



TORONTO POLICE SERVICE DISCIPLINE HEARING

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

AND IN THE MATTER OF THE  
THE TORONTO POLICE SERVICE

AND

SERGEANT MANDY MORRIS (99494),  
POLICE CONSTABLE NOEL HUDSON (10248),  
POLICE CONSTABLE SAMIP PATHAK (9663),  
POLICE CONSTABLE THAO VO (7897)

Charges: 16/2015 Sergeant Morris – Discreditable  
Conduct

17/2015 Constable Hudson – 1) Discreditable  
Conduct, 2) Unlawful or Unnecessary Exercise  
of Authority

18/2015 Constable Pathak – Discreditable  
Conduct

19/2015 Constable Vo – Discreditable Conduct

**REASONS FOR DECISION**

Hearing Officer: Acting Superintendent Richard Hegedus;  
Toronto Police Service

Prosecutor: Acting Superintendent Peter Callaghan

Defence Counsel: Mr. David Butt (for Sergeant Morris)

Defence Counsel: Mr. Michael Lacy (for Constable Hudson)

Defence Counsel: Ms. Joanne Mulcahy (for Constable Pathak and Constable Vo)

Public Complainant: Ms. Wonita Rajpaul

Case Numbers: 16/2015 (Sergeant Morris)  
17/2015 (Constable Hudson)  
18/2015 (Constable Pathak)  
19/2015 (Constable Vo)

Hearing Dates: 2018.10.22, 23, 24, 25  
2018.12.20

Decision Date: 2019.07.22

## REASONS FOR DECISION

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SERGEANT MANDY MORRIS (99494), POLICE CONSTABLE NOEL HUDSON  
(10248), POLICE CONSTABLE SAMIP PATHAK (9663),  
POLICE CONSTABLE THAO VO (7897)

**DATE:** 2019.07.22

**REFERENCE:** 16/2015 (Sergeant Morris), 17/2015 (Constable Hudson),  
18/2015 (Constable Pathak), 19/2015 (Constable Vo)

Acting Superintendent Richard Hegedus: Before commencing my reasons for decision in this matter, I wish to thank defence counsel Mr. David Butt, Mr. Michael Lacy, and Ms. Joanne Mulcahy, and Inspector Peter Callaghan, the Service prosecutor, for their arguments and exhibits tendered, all of which have assisted me in reaching my decision.

On October 22, 2018, Sergeant Mandy Morris (99494), Constable Noel Hudson (10248), Constable Samip Pathak (9663), and Constable Thao Vo (7897) pleaded not guilty to one count each of Discreditable Conduct. Constable Hudson further pleaded not guilty to one count of Unlawful or Unnecessary Exercise of Authority.

The Notices of Hearing for all four officers are summarized as follows.

Notices of Hearing - Count One - Sergeant Morris, Constable Hudson, Constable Pathak, Constable Vo

*You are alleged to have committed misconduct in that you did act in a disorderly manner or a manner prejudicial to discipline or likely to bring discredit upon the reputation of the police force, contrary to Section 2(1)(a)(xi) of the Schedule Code of Conduct of Ontario Regulation 268/10 and therefore, contrary to Section 80 (1)(a) of the Police Services Act, R.S.O. 1990 as amended.*

Statement of Particulars - Count One -Sergeant Morris, Constable Hudson, Constable Pathak, Constable Vo

*Being a member of the Toronto Police Service attached to 31 Division, you were assigned to uniform duties.*

*On Saturday October 4, 2014, you were on duty. You responded to a radio call for a noisy party at 4500 Jane Street, Apartment 1402, in the City of Toronto.*

*In the course of responding to that call you unlawfully entered Apartment 1402.*

*In so doing you committed misconduct in that you did act in a disorderly manner or in a manner prejudicial to discipline, or likely to bring discredit upon the reputation of the service.*

#### Notice of Hearing - Count Two - Constable Hudson

*You are further alleged to have committed misconduct in that you did use any unnecessary force against a prisoner or other person contacted in the execution of duty, contrary to Section 2(1)(g)(ii) of the Schedule Code of Conduct of Ontario Regulation 268/10 and therefore, contrary to Section 80 (1)(a) of the Police Services Act, R.S.O. 1990 as amended.*

#### Statement of Particulars - Count Two - Constable Hudson

*Being a member of the Toronto Police Service attached to 31 Division, you were assigned to uniform duties.*

*On Saturday October 4, 2014, you were on duty. You responded to a radio call for a noisy party at 4500 Jane Street, Apartment 1402, in the City of Toronto.*

*You unlawfully entered the apartment of Ms. Wonita Rajpaul and in the course of doing so held her against a wall while other officers entered the apartment.*

*In so doing you committed misconduct in that you did use any unnecessary force against a prisoner or other person contacted in the execution of duty.*

#### Decision

After an examination of the testimony of the witnesses, the exhibits, and consideration of the submissions of the prosecutor and defence counsel, I make the following findings in relation to Sergeant Mandy Morris (99494), Constable Noel Hudson (10248), Constable Samip Pathak (9663), and Constable Thao Vo (7897).

