

NOTE:

The name of a third party has been redacted in this decision. The third party was present with the complainant during the incident that led to the disciplinary hearing. The third party was arrested during the incident but it is unknown whether he was released without charges. He was not a witness during the investigation of this incident and he was not a witness at the disciplinary hearing. Therefore, in accordance with the provisions of the *Freedom of Information and Protection of Privacy Act*, his name has been redacted.

Windsor Police Service Discipline Hearing

In the Matter of

Ontario Regulation 268/10

Made Under the Police Services Act, R.S.O. 1990 c. P. 15

And Amendments Thereto

AND

In the Matter of the

Windsor Police Service

And

Constable Antonio 'Tony' Fanara # 2242

Charge: Unlawful or Unnecessary Exercise of Authority

Before: Superintendent John St.Louis  
Windsor Police Service

Appearances:

Prosecutor: Ms. Suzanne Porter  
Windsor Police Service

Defence: Mr. Edward Parent  
Windsor Police Association

Public Complainant: Ms. Samantha Lauzon

Hearing Dates: April 23, 24 and 25, 2014

## **Reasons For Decision**

Constable Antonio 'Tony' FANARA has been charged with one count of unlawful or unnecessary exercise of authority, in that on March 23, 2013 he used unnecessary force against Samantha Lauzon while in the execution of his duty, contrary to section 2(1)(g)(ii) of the Code of Conduct contained in Ontario Regulation 268/10 section 80(1)(a) of the Police Services Act R.S.O. 1990, c. P. 15

Constable FANARA was also charged with one count of insubordination, in that on March 23, 2013 without lawful excuse he disobeyed, omitted or neglected to carry out a lawful order, constituting an offence against discipline, Insubordination, in that he failed to follow Directive 761-01 Note Taking Responsibilities, contrary to section 2(1)(b)(ii) of the Code of Conduct, Ontario Regulation 268/10 section 80(1) of the Police Services Act R.S.O. 1990 c.P.15

On April 23, 2014, at the request of the prosecution the charge of Insubordination was withdrawn.

## **Plea**

Constable FANARA pleaded not guilty to the remaining allegation of misconduct.

## **Exhibits**

Exhibits tendered during the Hearing included the following:

- Exhibit #1 - Order to Conduct a Hearing - Supt. St.Louis
- Exhibit #2 - Prosecutor's Designation - Inspector D. Cassidy
- Exhibit #3 - Notice of Hearing
- Exhibit #4 - Prosecutor's Designation - Ms. Suzanne Porter
- Exhibit #5 - Ms. Lauzon's complaint to OIPRD
- Exhibit #6 - Sketch of location of the incident
- Exhibit #7 - Photographs of Ms. Lauzon (marked A through H)
- Exhibit #8 - DVD - OIPRD Interview of Constable FANARA
- Exhibit #9 - Transcript of Interview with Constable FANARA
- Exhibit #10 - General Occurrence Report # 2013-20158
- Exhibit #11 - Constable M. Dehoop's Duty Report
- Exhibit # 12 - Constable N. Perioris Duty Report
- Exhibit # 13 - Windsor Police Directive #711-00 dated 2012-07-20
- Exhibit # 14 - Training Record for FANARA
- Exhibit # 15a - Video File Report # 330 Re Case # 2013-20158
- Exhibit # 15b - DVD of video in relation to Exhibit #15a
- Exhibit # 16 - Cumunits Vitae of Constable K. Price
- Exhibit # 17 - Ontario Police College - Principles of Physical Control
- Exhibit # 18 - Prosecutor's Book of Authorities
- Exhibit # 19 - Defence's Book of Authorities

## Acknowledgement

In this matter, Ms. Suzanne Porter served as prosecutor for the Windsor Police Service (WPS) and Mr. Ed Parent served as counsel for Constable FANARA. Ms. Samantha Lauzon, the public complainant, represented herself. Before commencing, I would like to thank each for the manner in which they presented their cases. I heard from seven (7) witnesses and received numerous exhibits all of which have collectively assisted me in reaching my decision.

## Prosecution's Case

Ms. Porter called Samantha Lauzon as her first witness.

Ms. Lauzon is Personal Support Worker and a stay at home single mother of a ten (10) year old daughter. She has no criminal record and requires a police clearance for her profession.

Ms. Lauzon's complaint to the Office of the Independent Police Review Directorate (OIPRD) was entered as Exhibit #5. Ms. Lauzon prepared her statement in the complaint by herself and it is dated May 13, 2013.

On March 23, 2013 Ms. Lauzon attended the Anglo Club, 1286 Lauzon Road, Windsor, ON with her girlfriend, and ex-boyfriend, S█████ T█████, for a charity event for 'The Distress Centre'. Ms. Lauzon had one alcoholic beverage prior to attending the Anglo Club and two more while at the Anglo Club. She testified she was not intoxicated.

At or about 9:30 pm Ms. Lauzon and Mr. T█████ were in the parking lot of the Anglo Club smoking a cigarette when a group of males from an establishment known as Average Joe's located across the street from the Anglo Club approached them and began saying rude comments to Ms. Lauzon. After which time there was an exchange between one or more of these males and Ms. T█████.

It was shortly after this exchange when a Windsor Police car arrived in front of the Anglo Club. A diagram prepared by Ms. Lauzon for OIPRD investigators was tendered as Exhibit # 6. In this sketch Ms. Lauzon positioned herself at an utility pole near the sidewalk north of the Club. The police parked their cruiser on the right side lane (of southbound Lauzon Road) in front of where Ms. Lauzon was located.

The police officers exited their car and stated there was a call about a Vietnamese male with a knife. Ms. Lauzon told the officers there was no knife they were just having a cigarette at which time she was told to be quiet.

The officers took a hold of Mr. T█████, searched him and handcuffed him. He was placed against the hood of the police car. Ms. Lauzon stated she reacted by yelling there was no knife

at the officers and demanded to know why Mr. T [REDACTED] was under arrest as it made no sense to her.

Ms. Lauzon stayed in the same place during Mr. T [REDACTED]'s arrest (which she marked as a "x" on the sketch in Exhibit #6) with the police car right next to her. She never moved to the front of the police car.

Ms. Lauzon described one of the officers she later learned was Constable FANARA as irritated and who repeatedly told her to "shut up". Ms. Lauzon indicated there was no need for the officer to talk to her that manner and described Constable FANARA was "wanting to be a tough guy." Ms. Lauzon would be quiet for a while but would start talking again.

Constable FANARA then approached Ms. Lauzon from the police car. It only took about two seconds. Constable FANARA came directly at her, she does not recall Constable FANARA striking her with a punch, but she spun around and her head flew backwards. In her words, she was thrown down to the cement, her head was bashed in, and she was covered in blood and told she was under arrest.

