

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 ANNE EMMERSON-STRINGER, # 7785

AND THE ONTARIO PROVINCIAL POLICE

CHARGE: NEGLIGENCE OF DUTY

DECISION WITH REASONS

Before: Superintendent Greg Walton
Ontario Provincial Police

Appearances:

Counsel for the Prosecution: Inspector Hazel O'Brien
Ontario Provincial Police

Counsel for the Defence: Mr. David Butt
Ontario Provincial Police Association

Complainant: Mr. D.L.

Hearing Date: October 26, 27, 28, 29, 2015

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

PART I: OVERVIEW

Allegation of Misconduct

NOTE: When the Notice of Hearing (NOH) was drafted, the officer was known as Provincial Constable Anne Stringer. At the commencement of this proceeding the NOH was amended to read ‘Provincial Constable A.L. (Anne) Emmerson-Stringer’ at the request of the officer.

Provincial Constable (PC) Emmerson-Stringer stands charged with neglect of duty in that she without lawful excuse, neglected or omitted to promptly and diligently perform a duty as a member of the Ontario Provincial Police (OPP), contrary to section 2(1)(c)(i) of the Code of Conduct contained in the Schedule to Ontario Reg. 268/10, as amended. The edited particulars for PC Emmerson-Stringer are as follows:

- On July 28, 2013 while on duty PC Emmerson-Stringer responded to a call for service at the Oro Family Campground in Oro-Medonte Township involving T.A, T.I. and D.L.¹
- PC Emmerson-Stringer failed to investigate this incident in compliance with the OPP domestic violence policy.
- PC Emmerson-Stringer failed to treat T.I. in compliance with OPP domestic violence policy.
- PC Emmerson-Stringer failed to initiate and complete domestic violence reports.
- PC Emmerson-Stringer failed to make accurate notes in relation to the incident.
- PC Emmerson-Stringer failed to properly investigate, make inquiries and interview people involved in this incident.
- PC Emmerson-Stringer arrested and charged Z.H. and D.L. for assault notwithstanding an inadequate investigation.
- PC Emmerson-Stringer further failed to properly investigate a possible breach of probation and breach of court order involving T.A. and T.I. resulting from a previous domestic incident.

Plea

PC Emmerson-Stringer pleaded not guilty and a Hearing was held October 26, 27, 28, and 29, 2015.

¹ Involved persons initialized to provide anonymity

Decision

After reviewing all the evidence and considering the submissions, I find PC Emmerson-Stringer guilty. My reasons for this are as follows:

PART II: THE HEARING

Exhibits

The following exhibits were tendered during the hearing:

- Exhibit 9 : Prosecution Document Brief
 - Tab 1: Transcript of 9-1-1 recording T.A. July 28, 2013
 - Tab 2: Transcript of 9-1-1 recording Deb Brunner, July 28, 2013
 - Tab 3: Transcript of OPP Logger tape, July 28, 2013
 - Tab 4: Notes of PC Emmerson-Stringer, July 28, 2013
 - Tab 5: Duty Report of PC Emmerson-Stringer
 - Tab 6: Transcript of PC Emmerson-Stringer interview, April 8, 2014
 - Tab 7: Probation order – T.A.
 - Tab 8: Notice of revocation of consent to communicate, June 27, 2013
 - Tab 9: Revocable consent to communicate, July 27, 2013
 - Tab 10: Crown memo R v. T.L / Z.H, March 6, 2014
 - Tab 13: Statutory Declaration Deb Brunner, October 8, 2013
 - Tab 14: Statement of Sean Dennis
 - Tab 15: Photos of D.L. injuries (three)
 - Tab 16: Curriculum Vitae of Sergeant Shelley Tarnowski
 - Tab 17: Expert Opinion of Sergeant Shelley Tarnowski
 - Tab 18: OPP Orders section 2.14 – domestic violence occurrence
 - **Tab 11: Statutory Declaration Sue Clark, October 2, 2013**
 - **Tab 12: Statutory Declaration David Clark, October 2, 2013**

Tabs 11 and 12 although part of the submission, were not viewed or relied upon at the request of prosecution (stapled shut)

- Exhibit 10: Facebook photograph of D.L. timestamped 18:20 (not dated)
- Exhibit 11: Facebook photograph of D.L. timestamped January 11, 18:10
- Exhibit 12: Facebook photograph timestamped October 24, 2013, 18:20
- Exhibit 13: E-mail thread between Detective Sergeant Jennifer Wilks / Sean Sharpe
- Exhibit 14: DVD 9-1-1 audio recordings
- Exhibit 15: Transcript of T.A. interview April 7, 2014
- Exhibit 16: Transcript of T.I. interview May 14, 2014
- Exhibit 17: DVD audio recording of T.A. and T.I. interviews

- Exhibit 18: Hand drawn sketch by PC Emmerson-Stringer
- Exhibit 19: Niche General Occurrence report OP13238790
- Exhibit 20: Prosecution Book of Authorities
 - Tab 1: *R. v. Storrey*, [1990] 1 SCR 241, 1990
 - Tab 2: *Hill v. Hamilton-Wentworth Regional Police Services Board*, [2007] SCC
 - Tab 3: *Charlton v. St. Thomas Police Services Board*, 2009, ON SC
 - Tab 4: *Ontario Provincial Police v. Turgeon*, August 4, 2011
 - Tab 5: *A.M. v. Matthews*, 2012, ABQB 185

Representation

In this matter, Mr. Butt represented PC Emmerson-Stringer, Inspector (Insp) O'Brien represented the OPP and the complainant D.L. was unrepresented.

Evidence

Insp. O'Brien tendered Exhibit #14, the 9-1-1 recordings and logger tape. The audio recording began with the 9-1-1 call from T.A. dated July 28, 2013 at 8:37 pm. T.A. stated he had just been "jumped by two guys" at the Oro campground. He stated he was now seated in his truck surrounded by people looking to get him out of there. He identified D.L. as the person who attacked him assisted by another male: "some other guy in this red sweater with a grey hood on it comes over and holds me down while he (D.L.) punches me, like two on one." T.A. indicated the fight was over his girlfriend, T.I.. He wanted her to come home to care for twin 8-month old boys and he was there to pick her up from D.L.'s trailer. He described all the neighbours as being out and around his truck trying to get at him. The voices of others could be heard in the background but not understood. T.A. could be heard telling the crowd of people he was on the phone with the OPP. He advised the call taker his knees were all cut up from being thrown on the gravel ground and he wanted them charged for assault. He also advised he just got out of jail for domestic assault but there was not a non-association clause. The recording ended upon the arrival of police.

The next 9-1-1 audio recording played was a call received from Deb Brunner July 28, 2013 at 8:43 pm reporting a disturbance, "like a domestic situation." She provided a description of T.A.'s vehicle and was advised the police were dispatched.

The next audio recording from Exhibit #9 was the logger tape of ongoing communications between OPP dispatch and attending officers. Officers were dispatched July 28, 2013 at 8:38 pm to an assault at the Oro campground; a male who reported being jumped by males was sitting inside his vehicle currently surrounded by people waiting for police. Particulars for known involved persons were provided to responding officers. The dispatcher explained it could be a domestic situation as the

complainant attended to pick up his girlfriend. While on route, PC Emmerson-Stringer requested an ambulance be dispatched to the scene. At 8:49 pm the three constables arrived in separate cruisers. Sergeant (Sgt.) Patterson arrived just over three minutes later.

At 9:04 pm PC Emmerson-Stringer requested a CPIC check and spelled T.A.'s surname phonetically for the dispatcher. At 9:05 pm the dispatcher asked if PC Emmerson-Stringer was "10-69." PC Emmerson-Stringer replied in the affirmative nine seconds later and the dispatcher then provided details including: an assault conviction entered by Barrie (Police Service) on July 10, 2013 and a suspended sentence for assault, theft under and failure to comply; June 26, 2013 consent granted (sic) contact PPO not to be within 100 metres of T.I.'s known place of residence, employment or education of except with her written revocable consent filed in advance with the probation officer or pursuant to a valid family court order as outlined in the family court agreement of June 26, 2013. That dispatched transmission ended at 9:06 pm followed by CNI information. At 9:07 pm PC Emmerson-Stringer verbally acknowledged the transmission responding "10-4."

PC Emmerson-Stringer queried D.L. and again was asked if she was 10-69. She acknowledged and went through the same process again for Z.H..

PC Emmerson-Stringer received another call for service at 10:33 pm. She cleared this disturbance call to her badge number advising two parties were released from custody for assault.

Prosecution witnesses

D.L.

Examination in Chief - Prosecution

D.L. testified he is retired from the US army after serving 18 years as a radio technician. He currently owns a do-it-yourself garage in Barrie. He has been friends with T.I. since 2011 and on July 28, 2013, she attended his trailer to get a break from home. He was doing chores during the day but when he saw her at approximately 4:30 pm he described her as being "really really drunk." He told her to get some rest and to lie down on the couch. D.L. was using a shovel to spread a load of gravel around his driveway when a large truck arrived. He realized it was T.A. and described him as being irate. T.A. said T.I. had to leave with him so she could take care of her babies. When D.L. advised him she was drunk and passed out, he replied saying they were going to have a problem; T.A. turned from night to day, came at D.L., grabbed him and dragged him over a pile of dirt, down the other side and was "pounding him pretty good."

D.L. said Z.H. must have spotted the incident and came to his aid; pulling T.A. off of him. He testified they restrained T.A. physically and once he relaxed they both helped him up. T.A. went to his truck and they had no further contact that day.

