [REDACTED] had a clean toilet. Again while this does not negate the breach in policy, I found this illustrated an element of humanity on PC Potter’s part.

PC BELANGER delivered his testimony with candidness. He too admitted to things not in his best interest, such as the policy breach concerning constant supervision of a prisoner. In hindsight, he realized he should have left Ms. C [REDACTED] handcuffed to the rear. He admitted his carelessness in approving PC Potter’s defective Prisoner Report. Although one may be suspect that he did not see PC Potter cuff Ms. C [REDACTED] about the head, I found it was possible since he was in the front at one point focused on his C8 and twisting and pushing her foot through the security window. Overall, I found PC BELANGER a credible and reliable witness.

I will now turn to the five issues.

² Exhibit 11: Medical record

³ Exhibit 25: Professional Standards Bureau Investigative Report

⁴ Exhibit 31: Transcript of Mr. Hans Traimer’s interview

1. It is alleged Ms. C [REDACTED] received a black eye the night she was arrested and incarcerated. As the A/Sgt., what action should PC BELANGER have taken in light of this facial injury?

The evidence

PCs BELANGER and Potter testified Ms. C [REDACTED] had dark bags under her eyes when they first observed her. PC BELANGER also said they were puffy. Both specifically said they did not observe a black eye. The cell video camera pictures⁵ of Ms. C [REDACTED] show puffiness and dark circles under both eyes. The words, 'dark swollen eyes' was recorded the Prisoner Report, Guard Sheet.⁶ Mr. Traimer, the guard, stated the handwriting 'dark swollen eyes' was not his. He did not document or recall Ms. C [REDACTED] having a black eye.⁷ PC Thibeault released Ms. C [REDACTED] the following morning and had no recollection in regard to the state of her eyes.⁸ Doctor Sears documented her right eye was black.⁹ The photographs (IMG_0020 and IMG_0025)¹⁰ reflect Ms. C [REDACTED]'s right eye is blackened with pronounced discoloration near the outer right corner. Mr. Mu [REDACTED], who took the photographs told the investigators he "...seen her with black eyes."¹¹

The OPP Prisoner Care policy states,

Where a uniform member has placed a person under arrest who requires medical aid, the arresting uniform member shall ensure that the prisoner has access to appropriate medical attention prior to processing.¹²

The Prisoner Care manual¹³ directs officers to engage immediate medical intervention when situations include:

- head injuries resulting in any changes in the level of consciousness;
- blood loss from body opening;
- burns – other than minor nature;
- poisoning – accidental/overdose;
- choking;
- hanging;
- acute chest pain/shortness of breath;
- acute abdominal pain;
- excited delirium; and/or
- any other instance of acute distress any prisoner manifests by physical symptoms/emotional upset.

⁵ Exhibit 29: Cell photos

⁶ Exhibit 15: Prisoner report

⁷ Exhibit 31: Transcript of Mr. Hans Traimer's interview

⁸ Exhibit 26: Transcript of PC Thibeault's interview

⁹ Exhibit 11: Medical record

¹⁰ Exhibit 10: Photographs

¹¹ Exhibit 30: Transcript of Mr. R [REDACTED] Mu [REDACTED]'s interview, line 88

¹² Exhibit 16: Police Orders – Prisoner care

¹³ Exhibit 17: Prisoner Care Manual

Findings

Based on the above, I am satisfied Ms. C [REDACTED] most likely incurred injury to her eye sometime during the evening of September 4 before she was incarcerated. Like PCs BELANGER and Potter, I observed dark puffy bags under her eyes during the hearing, the same they described seeing on the night of the arrest. Notwithstanding, I was able to discern them from her black eye in the photographs taken the following day.

I find it reasonable to believe PC BELANGER did not see Ms. C [REDACTED]'s black eye given the time it takes an injury such as this to discolour; that, or the initial discolouring and swelling may have been masked by her natural appearance. I therefore find it difficult to hold PC BELANGER accountable for something he did not know existed. Quite simply, he brought her into the detachment with PC Potter and observed no injury. Therefore it stands to reason he made no note and took no action.