Ms. Lauzon sustained a scar to her right knee (this was later clarified to be the left knee), her lip was split with blood everywhere, her wrist was bruised from the handcuffs, and her right hip was bruised from being slammed to the cement by Constable FANARA.

At no time did Ms. Lauzon slap Constable FANARA. At no time was she ever physically aggressive. Ms. Lauzon added she could not have slapped Constable FANARA as she had a cigarette in her hand at the time and he was never in close enough range to slap.

A series of eight (8) photographs were entered as Exhibit # 7. These photographs were taken the morning of March 24th, 2013 shortly after her release from police custody. Ms. Lauzon indicated they are an accurate depiction of her injuries and the clothes she was wearing in the photos were the same as the time of her arrest.

After Ms. Lauzon was handcuffed she was left alone as Constable FANARA had returned to the police car with the other officer and Mr. T [REDACTED]. It was at that time she was able to get up off the ground on her own. She had to "wiggle" her dress down in order to stand up. There were now four (4) police officers at the scene. None of these officers asked her any questions regarding the occurrence.

A female officer later attended the scene at which time Ms. Lauzon was searched in a pat down manner. Ms. Lauzon was hysterical at the time but described the female officer as 'nice and respectful'. She was then escorted to the police wagon.

To the best of her knowledge no knife was ever located.

Ms. Lauzon was charged with assault police on Constable FANARA but she accepted diversion to obstruct police which included a \$150 contribution to charity and the assault charge was withdrawn. As part of the original agreement Ms. Lauzon was requested to write a letter of apology to FANARA but she refused because she had never assaulted the officer - this request was dropped.

Ms. Lauzon filed a complaint as she felt the actions of Constable FANARA were unfair. Her intent in filing the complaint was so this does not happen to anyone else.

In Cross Examination Ms. Lauzon testified she did not know the exact number of males from Average Joe's but that Mr. T [REDACTED] did not cross Lauzon Road and there was no knife.

Ms. Lauzon confirmed she had three alcoholic beverages between 6:00 pm and 9:30 pm the evening of March 23rd, 2013 but that she was not intoxicated.

When police officers arrived at the Anglo Club Ms. Lauzon could not be certain if the officers called Mr. T [REDACTED] to the police car or if they went to Mr. T [REDACTED].

Ms. Lauzon testified that officers had told her and Mr. T [REDACTED] they had received a call that a Vietnamese male had a knife. She described Mr. T [REDACTED] as polite and respectful for just being arrested. It was only after Mr. T [REDACTED] saw what Constable FANARA had done to Ms. Lauzon did Mr. T [REDACTED] become vocal at which time officers slammed Mr. T [REDACTED] down on the hood of the police car.

Ms. Lauzon agreed she was told to be quiet several times but she did not approach the officers. At no time did Constable FANARA ask her to leave, only to shut up. She clarified she did wave her cigarette at Constable FANARA but repeated at no time did she leave the sidewalk. Ms. Lauzon agreed she was grabbed by the same arm she was holding the cigarette.

Ms. Lauzon clarified after looking at the photos that it was her left knee and not her right knee which was injured.

Ms. Lauzon was grabbed by the arm near the shoulder and thrown down to the ground. There was blood in her face and in her mouth which she had to spit out. She did not see the punch occur as it happened too fast but that was the cause of her injury to her lip. Ms. Lauzon has medication prescribed to her but she did not take any the evening of March 23, 2013 because she planned to consume alcohol.

Ms. Lauzon took the diversion offered to her because she was not quiet on that evening, but she described her behaviour as compliant. She provided her identification and in her opinion was not rude.

If she was going to throw a punch it would be with her right hand but that was the hand in which she had a cigarette.

In re-direct Ms. Lauzon clarified there were only three (3) drink in total consumed that evening. One at home prior to attending the event and two while at the Anglo Club.

The bruising on her wrist occurred from the handcuffs and the intent for filing the complaint was to ensure this type of behaviour does not happen again.

Ms. Porter called her next witness, Mr. Thomas Andrews

Mr. Andrews is an investigator with OIPRD. Prior to this position he was a police officer with the Hamilton Police Service holding the rank of detective sergeant prior to his retirement after 35 years of service. Mr. Andrews held a variety of positions as a police officer including the officer in charge of the detective bureau. During his career he attended a variety of course at the Ontario and Canadian Police College.

Mr. Andrews' duties as an investigator with OIPRD including notifying the respondent officer of the public complaint, gathering all relevant information for the purpose of allowing the Director to make an assessment on whether a complaint should be substantiated or not.

On May 13, 2013 the public complaint filed by Ms. Lauzon was assigned to Mr. Andrews for investigation. Mr. Andrews identified Exhibit # 5 as the initial complaint he used to begin his investigation. Mr. Andrews stated it was his view he had to determine whether the arrest of Ms. Lauzon was lawful and whether or not the force used to make that arrest was excessive.

On July 2, 2013 Mr. Andrews, in company of OIPRD investigator William Ford, attended the City of Windsor for the purpose of continuing the investigation. He was unable to locate any video which may have captured the interaction between Constable FANARA and Ms. Lauzon.

Mr. Andrews viewed Exhibit # 6, the sketch of the scene on Lauzon Road, and confirmed it is a true copy of the sketch scene as drawn by Ms. Lauzon.

On July 3, 2013 Mr. Andrews and Mr. Ford interviewed Constable FANARA regarding the circumstances of the public complaint. The interview was audio-taped and played for the tribunal. A copy of the interview was entered as Exhibit # 8.

On January 30, 2014 Mr. Andrews reviewed a transcript of the interview conducted with Constable FANARA. Although there were a few typographical errors the substance of the transcript is an accurate reflection of the interview. The transcript was entered as Exhibit #9

The Director, Mr. McNeilly, made the decision the arrest was lawful but the force used was excessive and substantiated that portion of the complaint.

During cross examination Mr. Andrews reiterated it is the decision of the Director on whether or not a complaint will be substantiated. Mr. Andrews' role is to investigate the complaint,

make suggestions, provide all relevant material including reference material for the Director to make an informed decision. However, the final decision is that of the Director.

Mr. Andrews clarified he does not make determinations of credibility, instead he gathers evidence, looks for corroboration where available, and will point out discrepancies should they be identified.

Mr. Andrews is familiar with the Use of Force model. He was last trained in the use of force as a police officer in January 2012. Mr. Andrews was shown an illustration of the Ontario Use of Force model. Mr. Andrews was not qualified as an expert during his testimony and when questioned about his understanding of the model he referred to the material written on the model, specifically; "The officer continuously assesses the situation and acts in a reasonable manner to ensure officer and public safety."

Mr. Andrews agreed with Mr. Parent's suggestion that knives can be dangerous. He considered a variety of factors when preparing his investigative report including the size of the officer, circumstances of the occurrence, and the reported presence of a knife.