Case 16/2015 (Sergeant Morris)

Count 1 – Guilty

Case 17/2015 (Constable Hudson)

Count 1 - Not Guilty

Count 2 - Not guilty

Case 18/2015 (Constable Pathak)

Count 1 – Not Guilty

Case 19/2015 (Constable Vo)

Count 1 – Not Guilty

### Issues to be considered

The specific issues I must consider as described in the two separate Notices of Hearing are as follows:

- 1) Did Sergeant Morris, Constable Hudson, Constable Pathak, and Constable Vo unlawfully enter the dwelling of the complainant Ms. Wonita Rajpaul and in a manner likely to bring discredit upon the reputation of the Toronto Police Service?
- 2) Did Constable Hudson use unnecessary force against Ms. Wonita Rajpaul by holding her against a wall while other officers entered the dwelling?

### Background

Detective Morris was acting in the capacity of a uniform sergeant on the date of this event. For the purpose of this decision, I will use the term sergeant when referring to Detective Morris. Both titles describe a supervisory position but the ranks are equal. The general facts in this matter are not in dispute. On October 4, 2014, Sergeant Morris, Constable Hudson, Constable Pathak, and Constable Vo responded to a radio call (Exhibits 24, 25) for a noise complaint at 4500 Jane Street, apartment 1402, in the City of Toronto. Once at the location the officers heard a loud stereo in the apartment, knocked on the door, and announced their presence in order to speak with the occupants. The occupants in the apartment were aware that the officers were there but they did not respond them or turn the music down. The officers knocked on the apartment door loudly and repeatedly but were continuously ignored. Officers then looked into the apartment through the mail slot that was built in to the apartment door (Exhibits 5,6,7,10) to see what was occurring

inside. They made observations of a child inside and while propping the mail slot open with his baton, an occupant tried to prevent Constable Vo from recovering his baton from the door. After a struggle, Constable Vo retained control of his baton. The officers subsequently forced the door open and entered the apartment. Once inside, there was some physical contact between Constable Hudson and the complainant Ms. Rajpaul. The officers subsequently left the location. No enforcement actions were taken. This matter became the subject of a public complaint and a hearing was directed by the Office of the Independent Police Review Director (OIPRD).

### The Hearing

The hearing commenced on October 22, 2018. After issues regarding a potential witness were resolved, the hearing proceeded on October 23, 2018. Four witnesses were called namely; Ms. Rajpaul, Sergeant Morris, Constable Hudson, and Sergeant Richard Rowsome (8064). I have broken this decision down into two separate areas that each deal with the issues in the Notices of Hearing.

### Issue One

Did Sergeant Morris, Constable Hudson, Constable Pathak, and Constable Vo unlawfully enter the dwelling of the complainant Wonita Rajpaul and in a manner likely to bring discredit upon the reputation of the Toronto Police Service.

### Evidence in Chief Ms. Rajpaul – Issue One

Ms. Rajpaul was the first witness in the hearing. She testified in chief that on the night of October 4, 2014, she was in the kitchen of her apartment and was cooking food. Also present were her son [REDACTED], his father Larry, and a family friend, Asif. There was a knock on the door, so she went to the door and saw it was police. On this night she had the stereo speaker volume set at level 5 on a scale of 1-10. In the past she had answered the door to police who had told her to turn the music down. The knocking got louder and the door was kicked in.

Ms. Rajpaul said that her son's father Larry, and a friend Asif were in the living room. Her son [REDACTED] was in his room playing video games. Ms. Rajpaul heard knocking once and a second time, [REDACTED] went to check the door. She didn't check it and she was not going to answer the door on that date. [REDACTED] told her that the police were at the door.

Ms. Rajpaul said she had taped a flyer over the mail slot in the door to prevent people from looking into her apartment. Ms. Rajpaul said that when [REDACTED] went to the door, he said something was protruding through the mail slot. She pushed the object back down and at the time she didn't know what it was.

There was more knocking at the door and it got louder. She still didn't answer the door. She heard a bang, the door flew open, and an officer 'flew' through the door. She saw the first officer come in and then the rest followed.