On the flip side, had PC BELANGER observed Ms. C [REDACTED]'s black eye, I rely on the Prisoner Care Manual and related policy when I say I would not find him negligent in his duty. As unfortunate as it may be, persons who resist arrest and are combative with police sometimes inadvertently incur injury. In this case, I find her bruised eye, and similarly scratched wrists and other bruises superficial injuries which do not fall within policy that directs immediate medical intervention. I further note that the only complaint of injury she made to the guard was in regard to her back.

Based on these points, I do not find PC BELANGER negligent in his duty for failing to summons medical assistance for her injuries.

2. Ms. C [REDACTED] felt suicidal when she called 911. As the A/Sgt., was PC BELANGER neglectful when he failed to ensure she was taken to the hospital pursuant to the *MHA* for an assessment?

The evidence

PCs Potter and BELANGER were not privy to the numerous 911 callbacks and hang ups. The information relayed to them was, "They were trying to kill her" and "She would be dead by the time they got there". The officers were also told there was yelling and it sounded like others were in the apartment. Based on the limited information provided, PCs BELANGER and Potter reasonably believed they were responding to a domestic violence incident.

Ms. C [REDACTED] testified her suicidal feeling left her after she called 911; therefore it left before the officers

arrived.

When the officers arrived, Ms. C [REDACTED] attempted to relate her suicidal feeling to the officers, but was interrupted when she grabbed the knife. All the officers could glean before this was she was distressed over the drug trade in Cobalt and the impact it was having on her children. After her arrest, Ms. C [REDACTED] asked several times to see Doctor Sears. While she had ample opportunity to tell the officers why, she offered no explanation. The officers testified Ms. C [REDACTED] was beyond reason so any attempt to talk to her was fruitless. The PCC recording¹⁴ of Ms. C [REDACTED] on the telephone, yelling in the background when the officers first arrived, and yelling in the background at the detachment, corroborates the officers' assessment of Ms. C [REDACTED]s that she was beyond the point of reason.

Once they arrived on scene, PC BELANGER advised the PCC he believed it was an *MHA* call. PC Potter called it a 'drunken rage'. PC BELANGER believed Ms. C [REDACTED]s behaviour was consistent with someone under the influence of speed and alcohol.

Although Ms. C [REDACTED] denies this, both officers testified she banged her head against the cruiser's plexiglass. Mr. Feaver suggested this was evidence of her trying to harm herself and should have warranted a mental health assessment.

PC Potter indicated on the Prisoner Report Ms. C [REDACTED] was suicidal. PC BELANGER approved the Form.

On September 5, 2013, Ms. C [REDACTED] was seen by Doctor Sears. He documented her injuries and sent her on her way with a request to return a week later for a follow-up. He did not document any mental health concerns.¹⁵

Section 17 of the *MHA* states:

Where a police officer has reasonable and probable grounds to believe that a person is acting or has acted in a disorderly manner and has reasonable cause to believe that the person,

- (a) has threatened or attempted or is threatening or attempting to cause bodily harm to himself or herself;
- (b) has behaved or is behaving violently towards another person or has caused or is causing another person to fear bodily harm from him or her; or

¹⁴ Exhibit 28: PCC audio

¹⁵ Exhibit 11: Medical record

(c) has shown or is showing a lack of competence to care for himself
(d) or herself,
and in addition the police officer is of the opinion that the person is apparently suffering from mental disorder of a nature or quality that likely will result in,
(d) serious bodily harm to the person;
(e) serious bodily harm to another person; or
(f) serious physical impairment of the person,
and that it would be dangerous to proceed under section 16, the police officer may take the person in custody to an appropriate place for examination by a physician. 2000, c. 9, s. 5.¹⁶

Findings

No evidence has been proffered to persuade me PC BELANGER knew Ms. C [REDACTED] had contemplated suicide before he arrived. By her own admission, the feeling had passed after her 911 call. Ms. C [REDACTED]'s demand to see her doctor is not evidence onto itself she had contemplated suicide. She gave no reason and PC BELANGER had absolutely no basis for why she made the request.