Mr. Andrews agreed there were some inconsistencies with Ms. Lauzon's statement but added there were also some inconsistencies with FANARA's report.

Mr. Andrews did not personally observe any injuries to Ms. Lauzon, rather that information was gathered from her statement and the photographs provided by Ms. Lauzon.

Mr. Andrews is familiar with s. 25 of the Criminal Code but his investigation was a code of conduct investigation under the authority of the Police Services Act and not a criminal investigation.

Ms. Lauzon elected to ask Mr. Andrews if she was ever accused of having the knife in her possession to which he responded, no.

Ms. Porter called her next witness, Constable Joseph Antoun

Constable Antoun has been a police officer with the Windsor Police Service for eight (8) years. On the evening of March 23rd, 2013 he was assigned as a patrol officer and his duties include responding to calls for service and proactive enforcement. On that evening he was partnered with Constable FANARA when they received a call of a fight with weapons. They were dispatched to attend Average Joe's on Lauzon Road.

At the request of Sergeant Ray Turner, Constables Antoun and FANARA attended the Mac's Milk Convenience Store, 1091 Lauzon Road. Sgt. Turner had located the teens being chased by a male. There were at least three to four teens, one of whom was identified as the victim. Constable Antoun spoke with the youth and learned a male party, whom he later identified and was satisfied was S█████ T█████, had attempted to punch the youth but there was no mention



of a knife. This altercation had occurred in the parking lot between ABC Nursery and the Anglo Club. Constable FANARA was operating the police vehicle. Constable Antoun was the passenger.

The youths were returned to Average Joe's by Sgt Turner with Constables Antoun and FANARA following in their car. Constables Antoun and FANARA were advised by Sgt Turner via radio that there was a female and male in the parking lot of the Anglo Club and the male was the person responsible for the assault.

Constable Antoun indicated that since he and Constable FANARA had been following Sgt. Turner and it was only seconds between learning this information until they approached the Anglo Club in the police car. The police car was parked north of the club along the curb. Constable Antoun stated they were a " safe distance - good amount of space" north of the male and female party.

Constable Antoun exited the front passenger door. Neither he nor Constable FANARA approached, rather they ordered the male, later confirmed to be S [REDACTED] T [REDACTED], to the ground and the show his hands. Although Mr. T [REDACTED] did not comply they were able to coax him over to the police car. At that time Constable Antoun took control of Mr. T [REDACTED], placed him in handcuffs and advised him he was under arrest for assault. Incidental to the arrest Constable Antoun began to search Mr. T [REDACTED] but described Mr. T [REDACTED] and "frigidity, squirming" and yelling he did nothing wrong that he was just out for a smoke.

When asked what Constable FANARA was doing at this time Constable Antoun responded that Constable FANARA had approached the female, later confirmed to be Samantha Lauzon, but had returned of the police car as he could see Constable Antoun was having difficulty with Mr. T [REDACTED]. As far as Constable Antoun was aware Ms. Lauzon remained on the sidewalk where he had originally observed her, south of the police car, but now she was also yelling they were not doing anything wrong, just out for a cigarette. Constable Antoun agreed his concentration was on Mr. T [REDACTED] and he only noticed Ms. Lauzon peripherally.

Constable Antoun had very little contact with Ms. Lauzon and believed it was Constable FANARA who had obtained her identification.

Constable FANARA was on the left hand side of Constable Antoun when dealing with Mr. T [REDACTED] at the police car. Constable FANARA had left Constable Antoun and Mr. T [REDACTED] at the police car to deal with Ms. Lauzon when she began to encroach. When asked what this meant Constable Antoun clarified Ms. Lauzon was initially on the sidewalk but she had stepped out on the road in front of the cruiser. Constable Antoun felt with was creating an unsafe situation for all involved. This was a call involving a reported weapon. Ms. Lauzon was warned to get off the road and back on to the sidewalk. She refused to listen. The commands to Ms. Lauzon primarily came from Constable FANARA. Ms. Lauzon was also warned by Constable FANARA she would be arrested for interfering.

Ms. Lauzon was arrested by Constable FANARA. Antoun observed Constable FANARA take her by the arm back towards the sidewalk south of the police car. Ms. Lauzon continued to yell, be uncooperative, and belligerent. Constable Antoun did not notice any change in Ms. Lauzon's behaviour after her arrest.

Constable Antoun learned afterwards Ms. Lauzon had slapped Constable FANARA in the face and that was the basis for the assault police charge against Ms. Lauzon. Constable Antoun did not see that exchange between Constable FANARA and Ms. Lauzon. He saw Constable FANARA handcuff her while she was down on the sidewalk. Antoun had remained at the police car with T [REDACTED] during this time and did not recall if Ms. Lauzon had stayed on the sidewalk after being handcuffed.

Ms. Lauzon was searched by a female officer Constable M. Dehoop. She was then transported to headquarters by Constable Perioris.

The knife was never located

When asked about injury sustained by Ms. Lauzon Constable Antoun responded he did not have any injuries noted nor did he recall observing any. Constable Antoun believed Ms. Lauzon was clearly under the influence of the effects of alcohol. He believed she was intoxicated as her behaviour was not normal although he did not smell any alcohol emanating from Ms. Lauzon.

The general occurrence report concerning this incident, WPS Case # 2013-20158 was entered as Exhibit # 10.

In cross examination Constable Antoun advised the call he and Constable FANARA were dispatched to attend was a fight with weapons call. The weapon was described as a knife with a black handle and 6" blade. Constable Antoun was satisfied he was looking for a suspect that was described as a Vietnamese male.

Constable Antoun is not complacent with calls involving knives and when asked if they pulled their police car in front of Ms. Lauzon and Mr. T [REDACTED] at the Anglo Club Antoun responded, "absolutely not." Constable Antoun's training had taught him to keep threats, like knives, away from him. Constable Antoun believed he would have noticed had Ms. Lauzon been covered in blood after her arrest nor did he recall her complain of any injuries.

The arrest of Mr. T [REDACTED] occurred at the front right fender of their police car. He remained there with Mr. T [REDACTED] until the prisoner transport vehicle arrived.

When asked if he observed Constable FANARA handcuff Ms. Lauzon Constable Antoun stated it occurred on the ground and it was his experience for officers to use their body weight to maintain control of a subject while on the ground. Constable Antoun typically uses his knee too maintain control

Ms. Lauzon then asked Constable Antoun questions regarding the location of the arrest. Constable Antoun stated Mr. T [REDACTED] was arrested at the front right fender of the police car and Ms. Lauzon was in front of the car.

Ms. Porter's next witness was Constable Melissa Dehoop. She is a constable with 21 years experience. On March 23, 2013 at 9:20 pm she was dispatched to attend the Canadian Anglo Club for the purpose of searching a female prisoner. On arrival she observed a handcuffed female in custody, Constable FANARA and a sergeant.