When police first arrived, there were a lot of officers there; PC Emmerson-Stringer looked like she was in charge. He approached and told the group of officers he had been hit and showed them the injuries on his knees and legs which he said, would have been visible to anyone.

T.I. had told him that T.A. had been there earlier in the day but D.L. had not seen him. He said T.I. "is a bad alcoholic so you never know what to believe." He said he knows T.A. is abusive toward T.I.; she had said he had a prohibition order of some type through the court and he was not supposed to be around her without his probation officer's permission.

Tab 15 of Exhibit #9 contains three photographs identified by D.L. as being taken by him. The first being his knee covered with dirt and a bloody scrape resulting from this altercation and two photographs of his face that he described as being swollen and puffed. He indicated he had been examined by paramedics that evening but received no medical treatment. D.L. indicated he was surprised when he was told by PC Emmerson-Stringer he was being arrested and asked her to obtain statements from the people who were there. D.L. said the only people he knew were David Clark and Susan Clark but indicated there were many people in the area. PC Emmerson-Stringer advised him she would not take statements from his friends.

Following his release, D.L. approached people seeking statements and received a hand written statement from Sean Dennis, a person not previously known to him. He then approached PC Emmerson-Stringer. She said she did not need the statement but accepted it through her car window.

D.L. testified about his negative experience attending court and seeing people there who recognized him from his business. He advised the Crown Attorney withdrew the charges upon reviewing the case.

Cross Examination - Defence

D.L. stated although he has had a trailer at this campground for a number of years, he only really knows his neighbours from across the street, the Clarks. He indicated he was currently the same size as he was at the time of the incident; 236 pounds. D.L. explained T.A. parked his truck so that it was blocking the end of the driveway, not in the driveway. The truck was positioned with the driver's side nearest the driveway and D.L. was on the far side of the gravel pile, spreading it across the driveway. The pile was about 10 feet in diameter and about three feet high. D.L. stated he was approached by T.A. who came around the gravel to where he was working. He described being grabbed by the shirt, dragged by T.A. up one side of the gravel pile and down the other, his shirt getting ripped to shreds. The gravel was very fine stone.

D.L. stated he did not know Sean Dennis but asked him to write out what he saw. In his mind he was someone who was not part of the park community. The officer herself said she did not want statements from anyone so he asked for the statement, not knowing if it would assist him or not.

It was suggested to him his injuries were not visible to the paramedic who examined him as noted in Exhibit #13; paramedic Sean Sharp stated in an email to Detective Sergeant Jennifer Wilks he did not recall any facial injuries. D.L. remained steadfast in his position that his face was swollen, his arms and knees bleeding and that he had not been drinking.

D.L. described his demeanor on July 28, 2013 as being calm, cool and collected. It was suggested this contradicts the description provided by Sean Dennis who referred to him as emotional, agitated and drunk in his interview with the Professional Standards Bureau (PSB). He denied that position and denied concocting the story about T.I. telling him about a prohibition ordering T.A. not to communicate with her. It was put to D.L. he was in this process for the money; to recoup legal fees incurred. He admitted he told PSB investigators he would like to have his legal expenses paid but it is not the motivation for his complaint; he wants to ensure this does not happen to someone else; there were five or six witnesses all around him who could have been interviewed and then he would not have been arrested.

Mr. Butt produced photographs from D.L.'s Facebook account. Exhibit #12 depicts a male individual painting a wall with the words 'fuck the police'. Mr. Butt suggested he is anti-police. D.L. denied that instead he stated he hates irresponsible policing; someone shared the photograph with him, he thought it was funny so he posted it.

Re-Examination - Prosecution

D.L. stated he became panicked and agitated once he learned he was being charged. He described the situation as being a lot to handle, he tried to "adapt, improvise and overcome the situation." He said, although he would like to recover his expenses, he made the complaint for one reason; he does not want this to happen to someone else. He stated, "an investigation must be clear and present, everyone should have been interviewed." He said he felt terrible about what happened, had to go to court and ran into customers there who learned of his criminal charges.

Z.H.

Examination in Chief – Prosecution

Z.H. stated he had a trailer at the Oro campground since 2012 and on July 28, 2013 he was there helping D.L. do work at his trailer. They had dinner together at his trailer where Z.H. had a beer but did not consume any other alcohol that day. He and D.L. then returned to D.L.'s trailer where T.I. told them a guy had shown up and taken some of her belongings. She said she had a peace bond against

him and she did not want to leave with him. Not long after that, a white truck arrived. A man not known to him got out and confronted D.L. and they began to argue. Z.H. testified that he was watching from across the road, roughly 30-50 feet away. Although he couldn't hear the initial conversation, he could hear the man screaming at D.L.. He was watching to make sure nothing serious would happen and that is when he saw the man jump D.L. from behind and started to throw punches at him. Z.H. testified he went over to break it up but the guy was upset and wanted to get after D.L.. They held him down until the guy cooled down. The guy went back at D.L. again and they held him until he calmed for a second time. When he said he was done they let him up and the guy went to his truck.

He stated when the police arrived, D.L. pointed him out to the female officer but she said she did not want to talk to him and for him to go away. Z.H. stated he knew a few of the bystanders there offered to provide statements but were turned away. Sometime later, the same officer approached him and said "after a thorough investigation here, I have to place you under arrest for assault." He stated he was placed in the rear of her cruiser but she did not ask him for a statement. He did not talk to any other officers. Z.H. stated he was later released and the criminal charges he faced were ultimately dropped.

Examination in Chief – Complainant

D.L. asked about his own demeanor during the incident and Z.H. described him as being pretty shocked when it initially happened and confused. Z.H. said he didn't think D.L. even knew who hit him initially. Overall, Z.H. described D.L. as being really calm.

Cross Examination - Defence

Z.H. stated he only saw T.I. that day the one time at approximately 4:00 pm. When it was suggested she was drunk and asleep at 4:00 pm and therefore he was mistaken, Z.H. acknowledged she had been sleeping before they talked. When Z.H. was questioned about his vantage point from across the road, he described his view as being unobstructed. It was suggested to Z.H. that PC Emmerson-Stringer went straight to the truck upon her arrival and therefore did not state to him that she did not wish to speak with him. Z.H. disagreed with that assertion and he further denied making an utterance to PC Emmerson-Stringer to the effect of; he held down the individual while D.L. hit him.

Sean Dennis

Examination in Chief – Prosecution

Dave and Sue Clark are the parents of Sean Dennis' girlfriend and have a camper at the Oro campground. Although the people at the campground all know each other and drink together, he stated he does not know anyone else in the park besides the Clark's. July 28, 2013 was a Sunday

night and he was there for a barbeque. He noticed a vehicle at the end of the cul de sac with its engine revving followed by people yelling and screaming. There was an altercation between two guys, one being from the truck. The owner of the campground was on the phone with police. Mr. Dennis testified that he did not see any punches thrown but did not think he saw the whole incident. He was about 50 feet away and the truck initially obstructed his view so he could not be certain how the incident started. His girlfriend asked him to go across to ensure her father was not involved. Upon his arrival, the driver was being held down and was told to calm down 30-40 times. The man did not want to calm down. Another guy came and got involved. The guys let him up and then the police arrived.

Mr. Dennis was shown Tab 14 of Exhibit #9 and identified it as the statement he hand wrote that night. D.L. was being charged with something he did not think he should be charged with so he asked Mr. Dennis to write something down on his behalf. People in the area were upset D.L. was being charged but the guy in the truck was not. Mr. Dennis wrote down what he saw. He confirmed that prior to that day, he did not know D.L.'s name, just knew him to see him.

The statement reads:

I Sean Dennis, was visiting my in-laws Dave and Sue Clark, dropping my two daughters off for a few days. Someone was yelling and people were running towards the roadway.

I saw a white truck and Mr. D.L. was wrestling with the man from this truck. D.L. seemed to have this man in a control of some sort asking the man over and over again to stop and to calm down so he could let go without any violence. They eventually parted and the man in the truck got in, and refused to leave. The owner of the park showed up and called the cops.

Sean Dennis

Sean Dennis testified he does not consume alcohol but is of the opinion everyone else in the park drinks together and said some of the people there would have been inebriated.

Examination in Chief – Complainant

D.L. asked Mr. Dennis if he saw police making any inquiries of people seeking statements; he did not.

Cross Examination - Defence

Mr. Butt asked if the people at the park could be described as a community of drinkers and Mr. Dennis accepted that description. He agreed that drinking is commonplace and is often done to excess but this was the first time he noticed any negativity toward anyone inside the park.

By the time Mr. Dennis arrived, the men were already tangled up. Another fellow ran over. D.L. was trying to calm the fellow down but this second guy was trying to kick the driver of the truck. He thought D.L. may not have had a shirt on but was wearing shorts.

Sean Dennis described D.L. as being emotional, upset and concerned that he was being charged while the driver was not. D.L. needed someone to stand up for him and he was having trouble finding a credible witness; he was about the only one he could find. Mr. Dennis was of the opinion everyone, including D.L. had been drinking but could not state with any degree of certainty to what extent. He stated drinking several beers is too much in his opinion.

Mr. Dennis reiterated the fact that he did not see the altercation begin; his view was blocked by the truck. Upon his arrival, the men were tangled up. D.L. was trying to calm the man down but the second man started kicking him while he was down.

Re-Examination - Prosecution

Sean Dennis was asked to elaborate on the injuries he observed to D.L. and said he had scrapes on his elbows, knees and rib section. He added that D.L. was larger than the driver and was pinning him to the ground when he arrived. D.L. told him repeatedly to calm down but he wouldn't stop, then the other guy came in with kicks to the driver. Upon further reflection he believed D.L. was wearing tan shorts but no shirt.