I am not troubled by PC BELANGER's "MHA call" comment to the PCC, nor do I find it points to anything other than a descriptor police officers rely on to describe atypical behaviour. PC Potter's later description "drunken rage" was simply another way of describing Ms. C [REDACTED]'s behaviour. In the line of duty, police officers meet people from all walks of life suffering from all types all conditions caused by mental illness and substance abuse. Both play havoc on a person's demeanour. Simply because an individual demonstrates atypical behaviour, including that relating to mental health issues, does not automatically mean they are a candidate for apprehension under the *MHA*.

As reflected in section 17 of the *MHA*, officers have latitude and discretion. The *Act* provides broad authority to make involuntary apprehensions of persons exhibiting harmful behaviour to themselves or others. On September 4, the officers encountered an extremely intoxicated, angry and emotional individual. They had no reason to believe she had contemplated suicide prior to their arrival. To have affected an apprehension under the *MHA* based on their observations would have been in my humble opinion a stretch of their lawful authority.

I do not find the fact Ms. C [REDACTED] banged her head against the cruiser's security plexiglass sufficient evidence to warrant an apprehension under the *MHA*. While this is not an everyday occurrence, I rely on my own experience when I say it is not unusual for angry persons, with and without mental health issues, under the influence of alcohol and or drugs to act out in this manner.

¹⁶ Exhibit 34: *Mental Health Act* excerpt (section 17)

Ms. C [REDACTED] saw Doctor Sears thirteen hours after she was arrested and less than five hours after she was released. He did not document any issue concerning her mental health. I find this supports the officers' decision not to hold Ms. C [REDACTED] for a mental health assessment.

I accept PC Potter's explanation that he mistakenly indicated Ms. C [REDACTED] as suicidal on the Prisoner Form¹⁷ and further accept PC BELANGER's admission he mistakenly approved the defective paper work. As an A/Sgt., PC BELANGER should have exercised due diligence before he approved the report and though I fault him for not doing so, this mistake does not give rise to misconduct.

In this matter, PC BELANGER believed Ms. C [REDACTED] was under the influence of alcohol and speed. He relied on his observations, experience and knowledge of the Cobalt area when he formed this opinion. I find his conclusion was reasonable and within range of possibilities. I therefore do not find him negligent for not taking her for a mental health assessment.

3. Knowing her erratic behaviour and knowing she was flagged 'suicidal' on CPIC/RMS, was PC BELANGER neglectful when he failed to ensure Ms. C [REDACTED]'s mental state was assessed by a physician?

The evidence

On route to the scene, the PCC informed PCs BELANGER and Potter that Ms. C [REDACTED] was flagged S and V. Their CPIC and RMS checks at the detachment confirmed this.

Mr. Feaver suggested PC BELANGER could have determined Ms. C [REDACTED]'s mental state had he completed a proper investigation.

Findings

Flags on CPIC and RMS are important cautionary tools which allow an officer to engage in new situations with care. As useful as flags are, they do not predict the future. Simply put, a person who is flagged S or V does not mean they will be found suicidal or violent on their next encounter with police.

Contrary to the suggestion PC BELANGER's investigation should have gone deeper given Ms.

¹⁷ Exhibit 15: Prisoner Report (LE204/205)

C [REDACTED]'s suicide flag and erratic behaviour, I find his investigation was sufficient. The officers had just arrested an emotional and highly intoxicated individual who did not freely give up a knife. Despite their physical capabilities, it took both officers to free the knife and direct her to the ground. She was combative, resistant and belligerent upon arrest. PC BELANGER interviewed Mr. M [REDACTED] and Mr. Mu [REDACTED] to ensure he was not overlooking a domestic. He articulated the evidence which formed his opinion Ms. C [REDACTED]'s behaviour was primarily the result of extreme intoxication and possibly speed. Interestingly, Mr. M [REDACTED] also testified he believed Ms. C [REDACTED] was under the influence of marijuana.