The female was quite agitated and Constable Dehoop tried to calm her down. While conducting the search she was aware a knife involved in the occurrence was outstanding. She was able to calm Ms. Lauzon down and conducted the search without incident, The search did not reveal the knife nor any other evidence on Ms. Lauzon.

Constable Dehoop prepared a report in relation to this incident on July 29, 2013. The report was generated as a result of the public complaint initiated by Ms. Lauzon. This report was tendered as Exhibit #11.

She was able to calm Ms. Lauzon down by talking to her. Constable Dehoop was aware this was a call involving a knife because it was transmitted over the police radio and described it as a significant call. Constable Dehoop noted dried blood on Ms. Lauzon's lips but nothing other than that at the time. Ms. Lauzon did not disclose any other injuries. Ms. Lauzon referred to FANARA as "a corrupt motherfucking cop".

Under cross examination Constable Dehoop indicated Ms. Lauzon was not covered in blood and that she could smell the odour of alcohol from Ms. Lauzon.

Constable Dehoop obtained statements from witnesses after searching Ms. Lauzon. In the statements she learned an Asian male and Ms. Lauzon had attended Average Joes and approached a couple of males and that T [REDACTED] had a knife. Constable Dehoop admitted she did not see the male arrested with Ms. Lauzon.

Under re-examination Ms. Porter asked Constable Dehoop whether or not she could state that Ms. Lauzon and an Asian male were at Average Joes. Constable Dehoop stated if it was not in the statement then she may have heard that over the police radio but in either case she had no direct information about this point. Nor was she ever aware if a photographic line-up was presented to witnesses.

Ms. Lauzon questioned Constable Dehoop about whether she noted the rip in Ms. Lauzon's clothing to which Constable Dehoop responded, "no, sorry."

Ms. Porter's next witness was Constable Nick Perioris.

He has been a police constable with the Windsor Police Service since October 2010. He was assigned as the prisoner transportation officer on March 23, 2013. He was responsible for picking up arrested parties and bringing them to the detention unit. He was dispatched at 10:17 pm to 1286 Lauzon Road for two parties under arrest. S██████T██████ was arrested for assault and breach and Samantha Lauzon for assault police officer.

At the scene other officers placed the arrested parties in the van. His only visual contact with them occurred when they arrived at headquarters. There he did not note any injuries nor does he recall of any injuries to Ms. Lauzon. He could not recall if Ms. Lauzon was booked immediately or first placed in holding cell. He described Ms. Lauzon as cooperative at headquarters.

Constable Perioris prepared a report, dated July 12, 2013, concerning his involvement with Ms. Lauzon on March 23, 2013. It was tendered as Exhibit # 12.

In cross examination Constable Perioris stated he did not note Ms. Lauzon to be under the influence any substance. He did agree he was asked "to speed it up" meaning asked to attend the scene of the arrest quicker than normal. This typically means to him there is an issue at the scene or to remove an arrested person as quickly as possible.

Constable Perioris agreed had Ms. Lauzon been covered in blood he was have noted it and he had no notes to that regard.

Ms. Lauzon asked Constable Perioris if he was the officer on tape who said she has an injury on her knee. Constable Perioris responded, "No, sorry."

### **Defence's Case**

Constable Ken Price was called as the first witness.

Constable Price has been with the Windsor Police Service for almost sixteen years. He is presently assigned to the Training Branch and is responsible for Use of Force and Firearms instruction. Constable Price is qualified to teach use of force techniques and is familiar with Windsor Police directive and has received training through the Ontario Police College in this area

Constable Price is familiar with the Use of Force model as used by police organizations across the province. In the case of an assaultive/active resistant person different options are available to an officer. Officer presence in and of itself is a form of use of force. Intermediate weapons are available to the officer as an option to consider when dealing with a subject exhibiting this type of behaviour.

Situations can escalate, and conversely de-escalate quickly and there are no "hard and fact" rules relative to which use of force choice an officer may use among the available options. The officer's perception of the situation is based on their experience and capabilities. The use of

force model does not justify the use of force rather it is a tool to help select the appropriate use of force in a given situation.

Punches are taught in Use of Force training including palm strikes. These are considered hard impact strikes. Open palm strikes are recommended as it lessens the potential for injury to both the officer and the subject.

The Windsor Police Service conducts situational training for officers for the purpose of evaluating officers' judgement in the selection of use of force for a given scenario.

During cross examination Constable Price reviewed the Principles of Physical Control (Exhibit #17) and stated the ultimate goal is to stop the behaviour and gain control of the subject. He agreed that if a arrested person is compliant any further use of force would be considered excessive.

The purpose of Use of Force training is to follow the guidelines of the legislation, for officers to maintain public safety, officer safety and to gain control of the situation.

Constable Price indicated disengagement is taught as an option available to officers. Disengagement includes a different line of communication or new positions - the options are limitless.

Under re-examination Constable Price clarified disengagement does not necessarily mean to "just cut and run."

The next witness for Defence was Constable FANARA

Constable FANARA is a senior constable and has been with the Windsor Police Service since December 7, 1998. He is presently assigned to the Patrol Division and on March 23, 2013 he was partnered with Constable Joe Antoun.

On that evening he was dispatched to Average Joe's, 1286 Lauzon Road for a call regarding a fight with weapons. This type of call is categorized as a priority one call. En route he received further information over the police radio that the suspect involved was at 1183 Lauzon Road. Constable FANARA was the driver of the police car that evening.

Constables FANARA and Antoun attended 1183 Lauzon Road. As he approached he observed a male party on the west sidewalk matching the description of the suspect (later identified to be S█████ T█████). Also present was a female (later identified through a Health Card as Samantha Lauzon). Constable FANARA parked the police car along the west curb, facing south in front of 1183 Lauzon. Constable FANARA parked a safe distance from Mr. T█████. Constables FANARA and Antoun exited the vehicle and gave instruction to Mr. T█████ to approach the police car. Prior to that Mr. T█████ was told why the police were there and of their investigation.

At first Mr. T [REDACTED] was reluctant but then approached the police car. The original distance between Mr. T [REDACTED] and the front of the police car was about ten yards - this distance was for officer safety purposes.

After Mr. T [REDACTED] approached the vehicle Ms. Lauzon shouted words to the effect, this is fucking bullshit we are only having a cigarette. Constable Antoun secured Mr T [REDACTED] in handcuffs and once satisfied he was no longer a threat Constable FANARA approached Ms. Lauzon who was about ten yards away standing near a utility pole.