Deb Brunner

Examination in Chief – Prosecution

Deb Brunner and her husband own the Oro campground and for the last 10 years she has been the manager, taking care of the customers. On July 28, 2013 she was in her residence when she learned of an altercation and was asked to attend. Upon her arrival, T.A. was sitting in his truck, parked in front of D.L.'s trailer. Deb Brunner was told there was an altercation involving D.L. and so she called 9-1-1. Police arrived, took her particulars and she explained to police what she had heard about the incident from Sue Clark. The female officer in attendance insinuated the people talking about the incident were biased.

Mrs. Brunner advised the female officer she had dealings before with T.I. and T.I. had a habit of calling T.A. for a ride from D.L.'s trailer. Her understanding of this incident was that T.A. hit D.L.. With the assistance of the police; she served a trespass notice upon them when they were leaving. There was a group of people around, all of whom appeared concerned about what happened. They did not seem agitated or intoxicated.

Examination in Chief – Complainant

D.L. asked about the general reputation he has at the site. She stated she never receives complaints about D.L., she never finds him intoxicated and he generally keeps to himself.

Cross Examination - Defence

Mrs. Brunner stated she did not see the altercation and she did not see T.I. that day at all until she was leaving with T.A. following the altercation. Mr. Butt reviewed the content of her statutory declaration, Tab 13 of Exhibit #9; specifically paragraph 27 which suggested T.A. was speaking on the phone with a female with a Russian accent. It was established by Mr. Butt that T.A. was speaking with the 9-1-1 call taker at that time and not a female with a Russian accent. Mrs. Brunner was steadfast in her position that she was certain she heard a Russian voice. Mr. Butt suggested she said this to help out D.L. but she denied that submission.

Sergeant Shelley Tarnowski

Examination in Chief - Prosecution

Mr. Butt accepted the curriculum vitae of Sergeant (Sgt.) Tarnowski and took no issue with having her deemed an expert in OPP domestic violence policy and in the investigation of domestic violence occurrences in general.

Sgt. Tarnowski was requested by prosecution to provide a written opinion in relation to the investigation conducted by PC Emmerson-Stringer. Her expert opinion is noted at Tab 17 of Exhibit #9. Sgt. Tarnowski reviewed PC Emmerson-Stringer's Niche report entered August 17, 2013 and the PSB report of June 11, 2014.

Sgt. Tarnowski's main concern was that the matter was not identified to be related to a domestic violence incident despite the information provided to the officer. There was no investigation as to why T.A. attended the campground that day and the only reference to T.I. was that she left with T.A.. The dispatcher provided sufficient information that should have been explored such as a previous domestic situation between partners. T.A. was recently charged with breach of probation and had a revocable consent that was not explored. Her sense was that T.A. attended there twice to have her leave with him but both times he was told she did not want to leave. The first time he took her purse and cell phone with him. At the time of incident T.I. was asleep in the trailer and was reported by police to be extremely intoxicated. Sgt. Tarnowski concluded the officer did not turn her mind to the fact it was a domestic violence incident.

OPP domestic violence policy states if there is an indication of intimate partnership and any altercation ensues, it is to be classified as a domestic violence incident and given due diligence of a domestic violence investigation. Sgt. Tarnowski was concerned T.I. was not given any choice but to leave with T.A.. She was essentially forced to leave with him and was issued a trespass notice along with him despite indicating on two occasions she did not want to go. Sgt. Tarnowski said T.I. was extremely disadvantaged because of her level of intoxication and history of domestic violence. Sgt.

Tarnowski was concerned that T.I. was not questioned about domestic violence or her fears (if any) to determine if it would be safe for her to leave with T.A. noting that T.A. was not provided any other options. She opined there was sufficient information provided by the dispatcher that warranted further investigation. If it was determined T.I. was too drunk at the time, other witnesses could have provided information but they were not spoken to; policy says all potential witnesses shall be spoken to. There was an onus to satisfy safety concerns. T.I. was returning home under stress with small children present. Child protection services should have been notified.

Examination in Chief – Complainant

D.L. simply sought clarification on some of the material reviewed by Sgt. Tarnowski; she indicated she was not certain if she read the communication logger transcript in preparation of her opinion document.

Cross Examination- Prosecution

Sgt. Tarnowski indicated she had been qualified as an expert on three previous occasions and agreed there are two central pillars for an expert opinion; independent assessment and that assessment be based on the best possible information. In lieu of the presence of those pillars, without fault of the expert, the opinion can be compromised. Mr. Butt suggested Sgt. Tarnowski used derivative information; she did not listen to the recorded interviews for example. Sgt. Tarnowski stated she read reports but the original witness interviews were not provided and therefore not reviewed. The investigative report was reviewed for consideration which contains a one paragraph summary for each witness statement.

There was discussion about summarizing statements. Sgt. Tarnowski reviewed the one paragraph summary provided to her of T.A.'s interview. Mr. Butt noted that is a summary which captures a 31 minute interview. Mr. Butt noted the Deb Brunner interview was 55 minutes, the Sean Dennis interview 34 minutes, the Z.H. interview 24 minutes, the T.I. 10 minutes and the D.L. interview 47 minutes. Mr. Butt estimated three hours of interviews were summarized in a few very brief summaries. Sgt. Tarnowski agreed she was left to rely upon for example, a 47 minute interview of D.L. summarized in one paragraph. Sgt. Tarnowski agreed if there was critical information not in the report provided to her, it could affect her opinion. The opinion she delivered was based only on the information she was provided.

Sgt. Tarnowski asserted that her expert opinion is independent but Mr. Butt suggested the investigative report she was provided is not an independent document; it was drafted by PSB and expresses an opinion. Sgt. Tarnowski stated she formed her own opinion. Mr. Butt took Sgt. Tarnowski to a quote from her expert opinion document:

Other than a very mention on the last line of the reports indicating that he and his girlfriend departed the campground having been served with trespass notices, there is no reference whatsoever to T.A.'s girlfriend (T.I.) within the report or how she was involved in the incident.

Sgt. Tarnowski confirmed for Mr. Butt, she did not listen to the actual interview and he noted if she had actually listened to the interview, she would have received information suggesting there was no interview of T.I. because she was asleep. Sgt. Tarnowski stated the fact he took her purse and cell phone was concerning. Sgt. Tarnowski read Niche reports but when shown the 9-1-1 transcript she acknowledged she had not seen it before. Sgt. Tarnowski refused to admit she was making credibility findings but based on the information provided, she concluded the witnesses did not believe T.A. was allowed to be there. Mr. Butt asked Sgt. Tarnowski if knowing T.I. advised PSB investigators she gave her items to T.A. earlier in the day of her own volition would have influenced her opinion. Sgt. Tarnowski advised victims of domestic violence often minimize their experience after the fact so it may have been relevant to consider but may not have been impactful. There was a further exchange between Sgt. Tarnowski and Mr. Butt about appropriate analysis of information but Sgt. Tarnowski remained concerned that T.I. was essentially forced to leave the campground without a police inquiry from a domestic violence perspective.

Sgt. Tarnowski ended her cross examination by acknowledging, reviewing additional information could have affected her opinion as provided.

Audio statements

Insp O'Brien advised the Tribunal PSB was unable to locate two witnesses. They were described as being reluctant witnesses at best. Each of the witnesses provided interviews to PSB which were audio recorded and would now fall into the category of hearsay evidence. Mr. Butt agreed to the audio recordings being played into evidence and would speak to the weight to be applied if necessary in submissions.

T.A.

T.A.'s statement was taken April 7, 2014 by Detective Sergeant (D/Sgt.) Jennifer Wilks. He stated that when the police arrived at the campground, the female officer dealt with him while the remaining officers spoke with others in the park. T.A. stated he told the officer everything including just being released from Central North Correctional Centre for an assault involving T.I.. He attended the park to pick her up. He advised the officer he was confronted by D.L. who was assisted by another male. The officer believed what he had to say and told him she was going against her colleagues but she would not be charging him, she would be charging them. She said she did not have a reason to doubt his story.

About a week later, at the officer's request, T.A. attended the OPP office to provide a statement but the officer was not there so it was taken by another officer. At that time T.A. was in a cast. The night of the incident, he believed his hand was sprained but x-rays revealed a broken hand stemming from this incident. During the investigation, the officer asked him if he needed medical attention; although he advised his hand felt like it was broken, he declined. T.A. indicated D.L. had a swollen eye and had cuts on his head from their altercation.

None of the officers spoke to him about the court order regarding him and T.I.. T.A. had also advised PC Emmerson-Stringer he had attended the park earlier in the day but she was not ready to come home. T.I. gave him her "stuff" and then went back and passed out on D.L.'s couch. T.A. expanded on the physical altercation he had with D.L..

T.I.

The statement of T.I. was taken May 14, 2014 by D/Sgt. Wilks. T.I. began by indicating, due to her alcohol consumption that day; she has no real recollection and only knows what she has been told about it. She recalled being awakened by police and being told to go home. She could not recall if it was the police or T.A. who told her she needed to go home to care for her kids but she stated she was in no condition for that anyhow. Police escorted her from the trailer to T.A.'s truck and she recalled signing papers not to return to the park.

T.I. was not able to specifically recollect giving her items to T.A. earlier in the day but speculated she gave them to him willingly. She said sometimes she does not come home and by giving him her phone and purse it would have ensured she went home later. She added, "I probably gave it to him, he wouldn't take my stuff."

