

**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**

**PROVINCIAL CONSTABLE MICHAEL CUNNING, #13649**

**AND THE ONTARIO PROVINCIAL POLICE**

**CHARGES: DECEIT**

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**DECISION WITH REASONS**

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**Before:** Inspector Brad McCallum  
Ontario Provincial Police

**Appearances:**

**Counsel for the Prosecution:** Ms. Claudia Brabazon  
Legal Services Branch, MCSCS and MAG

**Counsel for the Defence:** Mr. Mark Wallace  
Ontario Provincial Police Association

**Public Complainant:** Mr. Steve Dick

**Counsel for the Complainant:** Mr. Robert Houston

**Hearing Date:** December 5, 2016, February 24, 2017

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

## **PART I: OVERVIEW**

### **Allegations of Misconduct**

Provincial Constable Michael CUNNING (PC CUNNING), #13649, being a member of the Ontario Provincial Police (OPP), faces one count of misconduct which alleges he committed Deceit, in that he willfully or negligently made a false, misleading or inaccurate statement pertaining to official duties, contrary to Section 2(1)(d)(ii) of the Code of Conduct contained in the Schedule to Ontario Regulation 268/10, as amended.

The particulars of the allegation state:

On or about January 19, 2015, you were interviewed by investigators from the Office of the Independent Police Review Director (OIPRD):

- During the interview with OIPRD, you insisted that when you called Cst. Dionne at home on September 3, 2014, Cst. Dionne told you that he could not recall if he had attended a specific residence in response to the 911 call on September 1, 2014. This was not true.

### **Plea**

On December 5, 2016 PC CUNNING, represented by Mr. Mark Wallace, pleaded not guilty. The hearing commenced on December 5, 2016 and continued on February 24, 2017. Ms. Claudia Brabazon represented the OPP and the public complainant was represented by Mr. Robert Houston.

### **Decision**

After reviewing and weighing the evidence presented, I find PC CUNNING 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'.

**Evidence Called – By the Prosecutor****Witness- Mr. Bernie Mueller (summary of testimony)**

Mr. Mueller has been an investigator with the OIPRD for six years and is currently the Acting Manager of Investigations. Prior, he was a police officer for 32 years with the Hamilton Police Service. He was assigned the public complaint investigation on October 8, 2014 relating to a September 1, 2014 911 call at the residence of K [REDACTED] M [REDACTED]. The investigation dealt with the lack of OPP response to the initial call, as Mrs. M [REDACTED] was subsequently found deceased on September 3, 2014. PC CUNNING became involved as he was the responding officer on September 3, 2014 and he had discussions with the original dispatched officer, Provincial Constable David Dionne (PC Dionne). As part of his investigation Mr. Mueller requested a number of items relating to the OPP response on September 1, 2014 and September 3, 2014. Relevant to these proceedings, he received the notes of PC CUNNING for September 1, 2014 and September 2, 2014. He conducted a number of interviews prior to arranging the interview with PC CUNNING.

On December 23, 2014 PC CUNNING initiated a telephone call with Mr. Mueller regarding his upcoming interview. PC CUNNING asked what Mr. Mueller was looking for in terms of disclosure. Mr. Mueller conveyed that he wanted duty notes related to the sudden death investigation and any emails between himself and Detective Sergeant David St. Clair (D/Sgt St. Clair). PC CUNNING did not say that there would be any issue with providing his notes or that he had lost his notebook.

On January 13, 2015 the OIPRD received a package containing an undated typed document from PC CUNNING (Exhibit 19) which stated:

On Friday September 19, 2014 my notebook, which included occurrence #SP14231173, was lost and thus I am unable to provide you with a copy of my notes. You may contact my immediate supervisor Sgt. Rene Cadieux, as well as D/C Paul Dube, who were both advised of the loss of my notebook on the day in question.

I do, however, have an independent recollection of the events occurring on the 3<sup>rd</sup> of September 2014, the day of the incident in question, and am able to provide you with a detailed description of my involvement in this incident.

Sincerely, Provincial Constable Michael Cunning

This was the first time Mr. Mueller was made aware there was any issue with PC CUNNING's notebook.

Also in the package received by the OIPRD from PC CUNNING was an email chain containing three emails. The emails were all dated September 4, 2014 (Exhibit 20):

**5:12 pm – Sent from PC Cunning to Coroner Dr. Yu with a carbon copy to D/Sgt St. Clair and Sgt Cadieux.**

Good afternoon Dr. Yu, Following up from the sudden death last night on [REDACTED] Street in Casselman, I spoke to the investigating officer and he

advised that as the call came in as "trouble on the line" and was a call held from dayshift, approximate [sic] 1.5 hrs after the original 911 call was placed, he patrolled the area of the house but did not approach the residence or knock on the door. If you have any further questions or concerns feel free to contact me. Thank you, PC Michael Cunning

**5:20 pm – Sent from D/Sgt St. Clair to PC Cunning.**

Thanks Mike. Dave OK?

**5:21 pm – Sent from PC Cunning to D/Sgt St. Clair.**

No problem. Ya Dave's ok. I told him to call you if he had any concerns but he seemed ok.

On January 19, 2015 Mr. Mueller, assisted by Rob Zufelt from the OIPRD, interviewed PC CUNNING, who was accompanied by an OPPA representative. A CD with the audio recording was tendered as Exhibit 18. A transcript of the interview was not available.

In the interview PC CUNNING provided dispatch details; outlined his discussion with the neighbour who made the call; he checked the involved address for any previous calls and he observed a 911 hang-up on September 1, 2014. There was little information in the clearing details, other than there was "trouble on the line". He also learned the initial responding officers were PC Dionne and Provincial Constable Oickle. He and Provincial Constable Sebastian Lamarche (PC Lamarche) checked the side door and were able to gain access to the residence where they subsequently located Mrs. M█████. He made the notification to his Sergeant. He called PC Dionne as he "was not sure of his (PC Dionne's) actual involvement in the call because there was no clearing". He wanted to know if PC Dionne had spoken with the female or attended the address. PC Dionne told him he did not remember what he had done and that was the extent of the call. Shortly thereafter Sergeant Rene Cadieux (Sgt Cadieux) arrived, the Identification Unit and then the Coroner. He sent an email (Exhibit 20) to the Coroner within a couple of days as the Coroner had requested follow up regarding the previous call.

During the interview, Mr. Mueller discussed the typed note (Exhibit 19). PC CUNNING identified the note as being his. PC CUNNING verified the duty notes Mr. Mueller had in his possession were his, but indicated he did not provide them, nor did he know who had copied them. Mr. Mueller showed PC CUNNING a copy of the RMS report related to the investigation on September 3, 2014 (SP14231173). PC CUNNING confirmed he was the author of the report. Mr. Mueller read the second paragraph of the report as follows:

PC CUNNING conducted an RMS/Niche check of the residence and observed a 911 misdial/trouble on the line call was placed on the 1<sup>st</sup> of September 2014. The dispatch details of this call advised that at approximately 16:43 hours on the 1<sup>st</sup> of September 2014 911 had received a call from *the affected person* of this complaint in Casselman. The dispatch details advised that female on the line, unknown what she wanted, attempts were made to make contact with the

female, dispatch details went on to say it was an open line contact, nothing heard in the background, it was confirmed trouble on the line and a ticket was created.

PC CUNNING said he obtained this information from RMS CAD and this was done while he was outside the M■■■■ residence.

With respect to the discussion with PC Dionne, PC CUNNING confirmed that he was still at the scene when the discussion took place. PC Dionne said he did not remember if he had attended and he was dispatched to a domestic dispute at the same time. That was all PC CUNNING was told at that time. PC CUNNING could not recall what time he had spoken to PC Dionne because he did not have his notes. He recalled relaying information to D/Sgt St. Clair that there had been a 911 call at the residence on the 1<sup>st</sup> of September and that he spoke with PC Dionne who said he did not remember if he attended. When challenged on this, PC CUNNING reiterated that PC Dionne said he did not remember if he attended. Then PC CUNNING said PC Dionne said he was "unsure" if he attended. PC CUNNING did not remember providing D/Sgt St Clair with any different information. PC CUNNING also did not remember sending an email to D/Sgt St. Clair indicating PC Dionne had not attended the residence.

In the interview Mr. Mueller cautioned PC CUNNING about providing false information pertaining to his duties. Mr. Mueller reviewed the email chain from September 4, 2014 (Exhibit 20) he received on or about January 13, 2015 as outlined above. PC CUNNING confirmed he forwarded the package of documents. PC CUNNING also confirmed he was the author of that email, which was sent at the request of his Sergeant or the Detective Sergeant. PC CUNNING said he could only relay what he could recall; he did not want to get into trouble; he was not hiding anything; and he did not have his notebook so he did not know times that he spoke with people. PC CUNNING reiterated what PC Dionne had told him; more specifically: he did not remember; he had a domestic; he was in Casselman and he was all over the map. PC CUNNING then said he could not recall exactly what PC Dionne said, but PC Dionne did say he did not remember if he attended. PC CUNNING did not remember speaking with PC Dionne after their initial call on September 3, 2015, but said if he wrote it in an email then he would have spoken to PC Dionne after their initial discussion and PC Dionne would have told him this information. PC CUNNING said he would not just make information up.