Constable FANARA approached Ms. Lauzon and obtained her identification, but while with her he noted Constable Antoun was having difficulty with Mr. T [REDACTED]. Constable FANARA told Ms. Lauzon to stay where she was and he returned to assist his partner. Mr. T [REDACTED] was positioned along the passenger side front quarter panel of the car. The car was maybe one to two feet from the curb. Mr. T [REDACTED] was standing on the roadway between the curb and the police car. Constable FANARA was on the left side of Mr. T [REDACTED] and took control of that side of his body while conducting the search of his person.

Ms. Lauzon continued to "badger" the officers. She was repeatedly told to keep quiet but she failed to listen to Constable FANARA's commands. Ms. Lauzon then began to approach the officers. She came onto the roadway in front of the police car. She said she was just having a cigarette and held it out. She was told by Constable FANARA to go back but she failed to comply with those instructions. Constable FANARA had concerns for his and Constable Antoun's safety because of the reported 6" black handle knife reported to have been involved in the call. Constable FANARA did not know what Ms. Lauzon was capable of doing.

Constable FANARA warned Ms. Lauzon she would be arrested if she did not leave. Constable FANARA then grabbed her left bicep with his right hand to escort her off the road and to effect the arrest of her in a safe area. Ms. Lauzon swung her right hand and slapped the left side of his face. Constable FANARA did not have complete control of Ms. Lauzon. He did not expect or know why he was hit. Constable FANARA chose to punch her one time - to the left side of her face with a closed fist. It was effective resulting in Ms. Lauzon falling to the pavement. He turned her over and handcuffed her. Ms. Lauzon was assisted by Constable FANARA off the pavement to the passenger side rear of the police car.

Due to the fact Ms. Lauzon was a female a female officer was called to the scene to conduct the search.

Constable FANARA never felt comfortable he had complete control of Ms. Lauzon when he first grabbed her left arm. He only had full control after she was secured in handcuffs.

Constable FANARA is required to successfully complete use of force training annually. The punch is among the use of force options taught in this training. The punch he used against Ms. Lauzon he described as a "rabbit punch" and he deployed it as a diversion or stun technique to get her of balance to effect the arrest.

Constable FANARA indicated he chose a jab as the appropriate use of force option because it would cause minimal injury. He had intermediate weapons available to him but he would have had to release his hold of Ms. Lauzon to access those weapons and feared an escalation of the situation.

Ms. Lauzon did not request nor was she provided any medical attention as a result of her arrest.

In describing Ms. Lauzon's demeanour that evening Constable FANARA stated she had immersed herself into the situation. She was originally ten yards away and he assumed she was under the influence of alcohol due to her behaviour. It was not until he effected the arrest that he smelled alcohol and formed the opinion she was intoxicated.

Constable FANARA explained that after Ms. Lauzon collapsed he handcuffed her by first rolling her over onto her stomach and pulled her arms behind her back. He needed to pin her to the pavement and in order to do this he knelt on her backside. He could not recall if this was in the small of her back or on her thighs.

He stayed with Ms. Lauzon until a female officer (Constable Dehoop) arrived to conduct the search. That was the last contact he had with Ms. Lauzon that evening.

Constable FANARA said he is trained to be prepared for anything. This was a serious call and as a result he was on heightened alert. Prior to arrival Constable FANARA was never told the suspect was with a female party. Mr. T [REDACTED] fit the description of the suspect and the location. Constables FANARA and Antoun were there to deal with Mr. Theam.

Constable FANARA clarified Ms. Lauzon was originally told she was under arrest for obstruct. Afterwards she was told she was also under arrest for assault police.

In cross examination Constable FANARA clarified they were originally dispatched to 1286 Lauzon but they first attended Mac's Convenience Store and met with Sgt Turner. There Constable FANARA learned Sgt Turner was with three teens who had been chased by a male.

Constable FANARA did not speak to any of the teens and did not recall if Constable Antoun spoke with any of the witnesses. Sgt Turner decided to return the 3 teens back to Average Joe's.

Constable FANARA said the search of Mr. T [REDACTED] occurred in stages; it was first started by Constable Antoun at this time Constable FANARA went to Ms. Lauzon, when Constable FANARA noticed Constable Antoun struggling with Mr. T [REDACTED] he returned to assist but at no time was a knife located from the search of Mr. T [REDACTED]. Although Mr. T [REDACTED] was handcuffed Constable FANARA stated he would not stay still.

When asked to describe how he approached Ms. Lauzon when he left Constable Antoun at the police car Constable FANARA stated the vehicle was facing south, Ms. Lauzon was facing north. Constable FANARA went to the sidewalk and walked east to her and grabbed her by her left arm and tried to turn her back towards the sidewalk. He advised her she was being arrested for obstruct police then she slapped him.

When Constable FANARA grabbed Ms. Lauzon he was facing south and did not know what Constable Antoun was able to see of the interaction between he and Ms. Lauzon.

Constable FANARA stated MS. Lauzon crumbled after being punched. Constable FANARA disagreed with Ms. Lauzon's testimony that she never slapped Constable FANARA. He admitted he never looked to see if he had any marks as a result of the slap.

When asked what other options did he consider regarding use of force Constable FANARA responded that given the circumstances any use of intermediate weapons would not be practical to deploy at that time. Constable FANARA stated he could not have grabbed her to by both arms to gain control because of her assaultive behaviour. Constable FANARA said he did not "ground her" as he thought this would had the potential of causing more injury to Ms. Lauzon.

When questioned about whether he considered using a palm strike instead of a closed fist Constable FANARA responded "never once considered it because it would have caused more damage."

Constable FANARA denied Ms. Lauzon encroached on the sidewalk. He agreed the knife was still outstanding at this time.

Constable FANARA stated his only purpose in approaching Ms. Lauzon in front of the police car was to arrest her for obstruct police and he felt to do so there was not safe. FANARA was referred to Exhibit #9 (FANARA's interview with OIPRD) and explained the safety issue he was referring to in the interview was to arrest Ms. Lauzon and there was a potential for her to get hit by a car.

Constable FANARA disagreed with counsel's suggestion that he had no real concern in relation to Ms. Lauzon by the manner he grabbed her by the arm. He did agree that there is a difference in stature between himself and Ms. Lauzon. Constable FANARA explained he was on a heightened state of alert and had concerns for his partner's safety as he had his back to the situation. He did agree he did not call for back-up but all units would have been aware of the call.

Constable FANARA admitted he did not recall whether Constable Antoun ever told he learned that there was no knife from the witness at Mac's Convenience prior to arriving at the Anglo Club. FANARA stated that information concerning the knife was received from the callers to 9-1-1 from Average Joe's.



Constable FANARA agreed with counsel that after being slapped by Ms. Lauzon that his response was completely reactionary. He also agreed that no independent witnesses saw the slap and it was pretty much his word against Ms. Lauzon.

Constable FANARA also agreed that if Ms. Lauzon had not slapped him he had no right to punch her.