Defence witnesses

PC Emmerson-Stringer

Examination in Chief – Defence

On July 28, 2013 at approximately 8:39 pm, PC Emmerson-Stringer was dispatched to an altercation at the Oro campground. PC Emmerson-Stringer stated she was aware of the park's reputation for fights and excess alcohol consumption. Two other officers attended to assist along with her immediate supervisor.

Upon arrival, PC Emmerson-Stringer found T.A. sitting in the driver's seat of his truck. He was locked inside with a large group of people around. They all had beers in their hands and other beverages in cups. The crowd was talking to one another; she went right to the truck because that was the call.

T.A. was upset and she tried to settle him and determine what had happened. Sgt. Patterson arrived at some point and was listening in on her conversation with T.A.. He told her how he was jumped by D.L.. PC Emmerson-Stringer testified that she requested of the dispatcher that T.A. be queried but her attention was 100 percent on T.A. and she did not comprehend everything being said to her in response.

T.A. told her he came to the park to pick up his girlfriend. He was jumped by two people; he only knew one as D.L.. He was punched and kicked several times and was pushed into gravel. She saw cuts on his knee caps and marks on the gravel (which may have been more like limestone that goes under flagstone) but concluded his story was corroborated by the marks in the stone pile and his injuries

PC Emmerson-Stringer tracked down D.L. and asked him what happened. He said he was in a scuffle with T.A.. That was all he provided. The admission he was involved in a scuffle and knowing T.A.'s version of events, PC Emmerson-Stringer determined she had reasonable and probable grounds (RPG) that T.A. had been assaulted by D.L.. PC Emmerson-Stringer subsequently arrested him and he sat in the front seat of her cruiser. PC Emmerson-Stringer did not see injuries on D.L. nor did he complain of any. He was wearing beige cargo shorts and possibly wearing a shirt; she thought it was a short sleeve plaid shirt. PC Emmerson-Stringer could smell alcohol from him and he appeared intoxicated. He was described as being cooperative and calm.

When shown the photographs of D.L., PC Emmerson-Stringer indicated she did not notice any facial injuries during her investigation.

PC Emmerson-Stringer stated, T.A. pointed over to large group of people and identified a younger guy wearing a red shirt as the second individual who assaulted him. PC Emmerson-Stringer called Z.H. over and asked him what had happened. He replied "I held the guy down while D.L. punched him". When he admitted he had assisted in the assault and was identified by T.A., PC Emmerson-Stringer formed RPG to believe he had assaulted T.A. and she arrested him. He was placed in her cruiser and later released on an appearance notice. She described Z.H. as very cooperative.

PC Emmerson-Stringer stated Deb Brunner wanted T.A. and T.I. out of the campground permanently so she ensured trespass notices were drafted and served. She updated Sgt. Patterson of the arrests and charges.

T.A. and T.I. said they had to get home to the babies so PC Emmerson-Stringer decided it was not prudent to obtain statements at that time; she made arrangements for them to attend the detachment at

a later date. PC Emmerson-Stringer testified she must have been tied up when T.A. attended to provide a statement; hence it being obtained by another officer.

PC Emmerson-Stringer described T.I. as being intoxicated but not falling down. She was coherent and understood their discussion. Based on their conversation and her observations of T.I., at no time did PC Emmerson-Stringer think she was uncomfortable leaving with T.A.. At no time did she receive information from any other civilian or officer at the scene about a potential domestic violence situation.

PC Emmerson-Stringer stated D.L. ran to her car window when she was ready to leave and said he had a statement from Sean Dennis. Mr. Dennis was not there any longer so she took it from him. She testified that she took no other statements because the large group of people were drinking and she does not take statements from people who have consumed alcohol. She had sufficient RPG and had a picture of what happened. They were all in a group, talking, drinking and knew each other so there were no independent witnesses.

Later in the night, PC Emmerson-Stringer briefed Sgt. Patterson; he said “good work.” Eventually she prepared paperwork on this incident. It is the Sergeant's responsibility to go through the brief and make sure it adds up and he would have to sign off on it. If he disagreed with any part of it, he would send it back; that did not happen so she stated he therefore must have approved it.

PC Emmerson-Stringer denied using the term ‘thorough investigation’ when speaking with Z.H.. She denied telling T.A. she was going against her colleagues, in fact she said she had no perception of what the other officers thought. PC Emmerson-Stringer also denied telling Z.H. she did not want to talk to him when she first arrived.

Cross Examination – Prosecution

PC Emmerson-Stringer agreed it is important to find out the perspectives of all people at any scene where two or more people are involved in a dispute. When asked about the dispatched information concerning T.A.'s record check, PC Emmerson-Stringer stated she did not give full attention to the response as she was dealing with and focused on T.A.. She did not recall hearing T.A. was on probation or any other details. The transcript of the communication between PC Emmerson-Stringer and the dispatcher was presented for her review. PC Emmerson-Stringer was asked to provide her understanding of ‘10-69’ and indicated to her, it meant “can you copy in private” and agreed with the submission it is generally a flag to pay attention. Although she replied with ‘10-4’, PC Emmerson-Stringer stated the content of the transmission did not register with her. When asked if it would have changed anything had she heard it, PC Emmerson-Stringer indicated that it would be difficult to

answer that. When asked what the entry meant to her now, PC Emmerson-Stringer stated they had a domestic situation in the past where he was out on conditions, and agreed she would have asked more questions had she heard it.

PC Emmerson-Stringer agreed that at no point did she take a statement from anyone but did not agree, having heard the Tribunal testimony thus far, it would be helpful in determining what happened. She stated she did not give any thought to the reason for the fight and did not consider a motive.

PC Emmerson-Stringer did not ask D.L. any follow up questions after he said he was in a scuffle. PC Emmerson-Stringer indicated although that *res gestae* statement was not captured in her notes it is in the Niche report she submitted. She added her notes are to refresh her memory. The comment made by Z.H. "I held the guy down while D.L. punched him" is not in her notes but she does have an independent recollection of the comment.

Insp. O'Brien took PC Emmerson-Stringer to her notebook entry that reads; 'T.A. said as he was taken to the ground by D.L., the above described male held him down while D.L. started punching him' and suggested she was mistaken; it was T.A. who made that comment but not Z.H.. PC Emmerson-Stringer said she had a strong recollection of Z.H.'s comment. It was suggested that Z.H. and D.L.'s comments are important and should be reflected in her notes. PC Emmerson-Stringer opposed that suggestion and stated she completes notes and reports for her benefit and to assist her in court and that she has an independent recollection of the statements.

She reviewed her RPG to charge D.L.: reliance on the information provided by T.A.; T.A. identified D.L. and Z.H. to her; T.A.'s injuries; T.A. was upset; T.A. landed in the limestone or gravel; D.L. had no complaint of injuries; D.L. had been drinking; and she believed T.A.. Insp. O'Brien asked if it was possible the knee indentations in the gravel could have been from someone other than T.A.'s knees and PC Emmerson-Stringer said, no, not in her mind.

Although her notes do not capture the fact D.L. had been drinking, it is in her report and PC Emmerson-Stringer has an independent recollection of it.

Insp. O'Brien asked, having heard the testimony of Sean Dennis that D.L. had injuries, is it possible he had injuries and she missed them? PC Emmerson-Stringer reemphasized if there were injuries, she would have seen them; he had no injuries on his arms, legs or face. However, she did see T.A.'s injuries and later learned he had a broken hand.

PC Emmerson-Stringer said she did not think there were any independent witnesses based on her observations. Even after getting the witness statement from Sean Dennis, she stated she was comfortable with the charges. When asked if she would now agree Sean Dennis was an independent witness, she stated she had no idea where he was standing or where the Clark's trailer is, but agreed he is somewhat independent.

PC Emmerson-Stringer maintained she conducted a thorough investigation and laid the appropriate charges.

Cross Examination – Complainant

D.L. questioned why PC Emmerson-Stringer asked him for a statement when she made it clear she does not ask people who had been drinking for a statement? She indicated she did not notice the smell of alcohol from him until after he was seated in her car which was after her inquiry. PC Emmerson-Stringer confirmed no one else offered her a statement.

Re-Examination – Defence

PC Emmerson-Stringer confirmed that following their rights to counsel, D.L. and Z.H. declined a telephone call to counsel. She had no notes about their replies but her general practice being, if they wanted to give a statement she would provide that opportunity, caution them and take them to the office to video record it.

Sgt. David Paterson (retired)

Examination in Chief – Defence

On July 28, 2013 Sgt. Patterson was the on-duty road supervisor in Barrie. Along with the three constables working at the time, he responded to the Oro campground regarding several males fighting, one male in a white truck boxed in by a golf cart and surrounded by males. He arrived at 8:53 pm; the three constables arrived moments before. He described the crowd as agitated but they were able to successfully de-escalate the situation. The male seated in the white truck refused to exit it; he had obvious injuries to his knees, scrapes, blood and gravel on his legs and knees. It was PC Emmerson-Stringer's call; that was determined at the start and it was understood she would take the lead and carriage of the scene. Sgt. Patterson noted PC Emmerson-Stringer was asking pertinent standard questions you would at any scene. He described her as being a very competent investigator and who does her due diligence at scenes.

Sgt. Patterson was only there about 15 minutes before he received another call for service. He stated he did not see or receive information that caused him to think this was a domestic violence incident. He stated his role in relation to arrest reports is to scrutinize the crown brief and provide approval. Although he did not specifically recall approving this incident and crown brief, he would have done so assuming it was in his tray. He admitted it is possible it could have been reviewed by someone other than himself depending on the circumstances.