PC CUNNING said at the scene he did speak with D/Sgt St. Clair and relayed what PC Dionne had told him that he did not remember if he attended the residence. PC CUNNING also confirmed he spoke with Sgt Cadieux at the scene and again he would have merely relayed what PC Dionne had told him. PC CUNNING confirmed that he spoke with the Coroner at the scene, but he could not recall specifically what was said. PC CUNNING confirmed he was present when Identification Constable Croney (I/Cst Croney) arrived and he relayed information to her that they found the deceased upstairs, but he could not recall any other information he provided. PC CUNNING could not comment on where I/Cst Croney obtained the information included in her report. PC CUNNING denied telling I/Cst Croney on September 1, 2014 officers responded to a 911 call, there was no answer and the front door was locked.

With respect to his lost notebook, PC CUNNING said he was filling up the police vehicle at a gas station in Rockland on September 19, 2015. He put his notebook on the roof of the car, went into pay and then drove off. He could not find his notebook so he returned to the gas station, viewed the video of the notebook on the roof and then attempted to locate it. This concluded the interview between Mr. Mueller and PC CUNNING.

In the hearing, Mr. Mueller identified PC CUNNING as the person from whom he obtained a statement from on January 19, 2015. PC CUNNING did not bring any materials to the interview and was relying on his memory. Mr. Mueller outlined that he was concerned with PC CUNNING's revelation in the interview because as part of his investigation he received occurrence reports and duty notes of involved officers and they were all very specific about what PC CUNNING had said at the time. PC CUNNING's version when interviewed was surprising to him and contrary to other information he had received. The interview on January 19, 2015 was the first time Mr. Mueller had heard that PC Dionne did not remember if he had attended the residence or not.

Mr. Mueller summarized either the information PC CUNNING provided during the interview on January 19, 2015 was inaccurate or the information PC CUNNING provided to and recorded by Sgt Cadieux, D/Sgt St. Clair and I/Cst Croney was inaccurate. The information provided in the email on September 4, 2014 also was not consistent with the information provided to the aforementioned officers at the scene or Mr. Mueller in the interview.

*In response to questions posed by Mr. Houston*, Mr. Mueller provided additional details of the conversation he had with PC CUNNING on December 23, 2014. Mr. Mueller confirmed PC CUNNING was inquiring as to what type of disclosure he wanted. More specifically, he indicated to PC CUNNING he was looking for duty notes related to the sudden death investigation and any emails or documents related to the investigation. Mr. Mueller agreed with Mr. Houston's assertion that prior to the interview on January 19, 2015, PC CUNNING had access to the email he provided, as well as, the RMS reports for the sudden death incident.

*In cross examination by the Defence*, Mr. Mueller confirmed the lost notebook was discussed with PC CUNNING during the interview. Further, he had done follow up checks with Sgt Cadieux on PC CUNNING's reporting the lost notebook. Mr. Mueller stated he did not speak with Provincial Constable Dube (PC Dube) about the notebook, as he merely wanted to confirm policy had been followed and this was satisfied by Sgt Cadieux. With respect to PC CUNNING's notes for September 1 and 2, 2014, Mr. Mueller explained his belief that those notes were collected as part of the initial gathering of the notes of all officers working on September 1, 2014 for the OPP sudden death investigation and a subsequent OPP internal investigation. Mr. Mueller received those notes as part of his initial disclosure request.

Mr. Wallace confirmed there was no issue with PC CUNNING's designation as respondent officer at the time of the interview on January 19, 2015.

Mr. Mueller confirmed in the absence of PC CUNNING's original notebook he did make inquiries of D/Sgt St. Clair to find a copy of PC CUNNING's September 3, 2014 notes in relation to the death investigation, to no avail.

**Witness - Detective Sergeant (D/Sgt) David St. Clair (summary of testimony)**

D/Sgt St. Clair has been with the OPP for over 21 years. He has been a Detective Sergeant for 13 years and in September 2014 he was an Area Crime Supervisor, responsible for supervising the death investigation of Mrs. M[REDACTED]. On September 3, 2014 at 10:05 pm he was contacted by the Provincial Communications Centre to advise of the death. At approximately 10:19 pm and 10:31 pm he had two telephone discussions with Sgt Cadieux who relayed, in part, the following information:

- PC CUNNING was going to be the investigating officer for the sudden death.
- PC CUNNING had called PC Dionne and PC Dionne said he had attended the residence, there was no answer and Bell Canada confirmed that there was trouble on the line and a ticket was entered.

At 11:42 pm he arrived at the M[REDACTED] residence. Already present were PC CUNNING, PC Lamarche, Sgt Cadieux, I/Cst Croney and the Coroner Dr Yu. Outside the residence he was provided a briefing by I/Cst Croney who had processed the scene. He went inside at 11:45 pm and was generally briefed by Sgt Cadieux initially, with PC CUNNING present. PC CUNNING and Sgt CADIEUX then showed him around the residence.

When he was at the house he was under the impression PC Dionne had attended the house and there was no answer at the front door. He specifically asked PC CUNNING if PC Dionne had gone to the side door and PC CUNNING did not know. PC CUNNING offered to phone and clarify with PC Dionne, but it was after midnight so he told PC CUNNING they could deal with it in the morning. His concern at that time was in trying to determine if the circumstances of the death were suspicious.

Subsequently, in the patrol office he spoke with PC CUNNING and Sgt Cadieux. He asked if it had been confirmed if PC Dionne had gone to the front door, the side door, or the scene at all. He could not recall if at that time PC CUNNING said he was going to phone PC Dionne. At 5:12 pm he received an email (Exhibit 20) from PC CUNNING, which stated PC Dionne had patrolled the area around the house, but he did not approach the residence.

He heard at one point that PC CUNNING had lost his notebook. He and PC Dube looked for the notebook on the day it was lost. At that time he made no connection to the notebook being lost to the death investigation. D/Sgt St. Clair was initially involved in the collection of notes for the internal investigation, but that responsibility was turned over to the detachment Staff Sergeant on September 4, 2015 at the direction of his Detective Staff Sergeant.

*In response to questions posed by Mr. Houston, D/Sgt St. Clair outlined the information he was provided on September 3, 2014 was that PC CUNNING and PC Lamarche entered the residence through the unlocked side door. He was interested in determining if PC Dionne checked to see if the side door was locked on September 1,*

2014. This fact would be relevant in his assessment of whether or not there was any foul play. He reiterated his understanding at the time was that PC Dionne had checked the front door and PC CUNNING was unaware if the side door was checked. He also reiterated information he received prior to attending through his discussions with Sgt Cadieux, that:

- PC CUNNING had already spoken with PC Dionne
- PC Dionne had gone to the front door

D/Sgt St. Clair could not recall if he asked PC CUNNING to reiterate the information at the scene. He did not believe he heard PC CUNNING or any other officer convey PC Dionne said he could not remember if he had attended the residence.

*In cross examination by the Defence*, D/Sgt St. Clair confirmed he was at his home when he was first notified of the incident. At 10:19 pm he called Sgt Cadieux and he received information. He got put on hold during the call, so he disconnected. At 10:31 pm Sgt Cadieux called him back and it was at that time Sgt Cadieux relayed what PC CUNNING had learned at least in part from PC Dionne. It was reported to him:

- PC Dionne attended the residence, there was no answer and Bell Canada confirmed that there was trouble on the line and a ticket was entered

D/Sgt St. Clair clarified this may have been blended information from different sources, including RMS and/or PC Dionne. Enroute he stopped at the detachment and looked at PC Dionne's notebook to see what had been done on September 1, 2014. There was nothing in the notes relating to the 911 call. D/Sgt St. Clair also checked RMS and there was no information other than the clearing details. He agreed that from 10:45 pm to 12:09 am there is an absence of information in his notes about conversations regarding what PC Dionne did or did not do. He clarified, if there had been no change in the information that he had been previously given he would not have noted it again. He agreed there was a conversation inside the residence in the kitchen area between himself, Sgt Cadieux, Dr Yu, PC Lamarche, PC CUNNING and later I/Cst Cronney. He believed they were standing around and not seated at the time. The conversation was off and on from the time he arrived until the time he left, as he was throughout the house. In this conversation he believed the information from PC Dionne was reiterated, which is when the request was made to follow up with PC Dionne. He repeated his understanding at the scene was PC Dionne had attended the residence and there was no answer, but it was uncertain whether or not he did a thorough check of the security of the residence, including the side door. He conceded there was a possibility in his mind that PC Dionne had not attended the residence, but that was contrary to the information he was provided.

Mr. Wallace questioned D/Sgt St. Clair about his interview with the OIPRD and a portion of the interview was played. In follow up to the OIPRD interview, D/Sgt St. Clair agreed with Mr. Wallace he did not have any notes regarding the conversation with PC CUNNING. He agreed he did tell the OIPRD in the interview there was some ambiguity as to whether PC Dionne attended the residence based on what PC CUNNING relayed. That said, in the hearing D/Sgt St. Clair reinforced his understanding at the scene was PC Dionne had attended the residence, but it was not clear how thoroughly he searched



the residence, including the side door. He agreed he told the OIPRD investigators it was ambiguous as to whether or not PC Dionne went to the house or not. The instruction to PC CUNNING to contact PC Dionne was to clear up the ambiguity, both as to whether PC Dionne went to the house and if he checked the side door, but more so whether PC Dionne checked the house completely. He conceded that it had crossed his mind PC Dionne had not even attended the residence. He did not recall providing PC CUNNING with specific instructions to ask PC Dionne if he went to the house, but he conceded it is possible because he gave consideration that PC Dionne may have lied to PC CUNNING initially.