Constable FANARA said he and Constable Antoun searched the area for the knife hoping to get lucky because it was a vast area. He recalled the canine unit was not available but he did not have authorization to call them in for the search.

Constable FANARA explained that although his attention was primarily on Mr. T [REDACTED] he and his partner had the benefit of space of time with respect to Ms. Lauzon. When it was suggested he did not have any concerns about Ms. Lauzon having the knife Constable FANARA responded he did not know where the knife was at that point.

Constable FANARA stated his recollection is Ms. Lauzon was intoxicated.

During Re-Examination Constable FANARA agreed he did document the injuries sustained by Ms. Lauzon in the FANARA's report (Exhibit #10). FANARA stated his fist was not clenched when he approach Ms. Lauzon.

### **Prosecution's Submission**

Ms. Porter reviewed the evidence before the tribunal and reiterated that many of the facts in this matter are undisputed.

Ms. Porter drew my attention to *Jacobs v. Ottawa Police Service*, OCPC #14-02 (*Jacobs*), and pointed out the standard of proof is the balance of probabilities. She further pointed out that correct test to apply in this matter was the force used unreasonable in the circumstances.

Ms. Porter submitted the credibility of the witnesses needs to be examined closely and provided *Faryna v. Chorny* [1952] 2 D.L.R. 354 when evaluating credibility. She submitted Ms. Lauzon has nothing to gain through her public complaint and her intent was to ensure the behaviour of Constable FANARA would not happen again. Ms. Porter conceded that Ms. Lauzon may have been inconsistent in her evidence on some matters but not the important facts. She described Ms. Lauzon as candid and honest. Conversely, Constable FANARA's evidence at times was self serving.

Ms. Porter next dealt with the issue of the punch. She submitted this was an excessive use of force. Ms. Lauzon maintained she was on the sidewalk and that she yelled at the officers. Ms. Porter submitted Constable FANARA became upset and punched Ms. Lauzon in the face to shut her up.

Ms. Porter submitted that should the tribunal accept Constable FANARA's version of events that he was first slapped by Ms. Lauzon the issue now becomes was that a reasonably measured response in light of those circumstances. Constable FANARA stated the punch was reactionary not a measured response. The use of force training is situational involving assessment, planning and acting. There was no articulation in Constable FANARA's report to justify his use of force against Ms. Lauzon. There is no mention he was trying to gain control of Ms. Lauzon. Constable FANARA was asked about whether he considered an open palm strike but dismissed it as it would, in his opinion, cause more injury. This is contrary to his training according to the testimony of Constable Price.

Ms. Porter submitted Constable FANARA alleged the situation was unsafe and that Ms. Lauzon had approached him and his partner while dealing with Mr. Theam. His partner had his back to her, and the knife was outstanding. Constable FANARA admitted he never considered she might have a knife and his actions did not support it was an unsafe situation.

Ms. Porter explained Constable FANARA's actions were not reasonable in the circumstances. It is not reasonable to just grab the arm and side step Ms. Lauzon to the curb leaving her power arm free. Constable FANARA never called for back-up. Constable FANARA repeatedly demanded to Ms. Lauzon to "shut up" which escalated the situation rather than de-escalate it. Constable FANARA could have ignored her rather he engaged her in unacceptable tactical communication. Conversely Constable Dehoop demonstrated effective communication skills in successfully calming Ms. Lauzon.

Whether the tribunal accepts Ms. Lauzon's version of events or those of Constable FANARA it is the position of the prosecution Constable FANARA should be found guilty of Unlawful or Unnecessary Exercise of Authority.

### **Defence's Submissions**

Mr. Parent began by stating Constable FANARA made a lawful arrest of Ms. Lauzon for the offence of obstruct police. He referred to his book of documents which included s. 42 of the Police Services Act regarding police officer duties, "apprehending criminal and other offenders and others who may lawfully be taken into custody." Mr. Parent referred to s. 25 of the Criminal Code of Canada which authorizes peace officers to use as much force as is necessary if he/she acts on reasonable grounds and is justified in doing what he/she is required to or authorized to do for that purpose.

Mr. Parent pointed out Ms. Lauzon admitted to obstructing officers. She was agitated and upset over the arrest of Mr. T [REDACTED]. When Constable FANARA was hit in the face he used his training and selected the appropriate level of force for the circumstances. Constable Price testified that a change in a subject's behaviour requires an officer to react to these changes. Mr. Parent further indicated Constable Price testified that punches were taught in use of force training classes.

Mr. Parent next referred to Legal Aspects of Policing regarding the measure of force and that police are not required to use only the least amount of force that might achieve the intended objective.<sup>1</sup>

Mr. Parent requested the tribunal take into consideration the aggressive demeanour of Ms. Lauzon and the lawfulness of her arrest. Both Constable FANARA and Constable Antoun testified she came onto the roadway. Constable FANARA used his training to stun, to distract Ms. Lauzon for the purpose of gaining control. In the use of force continuum Ms. Lauzon's actions were assaultive and Constable FANARA was justified in using empty hand hard techniques which included a closed hand punch. The actual force used was minimal and resulted in no medical attention being required.

Mr. Parent referred to referred to *Klyne v Rae*, 2002 SKQB 139 and advised in this case the court relied on a decision in *Anderson v. Port Moody (City) Police Department*, 2000 BCSC 1194, [2000] B.C.J. No. 1628 (B.C.S.C.) (*Anderson*) to determine if the amount of force used by the arresting officer was more that was necessary in dealing with the plaintiff. Mr. Parent submitted the in this case the court makes it clear officers do not have to employ the least amount of force

Mr. Parent provided the tribunal with *Duguay v. Bathurst (City)*, 2008 NBQB 183. In this matter the plaintiff sought compensatory damages alleging that the police officers used unjustifiable and excessive force in order to exercise control over him. In this matter the court found *Anderson* helpful, in deciding the force used in that case was reasonable.

Mr. Parent next referred to *Levesque v. Sudbury Regional Police Force* [1992] O.J. No. 512 (*Levesque*). The court ruled in dismissing the plaintiff's claim of excessive force stating "it is unreasonable and unrealistic to impose an obligation on the police to employ the least amount of force which might successfully achieve their objective."

Mr. Parent provided the tribunal *Robinow v. Vancouver (City)* [2003] B.C.J. No. 989 (*Robinow*) and explained in this civil matter the court relied on *Bennett v. City of Vancouver* (1999) in assessing what constitutes excessive use of force and the Court should be a doppelganger to the police officer.

In *Steward v. Canada (Attorney General)* Mr. Parent submitted the court considered whether the police officers in this case used excessive force in making the arrest of the plaintiff. The Court must assess the degree of force used from both a subjective and objective point of view as well as providing allowances for momentary miscalculation on the degree of force needed.