### Cross Examination Wonita Rajpaul - Issue One

In cross-examination by Mr. Lacy, Ms. Rajpaul indicated that the date was a Sunday and she agreed her music could be heard by neighbours and also possibly in the hallway of the building. She heard a knock on the door and agreed it was possibly in regards to another noise complaint. She wasn't expecting anybody and the thought of police was not going through her mind. She then responded that it passed through her mind that it could be the police. She looked out and confirmed there were officers. She didn't talk to the officers and didn't acknowledge them. She made a decision not to answer the door or say anything.

In cross-examination, Ms. Rajpaul said she closed the mail slot when something protruded through. She said that Larry didn't grab the baton at the mail slot but Ms. Rajpaul then clarified that she didn't see anyone grab the baton. Ms. Rajpaul agreed that the officers had knocked multiple times on the door which was different than what she had described during her original interview where she had said there were only two knocks at the door.

A portion of her statement to the OIPRD was put to the Ms. Rajpaul where she said she had looked through the peephole in the door. She didn't recall answering that way during her statement but she adopted that answer and agreed that answer was different than what she had testified to.

In cross examination she agreed that the knocks escalated and it sounded like somebody was kicking the door down. She was aware there were multiple knocks but she didn't respond. She consciously chose not to answer the door. She said that her lawyer had told her that she did not have to answer the door. She said she had gotten tired of being harassed and that's why she didn't answer door.

## Evidence in Chief – Sergeant Morris – Issue One

Sergeant Morris testified in chief that she has been a member of the Toronto Police Service since 1996. At the time of these events she was assigned to 31 Division. She has extensive experience with child welfare investigations. She was a full-time domestic violence investigator and has spoken at domestic violence conferences as it relates to children. She had previously been asked by numerous police services, including Niagara, Stratford, Barrie, and Peel, to interview children to assist police and the Children's Aid Society (CAS) when they had difficulties getting a disclosure from a child. She has represented Toronto on the CAS high risk apprehensions committee. When CAS had apprehended a child, she had also participated on the Board to review the case to ensure that they had done everything they could to avoid the further trauma of going back into care.

On October 4, 2014, she was assigned to uniform duties as a sergeant, having signed up for a 'callback' from 5:30 p.m. until midnight as part of a project to focus on disorderly conduct issues along Jane Street. She was working with Constables Hudson, Pathak, and Vo. Sergeant Morris said she was the ranking officer and was supervising.

At approximately 10:22 p.m. they responded to a radio call at 4500 Jane Street, apartment 1402, for a noise complaint. She was not aware of any specific child welfare issues at the address.

In a typical noise complaint, the police would speak to the occupants, tell them to turn down the music, and that sometimes included a discussion about the noise by-law. As long as there were no other concerns, no further action could be taken. At an earlier call that night for loud music, there was no answer at door and they left the location.

The officers took the elevator to the 14<sup>th</sup> floor and Sergeant Morris could hear loud music in the hallway as the doors of the elevator were opening. The music was loud and booming with bass.

Constable Hudson knocked on the door and she heard a female voice inside yell 'cops'. The music got lower to a level where a conversation could take place. A moment later it was raised to where it was before. That was unusual. The officers continued to knock several more times on the door and they waited until it was quiet between songs. Officers used a baton at the top of the door, the bottom of door, and kicked at the door to get the attention of the occupants.



The music was so loud that she could not hear voices inside. That caused her some concern. It was unusual behaviour and she wondered if the occupants were trying to drown out or mask events inside.

She bent to the door where there was a mail slot. She wanted to see if anyone needed help and wanted to figure out why they were not answering. She didn't know if there was an officer safety issue or if the apartment was a 'boozecan' with many occupants. It was a safety concern when a large number of people were in a small space.

She used her baton to open the mail slot flap in the door and she had a clear view into the apartment. On the couch she saw a young child sitting in a balled-up position, his feet and knees up to his chest. He appeared upset and was not talking.

It concerned her that it was loud in the apartment and the child appeared fixated on what was happening in front of him and was not paying attention to the knocking on the door.

She told the other officers that something didn't seem right. They were considering getting the key from the superintendent and discussing the occupant's right to privacy as well as safety. Sergeant Morris felt they were now dealing not with a noise complaint but a different situation. No decision had been made at that point as the situation was still developing and they were discussing all their options. They continued to knock and tried to get the occupants' attention.

The song in the apartment was coming to an end and there was an opportunity to get the occupant's attention. Sergeant Morris saw somebody come to the peephole in the door and look out. The officers waved to the occupant that they were the police.