The morning after, D/Sgt St. Clair made a notebook entry indicating it was still unknown if the OPP had attended the residence initially. He clarified he was of the belief that PC Dionne had attended the residence, but there was nothing concretely supporting that. He explained he had a doubt about PC Dionne attending at all because for a 911 call it is not typical to only check the front door, as the entire house would normally be searched, up to and including forced entry if necessary. On September 4, 2014 he made a notebook entry that he asked PC CUNNING whether it was confirmed with PC Dionne if he had attended the residence or not. D/Sgt St. Clair agreed the notation of the conversation was not whether or not the side door was checked. D/Sgt St. Clair could not recall if PC CUNNING provided a response at that time, but he did receive an email at 5:12 pm. He reiterated the information he was provided from Sgt Cadieux and I/Cst Croney was PC Dionne had gone to the house. He could not recall if PC CUNNING specifically provided him that information, but PC CUNNING was present when the information was being discussed. D/Sgt St. Clair said the focus on the conversation was more on front door versus side door and there was speculation as to whether or not PC Dionne went to the house.

With respect to the lost notebook, D/Sgt St. Clair agreed that on the same day the notebook was lost he was coming from Rockland with PC Dube and enroute they looked for PC CUNNING's notebook on the shoulder of the road.

*In re-examination by the Prosecutor*, D/Sgt St. Clair could not say with 100 percent certainty whether or not he discussed the contents of the September 4, 2014 (Exhibit 20) email prior to it being sent. The uncertainty of whether or not PC Dionne even attended the residence was a lot of his own speculation. He questioned why an officer would only check the front door, which is what he had been told by Sgt Cadieux. He did not recall Sgt Cadieux or PC CUNNING disputing any of the information he had been provided. The RMS report indicated that PC Dionne may have attended the call with the indication of "trouble on the line", which would typically mean that the officer attended, spoke with someone and confirmed that there were no issues. He was also told that PC Dionne had gone to the front door, which caused the discussion about the side door. He questioned: Did PC Dionne lie to PC CUNNING or did Sgt Cadieux misinterpret what he had been told by PC CUNNING? At the scene it was not urgent to get the answer that night. He did not doubt the information initially provided by Sgt Cadieux prior to attending the scene. Had he been provided different information at the scene he would have noted it because it was updated information.

**Witness - Sergeant (Sgt) Rene Cadieux (summary of testimony)**

Sgt Cadieux has been with the OPP since 1999 and he has been a Sergeant since March of 2013. On September 3, 2014 at 8:55 pm he was notified by the Provincial Communications Centre of a death in Casselman, Ontario. He was told the deceased female was 53 years of age and had possibly been deceased for three days. Further, that the neighbours had not seen her for three days, the windows were open, there were clothes on the line, the rear side door was unlocked and the front door was locked. He could not recall if he spoke with PC CUNNING enroute to the residence, but he was briefed upon arrival. At the scene he was provided additional information including the deceased's name, date of birth and that there was no known prior police involvement. PC CUNNING advised they had gained entry through the side door and the deceased was located on the second level in an office. PC CUNNING also notified him there was a 911 call from the residence three days prior, but there was no information as to what PC Dionne had done. He asked PC CUNNING to call PC Dionne to find out what transpired at the prior call. After PC CUNNING spoke to PC Dionne, PC CUNNING relayed PC Dionne had attended the scene, went to the front door, knocked on the door and left. He subsequently relayed this information to I/Cst Croney and D/Sgt St. Clair. When I/Cst Croney and D/Sgt St. Clair arrived on scene, PC CUNNING reiterated the information again he had received from PC Dionne. With I/Cst Croney this information was relayed while they were in the front door area. With D/Sgt St. Clair it was when they were all seated at the dinner table, adjacent to the kitchen. When D/Sgt St. Clair was advised, he asked PC CUNNING if PC Dionne had checked the side door. PC CUNNING was unaware, but offered to make a phone call to PC Dionne. D/Sgt St. Clair indicated it was getting too late and it could wait until morning. He confirmed there were at least three separate occasions that PC CUNNING relayed the same information about PC Dionne. PC CUNNING never said PC Dionne could not remember if he attended the residence or not. Had he been told this he would have found it odd as the call had only been two days prior.

When PC CUNNING advised him of the details of the conversation with PC Dionne he had no doubts about the veracity of the information because he considered PC CUNNING one of his best officers. On September 4, 2016 he started his shift at 4:00 pm. Shortly thereafter, he was informed that PC Dionne had not attended the call. It was decided that PC CUNNING would notify the Coroner about the new information.

Sgt Cadieux was shown Exhibit 20, the email from PC CUNNING to the Coroner. He reviewed the content and said unequivocally the information was different from the information he was provided the night prior. He relayed the information to his Staff Sergeant. As far as his relationship with PC CUNNING, they were Constables together prior to him being promoted. In 2014 PC CUNNING was brought over to his shift. He did not know if PC CUNNING and PC Dionne were friends outside of the work setting. As a platoon they would occasionally socialize.

*In response to questions posed by Mr. Houston*, Sgt Cadieux confirmed that he spoke with PC CUNNING around the time of his OIPRD interview. PC CUNNING commented he could not recall what PC DIONNE had said to him the night of September 3, 2014. The Supplementary Report of I/Cst Croney was put to Sgt Cadieux, who confirmed he

would have reviewed the report as a supervisor. He agreed with the content of I/Cst Croney's report which indicated officers had attended the scene, there was no answer and the front door was locked. Further, he confirmed this was the information that he was provided the night of the incident.

*In cross examination by the Defence*, Sgt Cadieux confirmed he had known PC CUNNING for his entire policing career, both as Constables and as his supervisor. He described the thoroughness and exactness of PC CUNNING's work. He would follow direction, ask for clarification when necessary, and would go above and beyond. He further described him as showing initiative, being a self-starter, eager, honest and hard working. He agreed with Mr. Wallace he never considered PC CUNNING as the source of the discrepancy of the information. He conceded he did not make any notes of the conversations he had with PC CUNNING regarding PC Dionne's activities. He emphasized he had his own recollection. When PC CUNNING relayed the information of his conversation with PC Dionne it did not raise any flags.

He confirmed he had asked PC CUNNING to call PC Dionne because of the prior 911 call to the residence. They did not know if PC Dionne spoke with Mrs. M■■■■ what his interaction was with her or what he did. His instructions were to call PC Dionne to see what he had done. He observed PC CUNNING on the phone, but he did not hear what was said. He did not agree with the assertion PC CUNNING had called PC Dionne prior to his arrival. He recalled speaking with D/Sgt St. Clair on the telephone and relaying information and then reiterating that same information upon his arrival during the briefing in the kitchen area, with the assistance and contribution of PC CUNNING. At that time I/Cst Croney and Dr Yu were not present. He did not agree with Mr. Wallace's assertion that there was uncertainty in conversation of whether PC Dionne had even gone to the house. He emphasized his understanding that PC Dionne had gone to the front door, adding the uncertainty was whether or not he went to the side door. The information PC Dionne did not attend the residence was not found out until the day after. He disagreed with the Mr. Wallace's assertion that D/Sgt St. Clair had asked PC CUNNING to find out if PC Dionne had even gone to the house. Sgt Cadieux stated his understanding was D/Sgt St. Clair had asked PC CUNNING to find out if PC Dionne had gone to the side door.

Sgt Cadieux confirmed he exited the residence at 1:00 am. His notes were done when he initially received the call and then he did not make any notes until he was in his cruiser while still at the scene. His notebook entries for the next shift start at 4:00 pm later that same day. He agreed he made a notation of, "debriefing with D/Sgt St. Clair", but there is no mention of PC CUNNING. He conceded he made no notation of the information received regarding PC Dionne's activities, despite the "surprising" substance of the information. He confirmed he was notified of PC CUNNING losing his notebook.

**Witness - Identification Constable (I/Cst) Catherine Croney (summary of testimony)**

I/Cst Croney has been a police officer for 24 years and with the OPP since 1999. On September 3, 2014 she was involved in the M■■■■ death investigation as a Forensic Identification Officer. She indicated she has some challenges with her memory

because of a neurological issue. Prior to attending the scene she had a telephone discussion with Sgt Cadieux and received some preliminary information. When she arrived on scene she spoke with the officers and received information pertaining to the September 1, 2014 911 call and, relevant to these proceedings, PC Dionne had attended that day and the front door was locked and there was no answer. She could not recall who specifically provided the information about PC Dionne or if PC CUNNING was present when the information was provided to her. PC CUNNING was in the residence at the time. She did not make a specific notebook entry with respect to the source of the information relating to PC Dionne. The information was provided and it was not contradicted by anyone else. Although her notes indicate she "met" with Sgt Cadieux, PC CUNNING and PC Lamarche, the entry actually means those were the officers present when she arrived at the scene, not necessarily that there was a meeting.

*In response to questions posed by Mr. Houston, I/Cst Croney confirmed she prepared a supplementary report to the M█████ death investigation on September 4, 2014 at approximately 8:00 am. She left the residence at 12:05 am and her notes were made at the residence. She read her supplementary report on the record, including the portion that stated, "On the 1<sup>st</sup> of September, in the evening, a 911 call was received and confirmed by Bell. Officers attended the scene but there was no answer and the front door was locked". The supplementary report was prepared with information she was provided at the scene and her own observations. The General Occurrence report and supplementary report of I/Cst Croney were entered as Exhibit 21.*

*In cross examination by the Defence, I/C Croney confirmed from her notes the arrival time of D/Sgt Lamarche at 11:55 pm and her departure at 12:05 am. The notation "no concerns with scene", meant all the officers at the scene had no concerns with the scene. She reported to D/Sgt St. Clair what she had done and observed.*

*In response to a question posed by the tribunal I/Cst Croney stated she arrived at the scene at 10:40 pm. Sgt Cadieux, PC Lamarche and PC CUNNING were present at the time, followed later by D/Sgt St. Clair.*

The Prosecution case rested.