Cross Examination – Prosecution

Insp. O'Brien produced the transcript of the dispatched information concerning PC Emmerson-Stringer's query of T.A.. She asked, after reading that information, if it changed his opinion as to whether this should have been explored further. Sgt. Patterson advised it was evident there was a domestic history and T.I. would have had to provide consent for communication. The CPIC information may have release implications for the arrested persons at the scene but it wouldn't change the questions asked or the manner of investigation, he testified. He added any investigator requires full and complete information when conducting an investigation.

Sgt. Patterson reviewed the Niche General Occurrence Report completed by PC Emmerson-Stringer, Exhibit #19 and read the statement of Sean Dennis. He was asked, as a supervisor, what further action he would expect. He indicated the statement from Sean Dennis should have been added to Niche and agreed an interview with Sean Dennis would have been helpful. There is also contradictory information; a man got in truck and refused to leave which is contrasting to him being blocked in. Sgt. Patterson said his expectations would include PC Emmerson-Stringer following up to determine what Sean Dennis saw. He provided additional comments about his expectations with regards to inculpatory statements and obtaining information from witnesses including those who had been drinking.

Cross Examination - Complainant

D.L. asked if it is normal for an accused person to acquire a statement from a witness. Sgt. Patterson indicated it is not uncommon for an individual to look for supporting witnesses. An officer is bound to complete a full investigation. Officers should take a statement if offered to them but when dealing with an accused statement, it is imperative the accused person understands their rights.

Submissions

Prosecution submissions

Insp. O'Brien stated there are three main elements to the NOH.

1. Inadequate investigation of the physical altercation between D.L., Z.H. and T.A..
2. Lack of any investigation concerning the possibility of whether or not domestic violence policy should have been engaged
3. Lack of any investigation of whether T.A. was in breach of a probation or court order.

Inspector O'Brien suggested these elements were compounded by the lack of fulsome notes.

Insp. O'Brien submitted D.L. gave a full and frank account in his testimony. Under cross examination he became confused but held firm about the salient facts. His motivation is to ensure no one else goes through what he went through, meaning getting charged unnecessarily. While his Facebook post is distasteful, it simply illustrated his anger and no weight should be applied. His testimony was credible and straight forward.

Z.H. also gave straight forward testimony Insp. O'Brien indicated. He saw D.L. get jumped and helped hold T.A. down while he calmed. None of his key evidence was challenged. He admitted to drinking but was not drunk and was shocked when he was arrested and charged.

Insp. O'Brien described Sean Dennis as an independent sober witness. He heard D.L. say calm down repeatedly and he saw D.L.'s injuries. He saw Z.H. kick T.A. while he was down on the ground. He is a credible and reliable witness.

Insp. O'Brien submitted, Deb Brunner relayed historical domestic violence information to PC Emmerson-Stringer about them but she chose to ignore it. The assertion she lied about hearing a Russian accent on the phone with T.A. was an honest mistake. She is a credible and reliable witness.

Sgt. Tarnowski is an expert in domestic violence investigations and she concluded PC Emmerson-Stringer should have explored that component further. The Crown should have been notified of T.A.'s broken hand and the charges upgraded. Sgt. Tarnowski noted T.A. was motivated to say he was assaulted to avoid negative consequences such as going back to jail.

Insp. O'Brien reviewed the testimony of PC Emmerson-Stringer stating it is her job to take control of the investigation and she missed key pieces of information. She missed the domestic reference from the dispatcher despite the '10-69' query. She made assumptions there were no independent witnesses or that they were all intoxicated. She failed to follow up after the fact to seek out potential witnesses even after she was given the statement of Sean Dennis.

PC Emmerson-Stringer was in possession of T.A.'s verbal statement; saw the two marks in the gravel and formed RPG. If that was the case, Insp. O'Brien questioned why she then asked D.L. what happened before reading him the caution. PC Emmerson-Stringer received a brief response from D.L. and Insp. O'Brien suggested perhaps it was then that she formed her grounds but noted she does not have a notebook entry about it. The same could be said about PC Emmerson-Stringer's approach to Z.H.; why ask what happened before cautioning him?

Insp. O'Brien noted the utterance allegedly made by Z.H. to the effect, "I held the guy down while D.L. punched him" is a critical statement which should have been included in her notebook. Insp. O'Brien submitted it is likely that it was D.L. who said that, not Z.H.. In any event, it would have been excluded at trial as it was not a cautioned statement Insp. O'Brien submitted. Insp O'Brien described PC Emmerson-Stringer's testimony as self-serving. She failed to make note of critical evidence and was not credible.

Sgt. Patterson testified he was confident of PC Emmerson-Stringer's experience and ability. He would have expected her to have given direction to other officers but she did not. Sgt. Patterson stated he would expect her to determine the who, what, and why during her investigation and was surprised to learn there was no follow up of Sean Dennis or others. He provided credible evidence.

Insp. O'Brien downplayed the significance of the email from Sean Sharp, the attending paramedic. It was clear he did not have a strong recollection of the incident from several months earlier. Therefore his comments in the email should receive no weight.

Insp O'Brien referenced the probation order, Tab 7 of Exhibit #9 which confirms June 26, 2013 as the date of T.A.'s conviction for assault and includes the non-association clause.

Tab 10 of Exhibit #9 is a memo from Assistant Crown Attorney Miriam Villamil dated March 6, 2014. The Crown determined there was no reasonable prospect of conviction in the cases against D.L. and Z.H.. Although the Crown has a higher standard than police, (reasonable prospect of conviction versus reasonable and probable grounds) Insp. O'Brien suggested PC Emmerson-Stringer did not have the grounds to charge D.L. or Z.H.. Insp. O'Brien stated the investigation fell short and PC Emmerson-Stringer had tunnel vision; she did not turn her mind to domestic violence at all. Insp. O'Brien said she does not accept the assertion PC Emmerson-Stringer did not listen to the dispatched information about the historical domestic violence. In addition to that transmission, T.A. told her he was just out of jail and she had knowledge from Deb Brunner about previous domestic violence. There were two kids at home and T.I.'s level of intoxication should have been concerning.

Insp. O'Brien submitted PC Emmerson-Stringer's notes are inadequate to support the charges. Key information that she would need to rely upon was omitted.

Insp. O'Brien referenced the neglect of duty section as it reads in the *PSA* schedule 268/10 and then referenced the submitted book of authorities. Insp. O'Brien made reference to *R. v. Storrey, Charlton v. St. Thomas Police Services Board* and then to *Hill v. Hamilton-Wentworth Regional Police Services Board* which states:

Two issues arise: What is the appropriate standard of care?

Was that standard met on the facts of this case?

At the outset of an investigation, the police may have little more than hearsay, suspicion and a hunch. What is required is that they act as a reasonable investigating officer would in those circumstances. Later, in laying charges, the standard is informed by the legal requirement of reasonable and probable grounds to believe the suspect is guilty; since the law requires such grounds, a police officer acting reasonably in the circumstances would insist on them.

Insp. O'Brien submitted PC Emmerson-Stringer lacked the RPG required to effect an arrest. Insp. O'Brien noted, the situation was under control and there was no urgency to lay charges. There was ample opportunity to complete a more thorough investigation and PC Emmerson-Stringer should not have disregarded the statement of Sean Dennis.

Insp. O'Brien suggested the 'scope of conduct to be reviewed' in *Ontario Provincial Police v. Turgeon* would be helpful:

To determine whether a misconduct occurred in this case we must ask, based on the evidence: Was the officer's conduct reasonable in light of the circumstances as they existed at the time of the alleged misconduct? One case referring to this principle is that of *Mousseau and the Metropolitan Toronto Police Force* 1981 OCCPS:

The reasonableness of an officer's conduct must be examined in light of the circumstances as they exist at a particular time. An officer is expected to use discretion and judgement in the course of his duties on many occasions. The police officers discretion or judgement ought not to be examined scrupulously by the benefit of hindsight, but it is essential to examine the circumstances under which the officer exercised discretion or independent judgement to see what extent discretion was warranted.

Insp. O'Brien cited *A.M. v. Matthews* to illustrate the need to complete a full investigation:

When new information emerges that could be relevant to the suspect's innocence, reasonable police conduct may require the file to be reopened and the matter investigated. Depending on

the evidence which later emerges, the requirements imposed by the duty to reinvestigate on the police may vary.

Complainant submissions

D.L. submitted this investigation was based on the assumptions that all witnesses were either intoxicated or were friends of his and therefore not independent. PC Emmerson-Stringer did not take the time to talk to one witness, if she did, she would have learned they were not intoxicated and she would have been able to form a better opinion; intrinsically educated opinions cannot be based on assumptions he submitted. D.L. questioned PC Emmerson-Stringer's contention she did not hear the radio transmission as her entire focus was with T.A.. The rationale behind any such query is to develop intelligence or a better understanding; if PC Emmerson-Stringer's focus was on the victim as she suggested, she should have heard the response. This is very vital and important victim information. She took the time to phonetically run his name; she should have been ready to copy all information including the fact T.A. was on probation with conditions. He said he found it troubling that she has no recollection of the 90 second transmission. D.L. submitted the notes of PC Emmerson-Stringer were sub-par and a more thorough investigation was warranted.

Defence submissions

Mr. Butt submitted the standards to apply to neglect of duty and clear and convincing evidence are well settled principles. The crux of this Tribunal turns on the assessment of the evidence, documentary and from the witnesses.

Mr. Butt submitted the Facebook photo of D.L. is powerful evidence of anti-police sentiments. In cross examination, D.L. did not try to explain it or apologize; he found it funny which speaks to anti police animus.