Mr. Parent submitted Constables FANARA and Antoun were dispatched to a priority one call. Constable FANARA took precautions for officer safety in how he approached the scene. Ms.

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<sup>1</sup> P. Ceysens, Legal Aspects of Policing §3.4(b)(viii)

Lauzon was belligerent and agitated and ignored officers commands. Mr. Parent described the scene as a volatile situation and when Constable FANARA arrested Ms. Lauzon she assaulted him. Constable FANARA should be afforded the protection afforded to officers in the criminal code.

### **Public Complainant's Submission**

Ms. Lauzon requested I review the video of her while at the Windsor Police Detention Unit. The video will illustrate she is not intoxicated or sidestepping. She further submitted her injuries were not documented by Constable FANARA. Ms. Lauzon stated there were no injuries or red mark on Constable FANARA's cheek to indicate she slapped him.

### **Findings**

Constable FANARA is charged with Unlawful or Unnecessary Exercise of Authority in that he used unnecessary force against Ms. Samantha Lauzon in the execution of his duty. He was also charged with Insubordination, however, that allegation of misconduct was withdrawn at the request of the Prosecution.

During the course of this Hearing I have taken notes, observed, and listening closely to the testimony of each of the witnesses, as well as the submissions from Ms. Porter and Mr. Parent. I have reviewed the exhibits , including the transcripts, reports, video, audio interview, and book of documents tendered by the Defence and Prosecution.

The burden of proof lies with the Prosecution. Mr. Parent argued the standard of proof is found in s. 83 of the Police Services Act as clear and convincing evidence. In the *Jacobs* decision the Ontario Civilian Police Commission articulates and reaffirms the standard of proof as;

*[E]vidence must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test.*

For further clarity, it is this standard, the balance of probabilities test, which I will apply in this matter in determining whether or not to find Constable FANARA guilty of misconduct.

Ms. Porter provided the tribunal with *Faryna v. Chorney* case to assist with the issue of assessing credibility. I find the O'Hallaran test a helpful tool in this regard, specifically it provides factors for consideration when assessing the testimony of a witness:

*The credibility of interested witnesses, particularly in cases of conflict in evidence, must reasonable be subjected to an examination of the consistency of their stories with the possibilities that surround the currently existing condition. In short, the real test of the truth of the story of a witness is such a case must be its*

*harmony with the preponderance of probabilities which a practical and informed person would readily recognize as reasonable in that place and in these conditions.*

It is this test I used when assessing the credibility of witnesses presented before this tribunal.

During the testimony of Ms. Lauzon she provided an account of her involvement in the incident. In her testimony she admitted she was quite vocal and at times unruly towards the officers as they arrested Mr. T [REDACTED] but she remained steadfast in her assertion that at no time did she approach the officers at the police car nor was she on the roadway. Rather she stayed at the utility pole where she had been smoking a cigarette when police first arrived on the scene.

Ms. Lauzon testified that Constable FANARA approached her and although she did not recall being struck with a punch, her head flew backwards then she was thrown to the ground. She sustained a cut lip, she was covered in blood, a scar to her left knee, bruising to her wrist from the handcuffs and right hip was bruised.

Conversely, Constable FANARA testified, at times relying on the supplementary report he had prepared that evening of the incident, that while assisting Constable Antoun with the arrest of Mr. T [REDACTED] that Ms. Lauzon ignored his warning to stay back and had approached the officers on the roadway. He grabbed her by her left upper arm for the purpose of arresting her for obstruct police when she unexpectedly slapped him in the face. Constable FANARA responded with a closed fist strike, a rabbit punch or jab as described by Constable FANARA, to the face of Ms. Lauzon to this assault.

The issue for this tribunal to consider are as follows;

1. Was Constable FANARA assaulted by Ms. Lauzon?
2. If Constable FANARA was assault by Ms. Lauzon was the force used from FANARA reasonable in the circumstances?

The prosecution contends the credibility of Ms. Lauzon should be accepted over that of Constable FANARA. When examining this evidence I have relied on the O'Hallaran test and the other evidence provided for my review. There are significant inconsistencies to the testimony of Ms. Lauzon which create difficulty for me in accepting the entirety of her evidence.

In her testimony Ms. Lauzon stated that the police car stopped next to her as she was standing next to the utility pole as depicted in Exhibit # 6. Constable FANARA testified he stopped the police car approximately ten (10) yards north of Mr. T [REDACTED] and Ms. Lauzon when he arrived on the scene at the Anglo Club. The purpose for stopping this distance away from the potential suspect was for officer safety purposes. Constable Antoun testified he and Constable FANARA had exited the police car a safe distance away from the male and female upon arrival.

Ms. Lauzon testified that she never came onto the roadway in front of the police car, rather she stayed on the sidewalk where she admitted she continued to yell at the officers when Constable FANARA approached her there. This is in direct contradiction to the testimony of Constables FANARA who testified Ms. Lauzon was on the roadway in front of the police car after being warned to stay away. He approached her, grabbed her by the upper arm to arrest her when he was struck. Constable Antoun testified that although his attention was primarily on Mr. T [REDACTED] he noted Ms. Lauzon was warned to stay back which was ignored. Ms. Lauzon created an unsafe situation by approaching them on the road and Constable Antoun observed FANARA arrest Ms. Lauzon, albeit peripherally, and escort her off the sidewalk. Constable Antoun did not observe the alleged slap of Constable FANARA by Ms. Lauzon.

Constable Antoun was dealing with the arrest of an uncooperative subject in Mr. T [REDACTED] at this time. It is understandable he would not be in a position to observe the entire interaction between Constable FANARA and Ms. Lauzon in exact step by step detail - however, he testified as to location of Ms. Lauzon, her failure to heed warnings, and her behaviour from his position.

I find Constable Antoun's testimony before this tribunal to be forthright, honest and credible. He communicated in a manner which I accepted as truthful and unembellished.

The only other person present at the time of Ms. Lauzon's arrest was Mr. T [REDACTED]. He did not testify before this tribunal and therefore I cannot speculate on what he may or may not have observed that evening.

Ms. Lauzon testified the force used by Constable FANARA resulted in a split lip, a scar on her left knee, bruised hip, and bruising on her wrist. In her testimony Ms. Lauzon indicated there was blood on her face. None of the officers who testified indicated they observed blood on Ms. Lauzon's face. I have reviewed the photos (Exhibit #7) of Ms. Lauzon's injury and without a doubt there is evidence of an injury to her lower lip. I accept this injury was caused by Constable FANARA's punch. I have reviewed the DVD tendered as exhibit #15b and although I observed Ms. Lauzon's clothing to be ripped at the left knee I did not observe any evidence of blood, dried or otherwise, as she described in her testimony.