### **Evidence Called – By the Defence**

#### **Witness - Provincial Constable (PC) David Dionne (summary of testimony)**

PC Dionne has been a police officer since 2005 and with the OPP since 2011. He was on duty on September 1, 2014 and was dispatched to a 911 call in Casselman. He did not attend that call. As a result he faced PSA charges, a trial was held, wherein he entered a guilty plea to one count of Neglect of Duty. He was subsequently convicted of one count of Deceit in July 2016. A mistrial was declared and ultimately he pled guilty to a second count of Neglect of Duty in January 2017.

On September 3, 2014 he received a call at his home from PC CUNNING. PC CUNNING initially asked him if he had gone to Casselman on his last night shift, to

which he replied, "Yes". PC CUNNING then asked him if he had gone to a specific address (M█████ residence) and he replied he could not remember or he did not know. After that PC CUNNING informed him they had found a person deceased inside the house. He said, "You're kidding right" and PC CUNNING said, "No". He asked again if PC CUNNING was joking and PC CUNNING said he was not and the phone call ended. His statement to PC CUNNING was "the truth at the time". He estimated the phone call was less than a minute.

On September 4, 2014, early in the day he remembered he did not go to the call. He did not call the office and speak with a supervisor, though in retrospect he said he should have. In the late afternoon at approximately 3:30 pm or 4:00 pm, PC CUNNING called him again to clarify if he had gone to the call. He told PC CUNNING he had gone to Casselman, patrolled the area, but he had not gone to the residence. He could not remember saying anything to PC CUNNING about the reason he had not gone to the call.

He has known PC CUNNING since PC CUNNING joined the OPP. He classified their relationships as "work friends". They have socialized outside of work with other co-workers, but never one on one. He has never been to PC CUNNING's house or vice versa.

*In cross examination by the Prosecutor*, PC Dionne confirmed he had nine years of police experience at the time of incident in 2014. He conceded he had received training on proper notetaking and had been doing notes for several years. He agreed notes are supposed to include all of the details of what you did and what you witnessed; including on/off duty, weather, lighting conditions, dispatch information, address of dispatch and arrival time. Also, any important information about the state of a door at a residence, including whether it was locked or not and if he had entered a residence and any observations therein. He also agreed notes should be made at the time of the investigation or shortly thereafter.

Ms. Brabazon challenged PC Dionne on not remembering whether or not he went to the 911 call just two days after. PC Dionne confirmed that was his evidence. Further, he explained he did not refer to his notes because he did not have them, as notebooks are left at the office. The following day after receiving the call from PC CUNNING, he did not go the detachment to look at his notes.

In the subsequent telephone conversation, PC CUNNING called to clarify whether or not he had gone to the house. When he had initially received the call it was late at night, he was caught off guard and over time he reflected back on his shift. It was during the ensuing hours he remembered he did not go to the house. He does not recall any "reaction" from PC CUNNING, but PC CUNNING did say he was going to be sending an email to the Coroner. Despite realizing that he was in trouble he did not call his supervisor or the OPPA, at that time.

PC Dionne did not agree with Ms. Brabazon's suggestion that when PC CUNNING called on September 3, 2014 he told him he had gone to the front door and there was no answer. PC Dionne also did not agree with Ms. Brabazon's suggestion about the content of the second call. PC Dionne reviewed the content of the email sent to the

Coroner by PC CUNNING (Exhibit 20) on September 4, 2014 and said the email was accurate and reflected their conversation. PC Dionne asserted he told Staff Sergeant Cyr he did not go the house and the first shift back in the office he told his Inspector, emphasizing he was willing to take responsibility for his neglect.

PC Dionne testified to a subsequent discussion with PC CUNNING about this matter. Approximately two months later they briefly crossed paths in the office hallway, prior to receiving notice of his OIPRD interview. He asked PC CUNNING, "how he was doing" and "how he was holding on". PC CUNNING said he was "confused" about the incident, but he was doing fine.

PC Dionne did not agree with Ms. Brabazon's assertion that he and PC CUNNING had agreed upon the story of PC Dionne not remembering whether or not he went to the house. PC Dionne said he had minimal contact with PC CUNNING because they did not want to impact any investigation that was going to take place.

*In response to questions posed by Mr. Houston*, PC Dionne said he received the initial dispatch at approximately 6:17 pm on September 1, 2014. He remembered the specific time because he had reviewed the report in preparation for testifying for his trial in July 2016, including the Event Chronology. He received a call from the dispatcher at the office, she informed him of the 911 call, that nobody was heard, that SMC Bell confirmed trouble on the line and that they had created a ticket. She also informed him the call came in during dayshift and it was held for nightshift. PC Dionne denied that the dispatcher had told him the caller was gasping for breath and could not be understood. He did not record in his notes what the dispatcher told him. He described his conversation with the dispatcher as "sadly informal"; she was talking about other things, including a prior call in Rockland. When he got off the phone he was talking to other officers, forgot to make a notation and then got dispatched to a domestic violence in progress, some time between 6:15 pm and 7:00 pm.

The Event Chronology for SP14229177 was filed as Exhibit 22. Mr. Houston read aloud the last entry, which states, "Event Comment = CCB: 911 ACTIVATION CONFIRMED TROUBLE ON THE LINE. NFA" (Entry made at 3:15 hrs). PC Dionne said he merely repeated back what dispatch had told him earlier, with the exception of including the information about SMC Bell. PC Dionne admitted he did not do anything with respect to this call. He did not think to tell the dispatcher that he did not go to the house because he felt the clearing information was sufficient. PC Dionne then admitted that he was supposed to go the call, but did not, which is why he pleaded guilty to neglect. Further, he did not tell anyone about not going to the house prior to receiving the call from PC CUNNING on September 3, 2014.

On September 3, 2014 at approximately 9:30 pm to 10:00 pm he received a telephone call from PC CUNNING. He recalled that it was dark outside, he was wearing pajamas, watching a movie with his spouse and drinking tea. He knew it was PC CUNNING calling because he saw his phone number on the call display. PC CUNNING said, "Hey Dave its Mike". PC CUNNING then asked him if he had gone to Casselman on the nightshift and he replied "Yes". PC CUNNING asked him if he had gone to a specific address on [REDACTED] Street. He told PC CUNNING that he could not remember. PC CUNNING then said that they had found a person deceased inside the residence. He

thought that PC CUNNING was joking and then the conversation ended. He estimated that the call was less than one minute. PC Dionne could only recall one 911 call on the nightshift starting on September 1, 2014, but could not say if he went to any 911 calls on the nightshift starting on September 2, 2014. PC Dionne's next dayshift was 4 or 5 days later (September 7 or 8, 2014).

PC Dionne said he thought about his shift and he started remembering. He did not think to record in any fashion what he remembered or what he had done with respect to the 911 call. He contemplated going to the office to check his notes, but he did not go. He was not able to explain any reason why he did not go to the office. He also could not explain where Sgt Cadieux would have gotten the information that officers had checked the front door and it was locked.

By September 4, 2014 in the late afternoon when he received the telephone call from PC CUNNING he had remembered he had not gone to the call. During that telephone call he told PC CUNNING he had patrolled the area of the house, but he had not gone to the residence. PC Dionne admitted he did not know where the house was and still does not know where it is. He clarified that at some point during the night he and PC Oickle did not have any calls, so they decided to do extensive patrols of the three biggest towns that they patrol; including over an hour in Casselman patrolling the streets and parks. They then went to two other towns and did the same thing. He believed he told PC CUNNING there was a time delay in him being dispatched to the 911 call. He could not recall if he told PC CUNNING there had been trouble on the line.

With respect to the subsequent discussion with PC CUNNING in the detachment hallway, PC Dione described PC CUNNING's behavior as "distracted". PC Dionne conceded he knew at that time he was likely going to face PSA charges. Mr. Houston asked PC Dionne why he had to console PC CUNNING at this time, when PC Dionne was the one facing PSA charges. PC Dionne responded, like other officers their relationship is like a "brotherhood" and PC CUNNING was a "partner" for him. PC Dionne then denied "consoling" him. Mr. Houston then asked what PC CUNNING was confused about. PC Dionne responded he did not know and he did not attempt to clarify with PC CUNNING.

#### **Respondent - Provincial Constable (PC) Michael CUNNING (summary of testimony)**

PC CUNNING started with the OPP in April 2012 and commenced his frontline duties in September 2012 at the Russell County OPP, based out of the Embrun Detachment.

With respect to his notebook covering the period of September 1 – 4, 2014, on September 19, 2017 he was working at the neighboring Rockland Detachment. He went to a gas station to fill up his police vehicle and put his notebook on the roof of the vehicle, which he forgot there when he drove away. Several hours later he realized his notebook was missing and he notified Sgt Cadieux. He went back to the gas station, reviewed the video and observed that he had put the notebook on the roof of the police

vehicle. He retraced his steps and notified other officers to look for the notebook. It was not found.