Mr. Butt suggested the facts must be analyzed in totality, not in isolation in order to reach a global perspective.

D.L. had a financial motive; while it is not fair to punish someone where a civil claim is warranted, it may be indicative of a motivation to overstate or to enhance the facts. A favorable finding here could be of great assistance in strategically carrying forward a claim for financial compensation he submitted.

Alcohol consumption is a factor in anyone's ability to deliver reliable evidence. The most reliable witnesses, Sean Dennis and PC Emmerson-Stringer both spoke to D.L.'s alcohol consumption in the face of his denial. Mr. Butt noted, D.L. said he was drinking later, but asked "when did it start?" Z.H. said he had a beer at dinner and Mr. Butt suggested it does not make sense for D.L. not to drink with Z.H. over dinner. T.A. stated to PSB; "D.L. drinks; that's why T.I. hangs out with him." Mr. Butt submitted D.L. was being disingenuous about his drinking and his perceptions therefore will be less reliable.

Mr. Butt suggested that D.L.'s story is implausible. D.L. described being dragged by his shirt up over and down a gravel pile 3-4 feet high and 10 feet wide. Mr. Butt noted how profoundly difficult it is to drag a 230 pound man across a mushy pile of gravel in poor footing. It is so difficult it is utterly implausible he submitted. Also implausible he said, D.L. had a shovel in his hand, dropped it and allowed himself to be dragged across the gravel pile. Common sense and instinct suggests one would not drop the shovel, one would use it. D.L. has a background in the military yet he allowed himself to be dragged through the gravel which is simply not plausible he submitted.

D.L. testified his shirt was shredded which therefore should have led to him falling from the grasp of T.A.. There is no evidence of D.L. falling backwards or of a ripped shirt. There are no photos of a ripped shirt. He was contradicted by Z.H., Sean Dennis and T.A.; none of them talked of D.L. being dragged over a gravel pile.

Mr. Butt suggested, given all the credibility issues with D.L., there is a broken continuity chain concerning the photographs submitted. It is not possible to assess continuity from origin to police custody, they are not forensically validated or time stamped. The photo content was contradicted by officer testimony.

D.L. testified T.I. told him there was a court order saying she and T.A. were not supposed to have contact and this was relayed to PC Emmerson-Stringer; that is not worthy of belief Mr. Butt submitted. There is indisputable evidence that that was not the case, it was revoked the day before so it makes no sense she would say that given what she had signed the day before. There was nothing that suggested there was an issue with contact between T.I. and T.A.. It is important to note he was getting her home to kids; that is not a domestic situation.

With regards to the testimony of Sean Sharpe, he is a professional, if there were injuries noted he likely would have remembered.

Z.H. is friends with D.L. and is not a neutral witness. Therefore less weight is to be applied to his testimony. His view of the assault contradicts that of D.L.. They have dramatically contradictory

accounts; they cannot get their story straight. Z.H. talked about the probation order but it differs in time and T.I. was asleep all day when he says he heard her speak of it. He submitted it makes no sense she would say it at all as articulated earlier.

Z.H. minimizes his role. Sean Dennis testified D.L. was holding T.A. down while Z.H. was kicking him. Sean Dennis's testimony is powerful evidence of Z.H. committing assault and D.L. as a party. Z.H. was directly across the street, in contrast with D.L. saying the truck would have blocked that view.

Mr. Butt noted if one thing was clear about the testimony of Deb Brunner, she was dramatically wrong with what she said she heard as evidenced by the 9-1-1 recordings. It does not matter if she is lying or unreliable, her evidence has no value. Her statement of declaration shows where her sympathies lie; she goes out of her way to say nice things about D.L. but not about T.A.. She's the one who makes reference to a domestic but she is unreliable and was watching television when this took place.

Sgt. Patterson stated what you hear on the radio call and what you find at the scene are often dramatically different.

T.A. and T.I. gave consistent information in their statements. There was a consent given and they were back together, not in domestic disharmony.

The fact T.A. has a broken hand is forensically neutral; it can be considered consistent with aggravated assault or self defence. He said he was jumped and defended himself. It is unfair to suggest PC Emmerson-Stringer should have followed up on the broken hand as it was information she never received.

In her interview, T.I. was never asked by PSB about domestic violence and they are alleging this was neglect; they themselves did not follow up on it.

Mr. Butt suggested there were three things wrong with the expert evidence of Sgt. Tarnowski: how it was prepared, its content and how it was delivered. Sgt. Tarnowski ignored rule number one, which is to examine all of the evidence gathered at the scene. No expert should present an opinion of a scenario if they have not reviewed all of the information gathered at that scene. She did not receive nor ask for the interview transcripts or videos. One of the core documents she did have was the investigative report, a report written to justify a conclusion that had already been reached. It is not material for an expert to work with. Therefore it is easy to understand why the report went wrong and referenced to her expert opinion submitted at Tab 17 of Exhibit #9 which reads:

The witnesses were not aware of that (the consent to communicate) and truly believed that T.A. wasn't supposed to be anywhere near T.I..

Mr. Butt wondered how an expert could conclude the witnesses truly believed anything without seeing the statements or reviewing the transcripts personally.

Sgt. Tarnowski assumed the issue of T.A. taking the purse was a position of force and she concluded it was likely used as a control tactic by T.A.. She was never provided with what T.A. and T.I. ultimately said about it being turned over willingly. That is just one example but her report is replete with assumptions based on inappropriate information. Mr. Butt opined the report itself is demonstrably weightless.

Mr. Butt described Sgt. Tarnowski as "a prosecution attack dog." An objective independent witness would not have refused to accept the premise of questions posed concerning alternative possibilities. She would not depart from her position under any circumstances and displayed an evasiveness of hypothetical questions. Mr. Butt stated, how the expert testimony was prepared, its content and how it was delivered were all fundamentally flawed. It was the expert who had tunnel vision.

PC Emmerson Stringer admitted in her testimony, she did not hear the details of the dispatcher's transmission; that was a mistake but she was truthful in her testimony.

Prima facie case means evidence if believed it would support a conviction. If T.A. is believed, PC Emmerson-Stringer had a *prima facie* case with confirmatory evidence in the form of marks in the gravel. Mr. Butt admitted it was not confirmatory evidence but if he is believed, it could confirm his statement. That's more than a *prima facie case*. Mr. Butt suggested it is very easy to second guess decisions made at a fluid, potentially dangerous scene like that; the benefit of hindsight is a temptation which must be ignored.

With regards to officer notes, Mr. Butt suggested every single time an officer testifies, they say more than what is captured in their notes. In fact part of the legal requirement to qualify an officer notes is independent recollection and are the notes simply an aid to their recollection. The exercise of looking at neglect in relation to notes is not the exercise of looking to see what's not there because if that was it, every officer would be guilty of neglect of duty who simply went into the witness box to testify truthfully. The test is for the notes to reasonably capture the essence of the officer's engagement. Absence of a particular entry cannot be presumed to be problematic such as the statement uttered by Z.H. which was not in her notes but was in her occurrence report days later.

Mr. Butt did not accept the notion that Sean Dennis' information was not followed up; the statement was placed in the brief and was moved forward. It is now known it would not have been an exculpatory statement. It shows T.A. was being held down while being kicked.

Mr. Butt stated, it has been suggested PC Emmerson-Stringer was neglectful in not returning to the scene in the following days to conduct interviews. It was an informed decision based on her assessment at the scene that she would not get reliable info; that does not fall into the category of neglect of duty. There may be lessons learned from a debrief situation such as returning to interview people in a sober state but again, that does not constitute neglect of duty, it is a lesson learned he suggested.

Mr. Butt noted four officers were covering an entire Township. There were two simple assault charges. These officers are busy, going call to call and he questioned whether it is realistic to think that officers have time to return to conduct a canvass; at the expense of what calls? If the officer believes they are unlikely to obtain reliable information anyhow, that does not meet the definition of neglect of duty he opined.

Mr. Butt observed that the Crown Attorney requires a reasonable prospect of conviction which is a higher standard than the police require to make an arrest and lay a criminal charge. The fact charges were withdrawn is no reflection on the work done by the officer in the field.

Based on the *Storey* case, a prima facie case is not required to lay the assault charges but PC Emmerson-Stringer had that and more Mr. Butt emphasized.

Mr. Butt stressed that the *Hill* case imposes a standard that appropriately reflects the realities, denies liability for minor errors or mistakes and rejects liability by hindsight. All of those apply here. The minor errors acknowledged in this situation do not give rise to neglect of duty he stated.

Mr. Butt stated the facts in the *Turgeon* case are quite different; a complainant contacted police and reported a domestic violence incident. It was characterized as a domestic, the officer knew it was a domestic and even noted it in his notebook, unlike in this situation. Here in this case the complainant contacted police to complain of an assault by two men, not a domestic. That is what the call was and what PC Emmerson-Stringer responded to. Mr. Butt submitted the NOH alleges a failure to investigate a domestic but there was no actual domestic incident to investigate.

With regards to omissions, Mr. Butt suggested it is important to look at the distinction between hindsight, legitimate learning from experience and neglect; the issues particularized in the NOH do not amount to neglect of duty.

For these reasons, Mr. Butt submitted, misconduct has not been made out.

Prosecution re-submissions

Insp. O'Brien suggested it is not the role of this Tribunal to determine whether an assault took place that evening or who was at fault; that was PC Emmerson-Stringer's job at that time. It is the job of this Tribunal to determine if PC Emmerson-Stringer neglected in that investigation to conduct a thorough investigation of the assault and the other components as noted in the NOH.