Constable FANARA documented in his duty report of the incident that Ms. Lauzon's injuries consisted of "cut lip and a skinned right knee" as a result of the arrest. Constable FANARA's failure to accurately describe and detail the injury to Ms. Lauzon is a reflection on his professionalism and attention to detail. He has a duty to document these details in his notes and report in an accurate manner - there was no reference in his report of any attempt he made to confirm this injury. I am further troubled that there appear to be no reference to any documentation of these injuries in his notes. Officers' notes are the primary means of documenting details at crime scenes, such as injuries, and failure to complete adequate notes in a fulsome and timely manner is a failure to sufficiently fulfil his/her duty.

Ms. Lauzon testified she had three alcoholic drinks on the evening in question over a period of approximately of three and half (3 1/2) hours. She was adamant she was not intoxicated at the time of her arrest. I have also considered the testimony of Constable FANARA that he was of the opinion Ms. Lauzon was intoxicated. In reviewing the video of the Detention Centre (Exhibit #8) I cannot come to the conclusion Ms. Lauzon is intoxicated with the evidence before me.

It is obvious to me this incident had an emotional and significant impact upon Ms. Lauzon. In her testimony I do not believe that she had any intent to mislead this tribunal regarding her recollection of events, although I do believe the prior consumption of alcoholic beverages that evening had an effect on her ability to recall specifics events. As a result I did have difficulty accepting aspects of her testimony.

Without question had there been no slap of Constable FANARA by Ms. Lauzon prior to her being punched Constable FANARA would have committed the criminal offence of assault. In dealing with this first issue of whether or not the slap occurred I place significant weight on the testimony of Constable Antoun. Although he did not witness this assault he was able to confirm much of the testimony of Constable FANARA which contradicts Ms. Lauzon's account of the incident. Therefore there is nothing before me which leads me to believe the assault in the form of the slap by Ms. Lauzon against Constable FANARA did not occur.

Next, I turn to the issue of whether the force used by Constable FANARA, the punch to the face of Ms. Lauzon was unnecessary in response to the slap.

Constable FANARA candidly admits he punched Ms. Lauzon in the face on the evening in question. However, he testified that he had first grabbed her by her left bicep as he was in the process of arresting her for obstruct police. She responded by slapping him in the face with her free hand.

The lawfulness of the initial arrest is not in question. Ms. Lauzon testified she accepted responsibility for her actions that evening by accepting adult diversion for the obstruct police charge while the assault police charge was withdrawn.

However, the question before me is was the force used by Constable FANARA unnecessary in the circumstances. Referenced in the material provided by Ms. Porter was *Burgess and St. Thomas Police Force* (1989), 2 O.P.R. 822 (Burgess). I have reviewed this case and have found it helpful when considering the issue of unnecessary use of force as noted below:

*We find that the word 'unnecessary', as used in the section, does not mean "not absolutely essential" but rather means something closer to 'unreasonable under the circumstances' considering the other options that were available.*

This is the situation that is presently before me in this matter; was the amount of force used by Constable FANARA reasonable under the circumstances considering other options that were available to him at the time.

In this matter Constable FANARA made the decision to arrest Ms. Lauzon for obstruct police. He testified that he did not have grounds to believe Ms. Lauzon was in possession of the knife and perhaps that is why he chose to assert his physical control by grabbing her left upper arm. In making this arrest he was required to gain and maintain control of Ms. Lauzon while his partner was dealing with a non-compliant subject in Mr. T [REDACTED]. The search of Mr. T [REDACTED] had not concluded and the reported knife had not been located. The slap of Constable FANARA by Ms. Lauzon makes it very clear to me that she was assaultive which necessitated Constable FANARA in using an empty hand technique to gain control and maintain control of her. The empty hand technique Constable FANARA utilized was a punch to the face.

However, in Constable FANARA's supplementary report included in Exhibit #10 there is no reference to any rationale why the degree of force he used was justified in those circumstances. In the Introduction of Defensive Tactics student workbook tendered as Exhibit #17 it states;

*Policing is a tremendous responsibility that requires you to form and articulate the grounds or justification to act.*

I could not agree with this statement more. Constable FANARA had a responsibility to articulate in this notes and report the rationale and justification he used when he chose to punch Ms. Lauzon rather than leaving it to a third party to come to their own conclusion. However, the reason we are here today is not Constable FANARA's report writing skills but rather whether the force used was excessive or not.

When Constable FANARA made the decision to leave his partner for the purposes of arresting Ms. Lauzon, unarguably a lawful arrest, Constable FANARA had to apply whatever force was necessary to accomplish the task.

When police officers are required to use force to make an arrest it is not an attractive or glamorous event. Without an appreciation for the circumstances of a particular occurrence the use of physical force such as kicks, empty hand strikes, punches, or baton strikes may appear excessive to third party but such techniques are, at times, necessary for a police officer to perform their sworn duty.

It is unfortunate to suffer any injuries whatsoever, but the reality is use of force techniques have the potential to, and do cause injury. An injury does not signify that particular use of force techniques as unnecessary or unlawful.

It is important to consider officers were responding to an occurrence involving violence, a fight with weapon reported to be a knife. Mr. T [REDACTED] was identified as the suspect and believed to



believed to have been in possession of that knife. He was arrested but was non-compliant as officers began their search of his person. Ms. Lauzon made this more complex and difficult by injecting herself into the situation by obstructing the officers. It became necessary for Constable FANARA to leave his partner and deal with Ms. Lauzon.

There is no issue with the initial force used to effect this arrest, however, when Ms. Lauzon's behaviour elevated to assaultive I am of the opinion there is no indication Constable FANARA used any more force than was reasonably required to accomplish his task of gaining control and making the arrest.

We ask police officers to respond to dangerous and volatile situations which may have the potential to impact their personal safety. As part of their sworn duty they are required to investigate criminal activity and make arrests. It is during these often unpredictable and dynamic situations officers do not have the time for quiet contemplation to assess or gauge in detail the degree of force required in a particular circumstance given all the variables in play at that exact time.

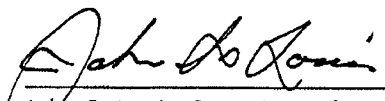
Ms. Porter accepted that the burden to prove these allegations falls to the prosecution. The evidence must be clear, sufficient and cogent to satisfy the balance of probabilities test to prove misconduct.

The evidence must demonstrate the officer used force which was unnecessary. As referred to in *Burgess* it is not sufficient that it might appear that the force used was not absolutely necessary rather it must be proven that the force used by the officer was unreasonable under the circumstances.

I am not convinced from the evidence presented before me during this hearing that Constable FANARA unnecessarily or unlawfully exercised his authority and/or used unnecessary force on Ms. Samantha Lauzon.

I find Constable FANARA not guilty of the allegation of misconduct.

Dated at Windsor, ON this 30th day of May 2014

  
John St. Louis, Superintendent  
Windsor Police Service