On September 3, 2014 he was dispatched to a call on [REDACTED] Street in Casselman. The neighbour was concerned about the well-being of Mrs. M [REDACTED] because he had not seen her in several days, there were no lights on at the house, there were clothes on the line, it had rained and several windows were open. The neighbour had knocked on the door and there was no answer, so he called police. He was first to arrive on scene, so he queried the residence on his laptop computer. There was one previous call to the residence on September 1, 2014. He noted the responding officers were PC Dionne and PC Oickle and the clearing information was vague so he did not know what they had done; more specifically, if they had even attended or spoken with anyone. He queried a vehicle in the driveway and it was registered to Mrs. M [REDACTED].

He spoke with the complainant, at which point PC Lamarche arrived. He did not know if they checked the front door or not, but the side door was unlocked. They called out and there was no answer. They entered the residence and subsequently located Mrs. M [REDACTED] deceased on the second floor. He advised the PCC and asked them to notify Sgt Cadieux. Because he knew PC Dionne he decided that he would call him to see what, if anything, he had done with the 911 call two days earlier. He said he knew when Sgt Cadieux arrived on scene he would have questions about the prior 911 call.

During the call to PC Dionne, he identified himself, he told PC Dionne he was in Casselman and asked him if he remembered having a 911 call on September 1, 2014. PC Dionne said he did not remember. He told PC Dionne they found a deceased woman in the residence, at which point PC Dionne did not initially believe him. He asked PC Dionne again if he remembered. PC Dionne said he had a domestic occurrence at the same time, he was in the area of Casselman, but could not remember if he attended or not. The conversation was very brief, but what he gathered from their conversation was that PC Dionne could not remember if he had attended or not. PC Dionne did not give him any idea if he attended or if he had spoken with anyone at all. After the conversation was finished he thought to himself that he really had nothing to tell his Sergeant. He just remembered being more confused than anything else after he called PC Dionne because he had very little information and the information he was given was not helpful.

PC CUNNING said in hindsight he should have asked PC Dionne more questions and been more curious as to his involvement. While waiting for Sgt Cadieux to arrive, he remained near the deceased to maintain continuity and he did notes. He did not have any direct conversation with Sgt Cadieux prior to his arrival at the residence. Upon Sgt Cadieux's arrival, he told him about the 911 call on September 1, 2014. He told him PC Dionne and PC Oickle were the officers linked to the 911 call. He told him what he and PC Lamarche had done. He told Sgt Cadieux he had called PC Dionne on the phone and relayed the information he was provided as outlined above.

He denied ever telling Sgt Cadieux or anyone else that PC Dionne had said he had gone to the residence, went to the front door, did not get an answer and left. PC CUNNING then volunteered, "to be honest with you that was never even mentioned to me at the scene as well, it never came up in conversation with anyone at scene". He



did not hear Sgt Cadieux give the above information to I/Cst Croney or D/Sgt St. Clair, emphasizing if he had heard he would have corrected it because that is not the information he was provided by PC Dionne.

PC CUNNING said that there was an informal discussion in the kitchen area of the residence; more specifically, they were standing by the front door, near the kitchen table. Present were D/Sgt St. Clair, Sgt Cadieux, PC Lamarche and I/Cst Croney was there for a short period, but she would come and go. There was confusion if PC Dionne had even attended or if he had spoken with anyone. Sgt Cadieux took the call over when he arrived and he was relaying information to other people. Himself and PC Lamarche were periodically searching the residence for a cause of death. The only time he was addressed in the conversation was when D/Sgt St. Clair turned and asked, "Do you even know what Dave did?" He replied, "I don't know what he did because he doesn't remember". He offered to call PC Dionne back that night, but D/Sgt St. Clair said because it was so late they could just call him the next day.

PC CUNNING qualified "from what I can remember", the instructions he was provided prior to calling PC Dionne on September 4, 2014 was to find if he attended and what he did if he attended.

On the afternoon of September 4, 2014 he called PC Dionne and, "asked him again what he had done with the call on the 1<sup>st</sup> of September". PC Dionne said he did not go to the address, elaborating he had a domestic call at the same time, the call was held from dayshift for several hours and that he had patrolled the area of Casselman. He was surprised, but did not understand the ramifications of what was going on as he had never been involved in any calls that ended up in the *PSA*. His intention was to provide information to the Coroner and the D/Sgt as per his instructions. He did not do any more "digging" then finding out that PC Dionne did not go. The Coroner had provided his email address and asked him to email him once he knew what the officers had done. After he spoke with PC Dionne on September 4, 2014 he forwarded him the information he was provided via email and CC'd D/Sgt St. Clair and Sgt Cadieux (Exhibit 20).

He confirmed he was interviewed by Mr. Mueller on January 19, 2015. Prior to this he had never had an interview with the OIPRD, Professional Standards or the Special Investigations Unit. He did little preparation for the interview and only reviewed his report briefly. His understanding of the interview was it had to do with what he did on September 3, 2014 and he did not realize there was any contradictory information. The interview with the OIPRD was the first time he became aware that officers were saying different information than what he was saying. He said he had no idea that there was going to be questions about the telephone call he had with PC Dionne. He said again he was not aware that the information was PC Dionne had gone to the residence, the door was locked or he knocked on the door, there was no answer, so he left. More specifically, PC CUNNING stated, "I didn't know that, I didn't know that that was even a possibility". He said he was telling the truth when he was interviewed by the OIPRD.

*In cross examination by the Prosecutor*, PC CUNNING again confirmed that what PC Dionne told him on September 3, 2014 was that he did not remember if he had gone to the residence. He said the only time he realized there was an issue with his information was when Mr. Mueller said he was jeopardizing himself, emphasizing at that point he

did not even know what jeopardizing himself meant. He was very confused and they took a break in the interview. In response to questions about preparing for the interview, PC CUNNING said this was an occurrence that happened months before.

Ms. Brabazon highlighted a number of things that PC CUNNING recalled, absent his notebook and not contained in the RMS report; specifically, who was in the kitchen and parts of the conversation. He conceded there were parts of the conversation that he did not remember. He reiterated that had he heard the information about PC Dionne being discussed he would have clarified it. PC CUNNING was challenged multiple times by Ms. Brabazon and his testimony did not change. PC CUNNING said he was "frustrated" by not getting a "yes or no" answer from PC Dionne on going to the 911 call. PC CUNNING maintained the follow up call to PC Dionne on September 4, 2014 was about whether he attended or not, and not about the side door.

With respect to Exhibit 20 and specifically the final portion, "he patrolled the area of the house but did not approach the residence or knock on the door", Ms. Brabazon questioned why he would have referenced a door knock if it had never come up before. PC CUNNING said he merely quoted what PC Dionne said to him and cannot speculate as to why he mentioned the door. PC CUNNING denied lying to the OIPRD in an attempt to save PC Dionne from a Deceit charge. PC CUNNING agreed with Ms. Brabazon that Sgt Cadieux and D/Sgt St. Clair are experienced officers and they would have no motivation to lie in this situation.

*In response to questions posed by Mr. Houston*, PC CUNNING said his Niche RMS Report (Exhibit 21) was entered by Civilian Data Entry (CDE) on 4:21 am on September 4, 2014. PC CUNNING confirmed that prior to going to the M█████ residence he reviewed the Niche RMS occurrence for the 911 call on September 1, 2014. He could not recall if he reviewed all of the CAD information at that time. At the time he did not know there was a delay in the officers being dispatched. His intention in checking prior calls was to see if there were any "flags" associated to the residence. The clearing remarks indicated there was "trouble on the line".

PC CUNNING said he called PC Dionne shortly after he discovered Mrs. M█████ at 8:57 pm. He did not make any notation about the call to PC Dionne in his Niche RMS report. PC CUNNING maintained he did not ask follow up questions to PC Dionne after he said he did not remember. He said in hindsight he should have been more inquisitive. PC CUNNING said Sgt Cadieux arrived before I/Cst Croney at 10:53 pm, but he did not have a specific time noted. He agreed it was possible Sgt Cadieux arrived at 9:25 pm. Upon Sgt Cadieux's arrival he relayed all of the information he had, including that he had called PC Dionne and he said he did not remember if he had attended. PC CUNNING said Sgt Cadieux is mistaken in saying he was the one that asked him to call PC Dionne. PC CUNNING said Sgt Cadieux is also mistaken when he indicated that PC CUNNING told him PC Dionne had attended the scene, checked the front door, knocked and left. He believes I/Cst Croney was "misinformed" about the information provided in her Supplementary Report and he could not say who provided her that information because that was not the information he provided to Sgt Cadieux. PC CUNNING agreed he was the only one that spoke with PC Dionne the evening of September 3, 2014.

PC CUNNING reiterated that at the scene there was no mention about checking with PC Dionne about the side door, his recollection was it was always whether PC Dionne had attended or not. Mr. Houston challenged PC CUNNING on the startling contrast of his testimony from the other officers. PC CUNNING replied, "I would not lie to this court, nor would I lie about my involvement".

*In response to questions posed by the tribunal*, PC CUNNING said the call to PC Dionne and the contents of that call should have been outlined in his Niche RMS Report. He explained he was investigating the 911 death and at the time he did not see the link to the prior 911 call (on September 1, 2014). The dictation for his General Occurrence Report was done when he got back to the detachment, with the report indicating September 4, 2014 at 2:53 am. At some point thereafter he would have reviewed the Niche RMS Report to verify the contents and he believed this was done after the second call to PC Dionne. He did not do a Supplementary Report for the subsequent call to PC Dionne on September 4, 2014. He explained he was following direction in providing a direct response to the Coroner via email, but he conceded he should have put in an RMS report. He did not review the report of I/Cst Croney.