I find PC BELANGER's conclusion that Ms. C [REDACTED]'s erratic behaviour was primarily a result of substance abuse, a fair and reasonable one.

4. Did PC BELANGER wrongfully enter the occurrence type as 'Prevent Breach of the Peace' in light of the fact the dispatch type was recorded as 'Attempt or Threat of Suicide'?

The evidence

PC BELANGER arrested Ms. C [REDACTED] for breach of the peace. He assisted PC Potter in completing the RMS occurrence and arrest report. The PCC classifies the type of incident they dispatch officers to based on the information they receive and when an officer calls up the report, he/she appends the type of occurrence found upon arrival.

Findings

I find nothing nefarious about PC BELANGER entering an occurrence type that differed from the dispatch type. To the contrary, he scored the occurrence type as 'Prevent Breach of the Peace', based on what he found upon arrival. It is not uncommon for dispatch and occurrence types to differ. By way of example, the PCC may dispatch an officer to a barking dog complaint, but upon arrival the officer finds it to be domestic incident.

5. As the A/Sgt., did PC BELANGER provide proper supervisory oversight of the incident involving Ms. C [REDACTED]'s arrest and incarceration?

The evidence

PC BELANGER was serving as the A/Sgt. for the nightshift. He accompanied PC Potter to Cobalt in response to a 911 call and subsequently arrested Ms. C [REDACTED]. He and PC Potter applied force to disarm and ground her after she grabbed a knife. They again applied force to secure her in the cruiser.

Ms. C [REDACTED] alleges PC BELANGER just sat in the front seat and did nothing when PC Potter stopped the cruiser, and punched her several times. At the detachment, PC Potter informed him he had used soft hand techniques against Ms. C [REDACTED] as they struggled to get her into the cruiser. PC BELANGER did not make further inquiry with PC Potter in regard to this statement.

PC BELANGER was aware Ms. C [REDACTED] was moved to a cell that did not provide for constant supervision. He was aware she was flagged suicidal.

The Prisoner Care policy states:

- Where a prisoner confined in an OPP lockup facility:
- is apparently *irrational* due to a physical/mental condition;
 - has threatened/attempted suicide in the past;
 - such risk is indicated on CPIC or Niche RMS; or
 - additional prisoner restraints are used;
- the prisoner shall be kept under constant observation and the officer-in-charge advised forthwith.¹⁸

The policy goes on to state, constant observation means ‘direct physical view, *NOT* via video monitoring, of the prisoner’.

Findings

There is no dispute on any side that the force applied to Ms. C [REDACTED] inside the apartment was warranted and justified. I found the removal and placement of Ms. C [REDACTED] into the cruiser posed a significant challenge to both officers and warranted force. I accept it took all of PC BELANGER’s strength to accomplish this despite his own level of fitness. Ms. C [REDACTED] was unquestionably combative and resistant. In her own words she did not want to go and she can be a handful.

I cannot say with absolute certainty if Ms. C [REDACTED] was struck by PC Potter at the scene or after they left. If it occurred after they left, PC BELANGER was duty bound, regardless of being a supervisor or not, to intervene and report the matter accordingly. But I have not been convinced it happened on the road. Rather, the evidence points to it happening in the yard as the officers struggled to secure Ms. C [REDACTED] in the back seat. I find it plausible PC BELANGER may not have seen it because at one point he moved to the front seat to twist and push Ms. C [REDACTED]’s foot through the security window.

¹⁸ Exhibit 16: Police Orders – Prisoner care

I agree with Mr. Feaver PC BELANGER should have made further inquiry with PC Potter in regard to what 'soft-hand techniques' meant. I am not familiar with this term, and believe it would have been prudent as a supervisor to ask. On the other hand, because PC BELANGER did not see anything untoward, it is reasonable to accept the question may simply have never entered his mind.