PART III: ANALYSIS AND FINDINGS FOR DISPOSITION

Summary of Misconduct

On July 28, 2013 PC Emmerson-Stringer was dispatched to a call for service at the Oro campground in Oro-Medonte Township. The essence of the allegations can be captured in the following points:

1. PC Emmerson-Stringer failed to properly investigate allegations of assault by making inquiries and conducting interviews. This inadequate investigation led to the arrests of Z.H. and D.L..
2. PC Emmerson-Stringer failed to investigate and to treat T.I. in compliance with domestic violence policy; failed to investigate T.A.'s potential breach of probation and/or breach of court order resulting from a previous domestic incident; failed to initiate and complete the corresponding domestic violence reports.
3. PC Emmerson-Stringer failed make accurate notes in relation to the incident.

Analysis and Findings

As the trier of fact, I must consider all the evidence and determine if clear and convincing evidence exists that demonstrate PC Emmerson-Stringer acted without lawful excuse, neglected or omitted 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 Reg. 268/10, as amended.

The NOH in this matter is for a single count of neglect of duty but there are eight bullet points listed in the particulars of allegations. The first bullet simply suggests PC Emmerson-Stringer responded to a specific call for service but a finding of misconduct in any one of the remaining seven points, or in a combination of the allegations, would be sufficient for a finding of guilt, if determined on clear and convincing evidence that it constituted misconduct.

To properly conduct this assessment, I must delve into the investigation conducted by PC Emmerson-Stringer to determine whether the acts or omissions meet the definition of neglect of duty. In doing so, I do not find it necessary to reinvestigate the assault allegations to determine who was at fault nor must I ascertain if a domestic violence incident occurred; I simply must assess if the investigation

conducted was fitting given the circumstances and if not, does it then meet the definition of neglect of duty. However, during this assessment I must be mindful of *Turgeon* which states:

To determine whether a misconduct occurred in this case we must ask, based on the evidence: was the officer's conduct reasonable in light of the circumstances as they existed at the time of the alleged misconduct? One case referring to this principle is that of *Mousseau* and the Metropolitan Toronto Police Force 1981 OCCPS:

The reasonableness of an officer's conduct must be examined in light of the circumstances as they exist at a particular time. An officer is expected to use discretion and judgement in the course of his duties on many occasions. The police officer's discretion or judgement ought not to be examined scrupulously by the benefit of hindsight, but it is essential to examine the circumstances under which the officer exercised discretion or independent judgement to see what extent discretion was warranted.

In this case, PC Emmerson-Stringer was dispatched to an allegation of an assault and when dispatched, it was further suggested there may be domestic violence overtones. It is important to consider the obligations police are challenged with when investigating criminal allegations. In a negligence case, the Supreme Court of Canada considered the standard for a police officer in *Hill v. Hamilton-Wentworth Regional Police Services Board*. Two issues regarding standard of care were identified: What is the appropriate standard of care and was that standard met on the facts of this case? *Hill* further states:

I conclude the appropriate standard of care is the overarching standard of a reasonable police officer in similar circumstances. This standard should be applied in a manner that gives due recognition to the discretion inherent in police investigation[s]...The standard is not perfection, or even the optimum, judged from the vantage of hindsight. It is that of a reasonable officer, judged in the circumstances prevailing at the time the decision was made – circumstances that may include urgency and deficiencies of information....The law distinguishes between unreasonable mistakes breaching the standard of care and mere "errors in judgement" which any reasonable professional might have made and therefore, which do not breach the standard of care.

I must review the steps taken and not taken by PC Emmerson-Stringer during the course of her investigation and assess them from the perspective of a reasonable officer at that time. During this review, I will consider whether the errors or omissions of PC Emmerson-Stringer are merely errors in judgement or are unreasonable and therefore breach the standard of care expected.

1. PC Emmerson-Stringer failed to properly investigate allegations of assault by making inquiries and conducting interviews. This inadequate investigation led to the arrests of Z.H. and D.L..

PC Emmerson-Stringer attended the scene and met with the 9-1-1 complainant. She made observations of the injuries sustained by T.A. and listened to his version of the incident. She examined the gravel pile and concluded the marks supported T.A.'s explanation and his injuries. PC Emmerson-Stringer formed RPG to effect the arrest of D.L. and Z.H.. She made arrangements to receive a witness statement from T.A. at a future date.

R. v. Storrey states:

In summary then, the Criminal Code requires that an arresting officer must subjectively have reasonable and probable grounds on which to base the arrest. Those grounds must, in addition, be justifiable from an objective point of view. That is to say, a reasonable person placed in the position of the officer must be able to conclude that there were indeed reasonable and probable grounds for the arrest. On the other hand, the police need not demonstrate anything more than reasonable and probable grounds. Specifically they are not required to establish a *prima facie* case for conviction before making the arrest.

PC Emmerson-Stringer testified she formed RPG to arrest D.L. based on his admission that he was involved in a scuffle, the marks she observed in the gravel which were consistent with T.A.'s injuries and T.A.'s explanation of events.

An inadequate investigation of any type can generate substantial consequences but they can become amplified if it leads to an unjust arrest or prosecution. I have not concluded the arrests were unjust but a more thorough investigation would have likely given rise to a different result; a successful prosecution, different charges being laid or no charges at all. *Hill* states:

There is a significant likelihood that police officers may cause harm to suspects if they investigate negligently. The gravity of the potential harm is serious. Suspects may be arrested or imprisoned, their livelihoods affected and their reputations irreparably damaged....It must be supposed that professional standards require police to act professionally and carefully, not just to avoid gross negligence.

PC Emmerson-Stringer concluded there was RPG to arrest D.L. based in part on the marks she observed in the gravel pile. There was no way to reasonably determine the marks were made by one involved person over another without further investigation. She reached this conclusion based on T.A.'s injuries and his explanation before speaking to other involved persons or witnesses.

PC Emmerson-Stringer testified that she approached D.L. and asked him what happened prior to his arrest. According to her recollection he stated he was in a scuffle with T.A.. Although this was not an inculpatory statement, she stated the comment assisted her in forming RPG and she promptly arrested D.L.. Her notes read as follows:

...T.A. was the only one with noticeable injuries. He had noticeable pieces of gravel around the open cuts on his knees. No witnesses that would be independent. Formed the opinion that T.A. was assaulted by two males. Arrested D.L. for assault on T.A.. Rights were given and understood. Counsel was declined.

As I interpret the notes, she formed RPG and subsequently arrested D.L.. There is no indication in the notes that he was asked what happened or that his response assisted her forming RPG. I find it more than disconcerting that an observation as important as a *res gestae* statement that helped form RPG did not make its way into a notebook. I will not delve into the issue of whether or not the caution to a charged person should have been issued in advance of this query as it pertains to D.L..

D.L. testified that he suffered injuries which he showed to police upon their arrival. I drew no inference from the fact paramedic Sean Sharpe had little to no recollection of injuries when questioned many months later; this was hardly a memorable scene considering his profession. His statement does not identify which individuals he did or did not examine. T.A.'s statement to PSB included his observation of D.L.'s swollen eye and cuts on his head. D.L. testified to his injuries and produced photographs of a scraped and bloody knee and a swollen face. It is difficult to draw any conclusion concerning the facial injury due to the poor quality of that photograph. PC Emmerson-Stringer noted and testified she saw no such injuries. This could be true but I do not believe D.L. doctored the photograph of his injured knee nor do I believe he purposely caused that injury post investigation to bolster his position. However, much like T.A.'s broken hand, the marks in the gravel pile and D.L.'s admission he was involved in a scuffle, I find D.L.'s injuries to be forensically neutral. They are all consistent with a physical confrontation but are not indicative of who the aggressor was.

The concern though, is PC Emmerson-Stringer's decision to arrest D.L. based on the fact he was not injured, his utterance and the marks in the gravel being consistent with T.A.'s version of events. When questioned whether or not the gravel marks could have been left by someone other than T.A., PC Emmerson-Stringer testified "not in my mind". I do not see how this could be considered a conclusive observation. A more thorough investigation was warranted before forming RPG such as conducting a canvass of potential witnesses. It was evident that there was a significant number of people present possibly willing to speak with police. PC Emmerson-Stringer presumed there were no independent or sober witnesses available but came to this conclusion without taking any steps to actually make this determination by speaking with any of the individuals.

There is a notebook entry which reads: “no witnesses that would be independent; formed the opinion that T.A. was assaulted by the two males.” During her testimony, PC Emmerson-Stringer remained committed to this position but I have difficulty understanding how she came to the conclusion none of the potential witnesses could be independent or sober without actually conversing with them. The statement and ultimate testimony of Sean Dennis confirms at least one witness was available to provide insight into the investigation. It begs the question, how many other witnesses were available? Regardless, even if that number is zero, the point is the canvass should have occurred in an attempt to enhance or refute the RPG.

Charlton states:

Police are required to weigh evidence to some extent in the course of an investigation. But they are not required to evaluate evidence according to legal standards to make legal judgements ...Furthermore the withdrawal of charges at a later time, or the legal absence of a criminal conviction, does not lead to an automatic conclusion reasonable and probable grounds did not exist for an accused’s arrest.

PC Emmerson-Stringer was provided a copy of the Sean Dennis statement before clearing the scene. This statement should have caused her to question whether or not her investigation was complete.

Charlton v. St. Thomas Police Services Board states:

In establishing reasonable and probable grounds, investigating officers must take into account all information available to them and are only allowed to disregard information which they have good reason to believe is unreliable. Further, reasonable and probable grounds can still exist, even where the information relied upon changes at a future date or otherwise turns out to be inaccurate. The requirement is that the information be reliable at the time the decision was made to arrest the accused.