*In follow-up Mr. Wallace* confirmed with PC CUNNING that a Supervisor reviews his completed report. There were no deficiencies brought to his attention. He did not recall receiving any "reworks" for this occurrence.

## **Submissions**

### **Prosecutor submissions**

Ms. Brabazon submitted the standard of proof in *PSA* hearings is one of "clear and convincing evidence", referencing the *Penner v. Niagara (Police Services Board)* decision, which was submitted as Exhibit 23. Ms. Brabazon further submitted the Ontario Civilian Police Commission (OCPC) decision of *Constable Bargh and Ottawa Police Service (2010)* accurately outlines the law regarding Deceit (Exhibit 24).

She emphasized that there were two elements that the Prosecution must prove; namely, that the statement was a fraudulent misrepresentation or is misleading, and secondly, there must be an intent to deceive. She outlined this case is about common sense, about what the tribunal knows about police officers and how that will impact its view of the evidence. Before the tribunal is the evidence of Mr. Mueller who interviewed PC CUNNING and the audio recording of the OIPRD interview, by which an assessment can be made of PC CUNNING's credibility.

Ms. Brabazon outlined her theory that PC CUNNING was assigned to investigate the 911 call, he reviewed the call and noted that PC Dionne was involved and he called PC Dionne to find out what happened. Ms. Brabazon asked me to accept the evidence of Sgt Cadieux, D/Sgt St. Clair and I/Cst Croney, that PC CUNNING stated to them that he had spoken to PC Dionne, that PC Dionne said he had attended the residence, he knocked on the door, there was no answer, the door was locked and he left. She outlined that I/Cst Croney's Supplementary report would have made it to Sgt Cadieux for his review and the information therein could have been corrected. Ms. Brabazon

submitted that the circumstances at the scene unfolded, such as the unlocked side door, made it clear that further information about what exactly PC Dionne had done when he attended was required. It is for that reason PC CUNNING was asked to call PC Dionne back. She submitted that when PC CUNNING called PC Dionne back it was at that point PC Dionne's story changed. Ms. Brabazon submitted that PC Dionne's evidence should be rejected, as it lacks credibility and it does not make sense. The evidence of PC Dionne that he did not remember on September 3, 2014, what he had done just two days prior is not credible and not worthy of belief. Nor does it make sense that upon reflection PC Dionne "started remembering" after the call with PC CUNNING and learning it was a death investigation, that PC Dionne would not pick up the phone and call his detachment and say he did not go. Ms. Brabazon opined PC Dionne knew he did not go the call, he lied about it, he got caught in the lie when PC CUNNING called him back, and it is in that moment he realized his initial story was not going to work. Then he says he patrolled the area of the residence. She highlighted the reference to the door knock in the email on September 4, 2014 as being very telling because that was the impression everyone had been left with the night prior. The problem that arises is that their conduct comes under scrutiny because it is known PC Dionne did not go to the residence and a woman has died. It is out of that concern that the story about "not remembering" emerges. It is her belief that if PC CUNNING tells the OIPRD investigator that PC Dionne does not remember what he did, then he might not be found guilty of the Deceit. She submitted a hallmark of truthfulness when people are giving evidence is the level of detail and specificity people have in their evidence. She submitted neither PC Dionne or PC CUNNING have much detail with respect to the one minute conversation. She suggested the version of the conversation before the tribunal is an entire fabrication and should not be believed.

Ms. Brabazon said that Sgt Cadieux testified honestly, he was unshaken on cross examination, he had a specific recollection of PC CUNNING telling him what happened. She asked the tribunal to accept his evidence. She acknowledged that despite D/Sgt St. Clair being less clear in his evidence, she asked the tribunal to accept that he too heard PC CUNNING's utterance regarding the discussion with PC Dionne. She asked the tribunal make a similar finding with respect to I/Cst Croney's evidence. She highlighted that PC CUNNING is the only source of any information on September 3, 2014 about what PC Dionne did or did not do on September 1, 2014.

Ms. Brabazon submitted PC CUNNING ostensibly believed he was a witness officer when he was being interviewed on January 19, 2015, but he had an obligation to tell the truth as a police officer. She submitted the motivation to make up this version of the conversation was to take away the element of Deceit from PC Dionne's *PSA* charges. She asked the tribunal to find PC CUNNING guilty.

### **Public Complainant submissions**

Mr. Houston adopted the comments of Ms. Brabazon. He outlined this matter was one of credibility. He emphasized there was a "startling" difference between the evidence of PC CUNNING and the prosecution witnesses. He referenced an older case that concluded that "words are facts". He said this is a tragic case. He said PC Dionne's duty and obligation was to respond to the call, albeit an hour and a half after the 911 call

was initially placed. Mr. Houston said there are differences between PC CUNNING's version and PC Dionne's version of a very short conversation. As he understood it PC CUNNING said he told PC Dionne there was a 911 call, asked if he had gone to Casselman, and then relayed they had found a resident deceased. He feels the evidence of PC Dionne is not credible because with PC Dionne's amount of experience he must recognize that this is a serious matter. For PC Dionne to testify he had forgotten or did not remember is not credible. Mr. Houston recapped his cross examination of PC Dionne as to why he did not do anything after the call from PC CUNNING to reduce to writing in some form his actions and inactions. He feels there was no credible explanation.

Mr. Houston referred to the evidence of PC CUNNING, in which he states he called PC Dionne, a police officer and a colleague. The response from PC Dionne that he did not remember and PC CUNNING not pursuing the matter further is not credible. Mr. Houston said logic would suggest further questions as the response was insufficient. He reiterated Sgt Cadieux's evidence that he provided direction to PC CUNNING to call PC Dionne. Mr. Houston emphasized PC CUNNING was the only source of information from PC Dionne. He pointed to the report of I/Cst Croney which accurately conveyed what she was told on September 3, 2014, regardless if it was Sgt Cadieux or PC CUNNING or a combination thereof. He pointed out there was no correction to I/Cst Croney's report by PC CUNNING and also nothing in PC CUNNING's report about his conversation with PC Dionne.

Mr. Houston submitted the case was made out on a clear and convincing basis. He said the evidence of Sgt Cadieux, D/Sgt St. Clair and as recorded by I/Cst Croney prove that PC CUNNING misled his fellow officers.

### **Defence submissions**

Mr. Wallace took no issue with the law submitted by the Prosecution with respect to the standard of proof to be applied, as well as, the elements of Deceit under the *PSA*. He highlighted that the Notice of Hearing (NOH) is drafted as a single count of Deceit and is particularized as PC Dionne "told you that he could not recall if he had attended a specific residence in response to the 911 call on September 1, 2014" and that this was not true. The burden of proof lies with the Prosecution to prove the statement PC Dionne could not recall was not true. Mr. Wallace submitted the Prosecution has not met the standard of proof. The direct evidence with respect to the conversation on September 3, 2014 both support the same position. Both PC Dionne and PC CUNNING indicated in that conversation PC Dionne said he could not recall attending the residence.

Mr. Wallace said the Prosecution has stated a theory that does not stand up to scrutiny. On September 3, 2014 the content of the call was that PC Dionne informed PC CUNNING that he had gone to the house, knocked on the door, the door was locked and he left. When PC CUNNING is interviewed by the OIPRD he then says that PC Dionne told him on September 3, 2014 he did not remember. If this is what truly happened and that was the information PC CUNNING passed along, then it is in fact PC CUNNING who has been deceived. There is a scenario, that PC Dionne lied to PC CUNNING. PC CUNNING in turn passes that along and then it turns out that that is not

true. Everybody knows that it is not true because PC Dionne comes clean on September 4, 2014.

Then there is the OIPRD interview three or four months down the road and the Prosecution wants the tribunal to accept that PC CUNNING deceived the OIPRD Investigator into believing that PC Dionne told him he could not remember. Mr. Wallace posed several questions: What benefit accrues to PC CUNNING when he is not under investigation?; What does he have to gain by saying this?; Why on earth would PC CUNNING think that deceiving the OIPRD would assist PC Dionne? He said it is possible that the Deceit has been perpetrated through PC CUNNING.

Mr. Wallace said that PC CUNNING was told, either truthfully or untruthfully, by PC Dionne that he did not recall and that is what he told the OIPRD. PC CUNNING could not possibly be assisting PC Dionne because the Deceit is well documented.

Mr. Wallace said it was stated that it does not "jive" with common sense that PC Dionne did not remember or for anybody to think that a police officer responding to a 911 call would knock on the door and then leave if they do not get an answer. He submitted nobody applying any common sense would think that was an appropriate response. He opined that was probably why the idea of the unlocked doors did not make any sense to D/Sgt St. Clair. He highlighted the common thread on the information as to what PC Dionne said, is Sgt Cadieux. Sgt Cadieux said in his evidence that PC CUNNING repeated that same information on two different occasions. One occasion was when the information was repeated to I/Cst Croney, who does not support that. She indicated her main dealings were with Sgt Cadieux and she had no idea if anybody was present when the information was given. Sgt Cadieux also said PC CUNNING repeated that information to D/Sgt St. Clair during what he described as a sit-down briefing in the kitchen. D/Sgt St. Clair did not support that as he said there was no sit-down and in his OIPRD interview he indicated that PC CUNNING did not say that PC Dionne had gone to the house. D/Sgt St. Clair said his instructions to PC CUNNING were to find out whether PC Dionne went and, if he did, what did he do. D/Sgt St. Clair was clear that the fact of PC Dionne's attendance was uncertain. Sgt Cadieux said the fact of attendance was never in question and the only thing to be checked up on was whether or not PC Dionne went to the side or back door. Nobody had notes about their conversations about PC Dionne's activities with the exception of I/Cst Croney.