PC BELANGER admitted he was unaware an individual flagged suicidal required constant supervision. To his detriment he admitted he has never read the Prisoner Care policy or manual. I truthfully found this shocking. The possibility of a prisoner harming him/herself while incarcerated poses a significant risk to the prisoner and OPP. There is no excuse for any member, supervisor or not, to have not read the policy. It is critical policy and all employees are expected to know it inside out.

It is arguable PC BELANGER's breach of the Prisoner Care policy falls under the particular, 'As the Acting Sergeant in charge of the platoon that evening, he was neglectful in providing supervisory oversight of the incident'¹⁹. That said, I believe the bullet was intended for a broader application of his oversight and not intended for this policy breach; if not, it ought to have been particularized as such on the Notice of Hearing. For this reason, I will consider in this instance the Prisoner Care policy violation a training issue and not misconduct.

PART IV: DISPOSITION

As evidenced by my findings, this may have not been a text book evening for PC BELANGER as the A/Sgt. Notwithstanding; he responded to and supervised a chaotic incident involving a highly intoxicated and defiant individual who had a spotted history of mental wellness. He articulated his observations and decision making process and satisfied this tribunal they were exercised in good faith and judgment. I do not find PC BELANGER's conduct in this matter sufficiently give rises to misconduct; the burden of proof, meaning clear, cogent and weighty evidence, has not been met.

To this end, I find PC BELANGER not guilty of neglect of duty.



Robin D. McElary-Downer
Superintendent
OPP Adjudicator

Date decision electronically delivered: September 19, 2015

¹⁹ Exhibit 24: Notice of Hearing copy

APPENDIX 'A'

- Exhibit 8: Prosecutor's designation
- Exhibit 9: OIPRD complaint
- Exhibit 10: Photographs
- Exhibit 11: Medical record
- Exhibit 12: RMS report
- Exhibit 13: Arrest report
- Exhibit 14: PCC transcript
- Exhibit 15: Prisoner report
- Exhibit 16: Police Orders – Prisoner care
- Exhibit 17: Prisoner Care Manual
- Exhibit 18: *Erskine and Ontario Provincial Police, Board of Inquiry, PC004/97, February 6, 1998*
- Exhibit 19: Ontario Police Services Act, Fully Annotated, Paul Ceysens, page 264
- Exhibit 20: *Nason and Hamilton –Wentworth Regional Board of Commissioners Police, Ontario County Court, August 31, 1984*
- Exhibit 21: Duty Report, PC BELANGER
- Exhibit 22: PC BELANGER's interview transcript
- Exhibit 23: PC BELANGER's interview transcript (2)
- Exhibit 24: Notice of Hearing copy
- Exhibit 25: Professional Standards Bureau Investigative Report
- Exhibit 26: Transcript of PC Thibeault's interview
- Exhibit 27: Statement of Claim
- Exhibit 28: PCC audio
- Exhibit 29: Cell photos
- Exhibit 30: Transcript of Mr. R. [REDACTED] Mu [REDACTED]'s interview
- Exhibit 31: Transcript of Mr. Hans Traimer's interview
- Exhibit 32: Use of Force continuum
- Exhibit 33: Book of Authorities
 - Hill v. Hamilton-Wentworth Police Services Board, [2007] S.C.J. No. 41*
 - Stevenson and York Regional Police Service, November 7, 2013, OCPC #13-12*
 - R. v. DaCosta, [2015] O.J. No. 1235*
 - Pitts and Director of Family Benefits Branch of the MCSS, [1985] O.J. No. 2578*
 - Mousseau and Metropolitan Toronto Police Force, July 6, 1981 OCCPS #81-07*

Gill v. Canada (Attorney General), [2007] F.C.J. No. 1241

Exhibit 34: *Mental Health Act* excerpt (section 17)

Exhibit 35: *Turgeon and Ontario Provincial Police*, August 4, 2011