PC Emmerson-Stringer failed to follow-up with Sean Dennis after learning of his potential status as a crown or defence witness. This witness had the ability to add clarity to the investigation and rather than pursue this opportunity, PC Emmerson-Stringer simply added it to the crown brief and disregarded the content of the statement. There was no reason provided as to why PC Emmerson-Stringer chose not to follow-up and contact Mr. Dennis other than her assertion that she was “comfortable with the charges” and the statement did not merit follow-up. I reiterate that this investigation resulted in criminal charges against two individuals which increases police accountability to those involved persons and the public. The sentence in Mr. Dennis’ statement *which reads: D.L. seemed to have this man in a control of some sort asking the man over and over again to stop and to calm down so he could let go without any violence,* suggests the possibility T.A.

could have been the aggressor. The onus is on the police to conduct a complete and thorough investigation which in this case meant PC Emmerson-Stringer was obliged to contact Mr. Dennis.

PC Emmerson-Stringer, armed with the knowledge there was at least one independent witness failed to return to the scene to canvass for other potential witnesses. As previously stated, this investigation resulted in the arrest and subsequent criminal charges against two individuals. There is an onus upon the police to conduct a complete and thorough investigation especially when effecting arrests and laying criminal charges. *Charlton* states:

At the outset of an investigation, the police may have little more than hearsay, suspicion and a hunch. What is required is that they act as a reasonable investigating officer would in those circumstances. Later, in laying charges, the standard is informed by the legal requirement of reasonable and probable grounds to believe the suspect is guilty; since the law requires such grounds, a police officer acting reasonably in the circumstances would insist on them.

There was ample opportunity to complete a more thorough investigation; the Niche report was not submitted until August 17, 2013 with initial court dates of August 26, 2013. I did not hear that the accused persons were released with conditions not to communicate with the complainant which meant there was no concern by PC Emmerson-Stringer of repetition of the offence and therefore, criminal charges could have been delayed pending the completion of a more thorough investigation.

PC Emmerson-Stringer did not question why there was a confrontation between the three individuals, D.L., Z.H. and T.A.. Common sense suggests the motive for committing any criminal offence is a significant factor. PC Emmerson-Stringer testified she did not give any thought to the reason for the fight. It defies logic for an investigator not to consider at any time what the impetus was for an assault. It ought to be a factor given consideration when forming RPG. On its own, this oversight could be considered an error in judgement or a training issue.

The evidence of Sgt. Patterson can be equated to that of a reasonable officer. He stated his expectation of any officer would be to conduct a full and complete investigation. Upon reading Sean Dennis' written statement, Sgt. Patterson testified he would expect an officer to follow up and determine what the witness had to offer in greater detail. I recognize the standard is not perfection but I find PC Emmerson-Stringer formed RPG prematurely. A more thorough investigation was warranted before arresting the individuals; in an investigation of this nature, it is incumbent upon an investigator to capture all available information prior to arresting these individuals. I find this omission breaches the standard of care which any individual should reasonably expect when being investigated by police for a criminal offence. Not conducting a more thorough investigation breaches the standard of care expected considering the totality of all circumstances.

2. PC Emmerson-Stringer failed to investigate and to treat T.I. in compliance with domestic violence policy; failed to investigate T.A.'s potential breach of probation and/or breach of court order resulting from a previous domestic incident; failed to initiate and complete the corresponding domestic violence reports.

T.A. called 9-1-1 to report an assault. While speaking with the call-taker, T.A. disclosed freely without being prompted, he was recently released from jail regarding a domestic violence incident involving T.I.. The dispatcher advised the responding officers: "...possibly result of a domestic. Apparently, the complainant went to that location to pick up his girlfriend because she left their 8-month old babies at home."

During his interview with PSB, T.A. stated that he also shared this information with PC Emmerson-Stringer when they met which would be consistent with his earlier disclosure to the call-taker.

PC Emmerson-Stringer requested CPIC queries of several individuals including the complainant, T.A.. The reply of 10-69 came nine seconds following her request which was acknowledged by PC Emmerson-Stringer. In the policing profession, the use of 10-69 by a fellow officer or dispatcher is considered a red flag or indicator that critical information is forthcoming. If PC Emmerson-Stringer was distracted or too busy to comprehend the transmission at the time, she should have indicated so. The reply from the dispatcher came immediately following her request. PC Emmerson-Stringer testified T.A. was cooperative at all times but also stated she did not hear the transmission as her attention was consumed by attending to T.A.. He had minor injuries at best. I find it unlikely that PC Emmerson-Stringer did not hear and fully comprehend the transmission. At the conclusion of the dispatcher's transmission, PC Emmerson-Stringer acknowledged the transmission by replying "10-4". If however, she did not completely understand the CPIC transmission she herself requested, it was incumbent upon her to seek clarification before moving on and running similar queries on other involved persons.

In the absence of any other information, T.A.'s admission to her about his recent release from custody for a domestic related incident in conjunction with the CPIC information provided to PC Emmerson-Stringer is more than sufficient to cause further inquiry. I do not need to nor did I, rely upon the testimony or expert opinion of Sgt. Tarnowski to conclude PC Emmerson-Stringer was obligated to investigate and determine whether or not this was also a domestic violence incident. Domestic violence policy is 'critical policy' which all members of the OPP must be familiar with and requires a greater commitment to diligent investigations. A domestic violence occurrence includes incidents of violence, or a threat of violence that may include the use of physical force (actual or threatened) emotional abuse, harassing behaviour, verbal disputes including disputes regarding child custody. I do not find it relevant whether the CPIC information would have proved that a domestic incident had occurred or not but it is significant that no steps were taken to make that determination.

I will not entertain the notion of completing domestic violence reports as I view this as a moot point. The issue is not one of a determination of domestic violence threshold but whether the investigation was appropriate given the circumstances. In this case I find by not conducting a more thorough investigation, PC Emmerson-Stringer breached the standard of care expected considering the totality of all circumstances.

3. PC Emmerson-Stringer failed make accurate notes in relation to the incident.

There are several examples which illustrate the notes of PC Emmerson-Stringer are inadequate and fall well short of what is expected of an officer investigating a criminal occurrence while ultimately arresting two individuals.

PC Emmerson-Stringer made a notation about T.A.'s injuries however; her observation of the gravel marks was not included as a notebook entry. PC Emmerson-Stringer considered this observation crucial as it helped her form her RPG to arrest D.L.. Similarly, PC Emmerson-Stringer testified D.L.'s utterance he was involved in a scuffle with T.A. contributed to her RPG yet there is not a notebook entry documenting this utterance.

Police officers must expect to be questioned in court about their grounds to effect an arrest of an individual. I do not question her assertion under oath that she is able to rely on her independent recollection of this observation but to not document critical observations is unacceptable.

The notebook entry pertaining to the arrest of Z.H. reads as follows:

Spoke to the other male who was pointed out by T.A. that was wearing the red and gry (sic) sweatshirt as Z.H....Arrested Z.H. and read him his rights to counsel. Assault. Z.H. did not try to defend himself when I informed him he was under arrest for assault.

The testimony of PC Emmerson-Stringer was that prior to arresting Z.H., she asked him what happened and he stated; "I held the guy down while D.L. punched him." This inculpatory statement was not captured in her notes. I find it inconceivable that an officer would expect the courts to rely upon an independent recollection of an admission to an allegation without the support of a notebook entry. If one was to take the time to document in a notebook, "Z.H. did not try to defend himself when I informed him he was under arrest for assault" would it not make more sense to write down the actual admission of "I held the guy down while D.L. punched him?" This raises concern that PC Emmerson-Stringer could have been confused when she completed her report several weeks later and attributed this utterance to Z.H. when it could have been attributed to T.A.. She has a notebook entry which reads: "T.A. said as he was taken to the ground by D.L., the above described male held him down while D.L. started punching him." Enhanced detailed notes of all relevant conversations would have alleviated this concern.

Again, I do not see it as being fruitful to examine the details of whether or not the *res gestae* statements should have been cautioned; to do so exceeds the standard as outlined in *Turgeon* and *Mousseau*.

I am further troubled by the fact there is no notebook entry suggesting anyone was queried on CPIC, a requisite task prior to the release of an arrested person at the very least.

I recognize it is impossible to capture every significant observation in a notebook but there are approximately 4 ½ pages of notes in total. The notes should capture greater detail surrounding the comments made by the charged persons and the RPG formed which led to the arrest of two individuals.

I find these issues to be more than simply errors in judgement but unreasonable and breach the standard of care to be expected by the OPP or individuals being investigated for a criminal offence.

In the case of *Ontario Provincial Police v. Turgeon*, the Hearing Officer took a closer examination of 'neglect of duty':

As noted in the *Brown and Ontario Provincial Police* (2006) OCCPS decision "There must be either 'wilfulness' or a 'degree of neglect' which would make the matter cross the line from a mere performance consideration to a matter of misconduct." Therefore simply failing to comply is not sufficient; there must be some evidence of deliberateness or recklessness.

I find PC Emmerson-Stringer did not promptly nor diligently perform her duty; her degree of neglect exceeded mere errors in judgement; her conduct was careless and neglectful, breaching the standard of care expected of a police officer.

PART IV: DECISION

I find on clear and convincing evidence PC Emmerson-Stringer is guilty of neglect of duty.



Greg Walton
Superintendent
OPP Adjudicator

Date electronically delivered: January 12, 2016