Mr. Wallace said he is not suggesting Sgt Cadieux is trying to mislead the hearing when he says the only point that required clarification was whether PC Dionne went to the side door or not. He submitted it is now clear that Sgt Cadieux is wrong and his information is not accurate. Mr. Wallace outlined there is a disparity between Sgt Cadieux and PC CUNNING as to when the call to PC Dionne took place. He suggested that the timing of the call is inconsequential and it does not matter if PC CUNNING self-initiated or was directed by Sgt Cadieux.

He submitted that the theory put forward by the Prosecution does not stand up to scrutiny and that his client did tell the truth in the interview.

## Prosecution Response

Ms. Brabazon stated her understanding of D/Sgt St. Clair's evidence is different than the summary provided by Mr. Wallace.

### PART III: ANALYSIS AND FINDINGS FOR DISPOSITION

It is alleged PC CUNNING committed Deceit in that he willfully or negligently made a false, misleading or inaccurate statement pertaining to official duties, contrary to Section 2(1)(d)(ii) of the Code of Conduct contained in the Schedule to Ontario Regulation 268/10, as amended. The particulars of the allegation are quite simple as they pertain to a statement PC CUNNING made to the OIPRD on or about January 19, 2015. More specifically, the allegations are that during the interview with OIPRD, PC CUNNING insisted when he called PC Dionne at home on September 3, 2014, PC Dionne told PC CUNNING he could not recall if he had attended a specific residence in response to the 911 call on September 1, 2014. This statement is alleged to be willfully or negligently false, misleading or inaccurate and pertaining to official duties.

Four issues arise in determining this matter:

My analysis will include a review of the evidence, case authorities and counsels' submissions.

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#### 1. What is the required standard of proof to reach a finding of guilty?

The Supreme Court's decision in *Penner* outlines at page 17 para. 59 that the standard of proof is a higher standard than a balance of probabilities:

...because the PSA requires that misconduct by a police officer be "proved on clear and convincing evidence"(s. 64(10))...in a civil action where the balance of probabilities – a lower standard of proof – would apply...The prosecutor's failure to prove the charges by "clear and convincing evidence" does not necessarily mean that those same allegations could not be established on a balance of probabilities. Given the different standards of proof...

Clear and convincing evidence is greater than a balance of probability but less than the Criminal Code threshold of beyond a reasonable doubt. This standard of proof was agreed to by all parties.

In May 2016, the Ontario Court of Appeal in *Jacobs* addressed the standard of proof applicable to a finding of misconduct in the PSA and stated:

In my view, we are bound by the Supreme Court's statement in *Penner* that the standard of proof in PSA hearings is a higher standard of clear and convincing evidence and not a balance of probabilities.

Finding:

I will rely upon the *Jacobs* decision of the Supreme Court which stipulates the standard of proof is clear and convincing evidence.

**2. What facts in issue must be addressed to meet the definition of Deceit?**

The *Bargh* decision starting on page 7 at paragraph 23 reviews the law with respect to Deceit.

Mr. Carroll submitted that the test for a finding of guilt on a charge of Deceit was articulated in *Perry and York Regional Police Service* (1972), 1 O.P.R. 89 (O.P.C.). At page 92 of that case, 'Deceit' was defined according to Black's Law Dictionary as being "a fraudulent and cheating misrepresentation, artifice or device, used by one or more persons to deceive and trick another, who is ignorant of the true facts, to the prejudice and damage of the party imposed upon."

He submitted that this test was also referenced in *McCoy and Fort Frances Police Force* (1969), 1 O.P.R. 16 (O.P.C.) where an officer had altered a document contrary to the then Code of Offences. The Commission stated at page 19:

It would seem to us, therefore, that to convict an officer of altering a document, contrary to the Code of Offences (sic) there must be "an intention to deceive".

Mr. Carroll referred to *Burgess and St. Thomas Police Service* (1989), 2 O.P.R. 822 (O.P.C.) to support his submission that an inaccurate statement by itself, in the absence of proof of wilfulness or intent, will not support a conviction. In relation to statements in an Occurrence Report, the Commission noted at page 828:

It is a long mile, however, between the point at which one can find a statement inaccurate and the point at which one can find that a statement was made with intent to mislead or deceive.

This was agreed to by all parties.

Finding:

The facts in issue to be satisfied to meet the definition of Deceit is that the statement made by PC CUNNING to the OIPRD on January 19, 2015 regarding the telephone conversation on September 3, 2014 was willfully or negligently false or inaccurate and there was clear intent to mislead or deceive.

**3. Did PC CUNNING's statement to the OIPRD in relation to his discussion with PC Dionne pertain to official duties?**



On September 3, 2014 PC CUNNING was on duty performing a general patrol function. He was dispatched to a residence and subsequently found Mrs. Missen deceased. He made inquiries on Niche RMS and learned PC Dionne had been dispatched to a 911 call on September 1, 2014. Although the timing of the call to PC Dionne is in dispute, whether it was before or after the arrival of Sgt Cadieux, it is not contested the call was made. Shortly thereafter PC CUNNING relayed details of the conversation to Sgt Cadieux and others. Further, on September 4, 2014 PC CUNNING sent an email providing a different account of PC Dionne's actions. The interview with the OIPRD on January 19, 2015 pertained to the Missen death investigation and PC CUNNING's discussion with PC Dionne.

Finding:

The statements made by PC CUNNING on January 19, 2015 pertained to official duties. Now that I have found that the statement pertains to official duties I can proceed to the next question.

**4. Has the Prosecutor met the standard of proof to support a finding of guilty for the offence of Deceit contrary to section 2(1)(d)(ii) of the Code of Conduct?**

The NOH before the tribunal relates to the statement PC CUNNING made to Mr. Mueller on January 19, 2015 and specifically to information PC CUNNING provided about the telephone conversation with PC Dionne on September 3, 2014. In the interview with Mr. Mueller PC CUNNING said PC Dionne told him he did not remember or was unsure if he attended the residence. The allegation of the Deceit in the NOH does not extend to statements PC CUNNING made to other officers after that telephone conversation concluded.

It is of great assistance to me that the interview with the OIPRD on January 19, 2015 was audio recorded. The accuracy and contents of the audio recording have not been disputed. The recording was played during the course of the hearing and also submitted as Exhibit 18 in its entirety. The information that PC CUNNING provided in the audio recorded statement can be used to compare to other statements he has made.

The majority of the evidence in this hearing comes from witnesses whose evidence will need to be assessed for credibility. The credibility of a witness is one of the important determining factors in reviewing evidence.

The recognized and accepted test for credibility is found in the judgement of O'Halloran, J.A. in *Faryna v. Chorny*, [1951] 2 D.L.R. 354 (B.C.C.A.). There are disparities in the testimony and for this reason I will rely on the *O'Halloran test* as it relates to credibility.

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story in such a case must be its harmony with the

preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place, in those conditions.

Mr. Mueller provided clear, honest, professional testimony. His evidence was corroborated by the package received by the OIPRD on or about January 13, 2015, the contents thereof, and the audio recording of the interview of PC CUNNING on January 19, 2015. Mr. Mueller was a very credible and reliable witness.

D/Sgt St. Clair provided clear testimony in chief, but he was not as certain in cross examination and easily agreed with statements of the defence. I do believe D/Sgt St. Clair was being honest in his responses to questions. Although D/Sgt St. Clair could not recall PC CUNNING relaying the information about the discussion with PC Dionne at the scene, PC CUNNING admitted to doing so in his OIPRD interview. The information relayed is what is in dispute. I still find D/Sgt St. Clair to be a credible witness; however, I find his evidence less reliable and thus have given it less weight.

Sgt Cadieux provided clear, honest testimony. His answers were direct, to the point and matter of fact. He was unshaken on cross examination by Mr. Wallace and, in fact, corrected Mr. Wallace when he made certain assertions. Sgt Cadieux was very complimentary of the PC CUNNING's abilities as an officer and attributes as a person, which further lends credibility to the factual nature of his testimony. Despite the absence of notes relating to the discussions with PC CUNNING regarding PC Dionne's actions, I have no credibility issues with this officer.

I am mindful of the discrepancies between the information of Sgt Cadieux and D/Sgt St. Clair regarding the location of certain discussions, what was said in those discussions and who was present. Although the evidence provided by these two officers is not completely harmonious, they are not glaringly conflicting on the evidence relevant to my decision.

I/Cst Croney provided unbiased, honest testimony to the best of her abilities. She indicated she had some difficulty with her memory because of a medical condition. I found I/Cst Croney to be sincere and forthright in the evidence that she provided. The Supplementary Report (Exhibit 21) authored by I/Cst Croney was referred to by all Counsel at some point during the proceedings and I believe the report is an accurate reflection of I/Cst Croney's recount of events, particularly given that the report was completed approximately eight hours after she left the scene. There was no concern raised by any Counsel about the content of I/Cst Croney's report and, in fact, it seemed to capture what the prosecution witnesses believed when they left the Missen residence on September 4, 2014.

PC Dionne testified for the defence. He admitted in examination in chief that he had pled guilty to Neglect of Duty and had been found guilty of Deceit in relation to this same incident. A mistrial was subsequently declared on the Deceit finding and ultimately he pled guilty to a second count of Neglect of Duty. I have not read any of the decisions relating to PC Dionne's matter, though I am generally aware of some of the reasons for the mistrial because it impacted these proceedings. Although there were minor variations in PC Dionne's testimony from examination in chief to cross examination, the fact remains PC Dionne's evidence is that he told PC CUNNING that

he could not remember going to a specific address in Casselman. Admittedly it is counterintuitive to think that PC Dionne could not remember going to a residence only two days after the call, the reality is that he forgot to attend the call the night he was dispatched. PC Dionne appeared worn down by the proceedings and his body language conveyed he just wanted his testimony to be over with. Although I have some concerns with PC Dionne's prior history regarding this incident because of the Deceit finding, the conclusion to that matter was a guilty plea to two findings of Neglect of Duty. There is no evidence to contradict PC Dionne's testimony regarding the telephone conversation he had with PC CUNNING on September 3, 2014. I find PC Dionne believable and cannot reject his testimony outright as recommended by Ms. Brabazon and Mr. Houston.

With respect to PC CUNNING I have difficulty believing anything that he said. He tried to convey a sincerity and honesty that I just cannot believe. In some instances he emphasized his naivety and yet in others he highlighted his experience. He attempted to tailor his evidence to support his position in this hearing, but he contradicted himself in other statements.

In his testimony, PC CUNNING denied ever telling Sgt Cadieux or anyone else that PC Dionne had said he had gone to the residence, went to the front door, did not get an answer and left. PC CUNNING then volunteered, "to be honest with you that was never even mentioned to me at the scene as well, it never came up in conversation with anyone at scene". With respect to the same information PC CUNNING later said "I didn't know that, I didn't know that that was even a possibility". PC CUNNING said the only time he was addressed in the conversation at the M█████ residence was when D/Sgt St. Clair turned and asked, "Do you even know what Dave did?" PC CUNNING said he replied, "I don't know what he did because he doesn't remember". This is not consistent with the evidence of Sgt Cadieux or D/Sgt St. Clair.

PC CUNNING asserts in his testimony that Sgt Cadieux was "mistaken" when he relayed information to others. I do not accept that assertion. Mr. Wallace stated in his closing the common thread in all of the information was Sgt Cadieux, seemingly suggesting Sgt Cadieux was the source of misinformation. This was not put to Sgt Cadieux in cross examination in any meaningful way. I do not accept the assertion of PC CUNNING or the suggestion of Mr. Wallace.

It is imperative to keep in mind PC CUNNING was the originator of the information pertaining to PC Dionne's actions received and relayed on September 3, 2014 and September 4, 2014, as he was the only one that spoke with PC Dionne.

The timing of PC CUNNING's call to PC Dionne is in dispute. PC CUNNING told Mr. Mueller that he placed the call to PC Dionne prior to Sgt Cadieux arriving. As Mr. Wallace pointed out, and I agree, the timing of the call is really inconsequential.

One area of particular note for me was the thoroughness and detail with which PC CUNNING completed his General Occurrence Report (Exhibit 21). What is noticeably absent is any mention of the initial telephone discussion with PC Dionne on September 3, 2014. In the hearing, PC CUNNING said he dictated the report the same night upon returning to the detachment. PC CUNNING completed a supplementary report

regarding contact with Ms. M [REDACTED]'s next of kin, which was entered on September 4, 2014 at 6:20 pm. Again, what is absent in the report are any details of the subsequent telephone discussion with PC Dionne which happened just before he sent an email at 5:12 pm. I believe the details of the discussions with PC Dionne were intentionally left out and I question the motive of doing so.

On September 4, 2014 at 5:12 pm PC CUNNING sent an email to the Coroner and others indicating, in part, the following:

- That he spoke with the investigating officer
- The call came in as "trouble on the line"
- The call was held from dayshift approximately 1.5 hours after the original 911 call was placed
- The officer patrolled the area of the house but did not approach the residence or knock on the door

This information is significantly different than the information relayed to Sgt Cadiuex and others the night prior. PC CUNNING acknowledged in the OIPRD interview that he was the author of the email. PC CUNNING further acknowledged that he is the one who sent the materials to Mr. Mueller in follow up to a discussion they had on December 23, 2014. The materials were received at the OIPRD on or about January 13, 2014, less than a week before the interview. I find it extremely troubling that despite the acknowledgement by PC CUNNING that he was both the author of the email and the person that forwarded a hard copy of the email to Mr. Mueller shortly before his OIPRD interview, that he could not provide an explanation for the content and seemed to be surprised by its existence. The reference to the "knock on the door" in the email to the Coroner, suggests to me that this was a point of clarification from a prior statement.

PC CUNNING's missing notebook was canvassed with Sgt Cadiuex as the supervisor notified, with D/Sgt St. Clair as the officer that helped search for the notebook and with Mr. Mueller. Unbeknownst to PC CUNNING, copies of his notebook entries for September 1 and 2, 2014 were taken between September 4, 2014 and September 19, 2014; the date the notebook was reported missing. Unfortunately PC CUNNING's notes for September 3 and 4, 2014 were not copied. In a telephone conversation initiated by PC CUNNING on December 23, 2014, Mr. Mueller conveyed that he wanted a copy of his duty notes and any emails or documents related to the M [REDACTED] matter. PC CUNNING did not immediately tell Mr. Mueller that he had lost his notebook. Instead, PC CUNNING provided a written notification to Mr. Mueller several weeks later. Although the timing of the missing notebook is suspect and the contents of the notebook entries for September 3, 2014 and September 4, 2014 could have contributed significantly to this matter for the Prosecution or the Defence, I have placed little weight on the fact that the notebook was lost.

PC CUNNING would like me to believe that after he spoke with PC Dionne he conveyed to Sgt Cadiuex shortly thereafter that PC Dionne did not remember if he went to the M [REDACTED] residence. Sgt Cadiuex then somehow misunderstood that information and incorrectly conveyed it to D/Sgt St. Clair on the telephone and at the scene upon his arrival. The identical incorrect information is relayed to I/Cst Croney, which she records

in her Supplementary Report. Further, PC CUNNING would like me to believe that he just happened to be conveniently absent when all of the discussions took place in the M [REDACTED] residence about PC Dionne, or else he would have corrected the misinformation. Also, that he conveniently did not read the Supplementary Report of I/Cst Croney or again he would have corrected the information. All of this is not consistent with the evidence before me both from the prosecution witnesses and the exhibits filed.

Given all I have stated above, how can I find PC CUNNING not guilty? In the hearing PC CUNNING said, "I would not lie to this court, nor would I lie about my involvement". I wholeheartedly believe that PC CUNNING purposely misled Sgt Cadieux, D/Sgt St. Clair and likely I/Cst Croney on September 3, 2014 in some manner. I also believe that he purposely misled this tribunal several times throughout his testimony. I do not find him credible.

I am satisfied from all the evidence when PC CUNNING got off the phone with PC Dionne on September 3, 2014 he relayed to Sgt Cadieux and likely others that PC Dionne attended the scene, there was no answer, the front door was locked and they left. What is not clear is whether that is the information that PC Dionne provided; was the information completely fabricated by PC CUNNING after he got off the call with PC Dionne; or the two concocted the story on September 3, 2014, only to change the story the following day. The answer to that question cannot be reconciled with the evidence before me.

As an Adjudicator my role is to assess all evidence as it relates to the NOH. That said, I am confined to the four corners of the paper on which the NOH is written and the particulars of the allegations contained therein. The particulars of allegations in this matter relate directly to the conversation between PC CUNNING and PC Dionne and what was subsequently relayed to Mr. Mueller on January 19, 2015. In this case we have two people involved in a conversation, PC CUNNING and PC Dionne. That is the only direct evidence I have with respect to the telephone conversation. Both provided consistent evidence regarding the content of that discussion and there has been no evidence to the contrary. Even if I outright reject PC CUNNING's testimony, I am still left with the evidence of PC Dionne which I cannot reject. It is not clear and convincing to me that PC CUNNING lied to Mr. Mueller about the content of their discussion. There seems to have been no consideration to the potential that the information that PC CUNNING provided to Mr. Mueller on January 19, 2015 was the first time that PC CUNNING told the truth.

**PART IV: DISPOSITION**

I am tied to the narrow particulars of the Notice of Hearing. I do not find the evidence clear and convincing. I find PC CUNNING not guilty of Deceit.

**Bradley McCallum BS (M)**

Digitally signed by Bradley McCallum BS (M)  
DN: c=CA, st=on, o=Government of Ontario, ou=GO-PKI, ou=OPP-  
CA, ou=Regions, ou=North West, cn=Bradley McCallum BS (M)  
Date: 2017.04.22 07:05:08 -04'00'

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Brad McCallum

Date decision electronically delivered: April 22, 2017

Inspector

Ontario Provincial Police

Adjudicator

**Appendix 'A'**

- Exhibit 17: Adjudicator Delegation – McCallum
- Exhibit 18: DVD- Audio Recording of PC Cunning OIPRD interview
- Exhibit 19: Undated Word Document – Addressed to Mr. Bernie Mueller
- Exhibit 20: Email Chain PC Cunning et al – September 4, 2014 – 5:12 pm, 5:20 pm, 5:21 pm
- Exhibit 21: SP14231173 - Niche RMS Occurrence Report
- Exhibit 22: SP14229177- Event Chronology
- Exhibit 23: *Penner v. Niagara (Regional Police Services Board)* [2013] S.C.J. No. 19 (SCC)
- Exhibit 24: *Constable Bargh and Ottawa Police Service* OCPC November 10, 2010