Constable Vo was down at the mail slot and put his baton through to look. His baton was grabbed. There was a tug of war through the mail slot for the baton.

Sergeant Morris testified that privacy was now outweighed by occupant safety because there was a child seated in a balled-up position, the music had been turned louder, and there was an aggressive act of trying to disarm an officer. She said the option of getting a key was taken away from her by those actions. They had to make entry based on the situation and Sergeant Morris now believed that forced entry was required and from her directions to him earlier, Constable Hudson kicked the door. Sergeant Morris said the concerns had increased and they needed to make entry to see what was wrong in the apartment and to make sure everyone was safe.

### Cross Examination – Sergeant Morris – Issue One

In cross examination by the prosecutor, Sergeant Morris said that the purpose of their entry was not to invade the occupants' privacy but to see if someone needed assistance in the apartment. She was not conducting a search and was not enforcing the Liquor Licence Act or investigating a 'boozecan'. Sergeant Morris said that if the door had not been answered they would have left the location. There was not much they could do.

She looked through the mail slot for approximately five seconds on the first occasion and agreed she didn't know why the child on the couch was upset.

In cross examination by Mr. Lacy, Sergeant Morris said that the entry was made to see about distress, see if the occupants needed assistance, and address any safety concerns, but it was not the first thing she did on that date. Sergeant Morris agreed that she had no reason to break down the door then. She was aware that the occupants didn't have to open door. Sergeant Morris said that using a baton was the only way to get a view into the apartment. Sergeant Morris could see the child on the couch who appeared frozen. It raised her concern when the child was fixated as to what the child looking at. Sergeant Morris said it was not a situation they could walk away from.

Sergeant Morris said the opportunity to get a key was taken from her by the occupants' aggressive actions and her concerns for occupant safety by the grabbing of the baton. She knew there was a woman and a child inside but didn't know who else. Sergeant Morris then believed it was an emergency and it was urgent to get in. She believed that safety trumped privacy.

Sergeant Morris said that she used her discretion. She was senior to the other officers. She agreed that as a sergeant she provided ongoing guidance and agreed she was in charge of the team. She agreed with Ms. Mulcahy that it would have been neglectful not to enter.

### Examination in Chief – Constable Hudson - Issue One

Constable Hudson testified in chief that he has been a police officer since 2008 and has been at 31 Division since then. He had worked for Sergeant Morris in the Criminal Investigation Bureau for two and a half years, had been in the Major Crime Unit for two years, and was in uniform on the date of this occurrence. He was performing a 'callback' at the time.

He was working with Constable Pathak and they received a radio call for a noise complaint, a common call. They had just come from another noise complaint call at 4750 Jane Street where the occupant had answered the door and turned down the music. In some cases there was no action that could be taken. It was not a practice to break down a door when there was no answer.

Constable Hudson and the other officers took the elevator and when they were almost to 14<sup>th</sup> floor, he heard loud bass from the music. He said, 'it's jumping in there'. He knocked to bring the occupants to the door. The music was so loud and he was not sure if anyone heard. He said it was the police. He believed the music volume went down and then he believed a female inside said 'it's the cops'. It suggested that the occupants were aware the police were there.

He saw someone looking through the peephole in the door but couldn't hear any other words in the apartment and there was no acknowledgement. The music volume went down and then went up again. Sergeant Morris went to the mail slot and announced that it was the police. She told the officers that there was a child on the couch with his legs up who didn't look over or respond.

They started knocking again and had a conversation about the expectation of privacy and occupant safety. Sergeant Morris was relaying what she saw to them. Constable Hudson was knocking with his baton on the door. No one had acknowledged them. The music remained at a high level.

At that point, the information they had was that Sergeant Morris announced it was the police, there was a child on the couch who was not responding, the music went louder and it appeared to be intentional. When the song ended Constable Vo made an announcement. They were still assessing the situation. Constable Hudson said he had a duty and couldn't just walk away. Constable Hudson didn't have any historical information in relation to violence at this particular address. They reached the point where they needed to take action but they took no action to breach the door at that point. It was a weird situation. They were attending two to three noise complaints a night. Even people who did not open their door answered from behind the door.

Sergeant Morris said that if they had to go in, they had to kick the door where the lock is. If Sergeant Morris were to direct the door be forced open then he was the one to do it. Constable Vo used his baton to knock on the door.

Sergeant Morris went to the mail slot and Constable Vo got down then he saw him begin to struggle. It looked like he was fighting for his baton. He thought someone on the other

side of the door was trying to steal Constable Vo's baton. He thought it was appropriate to enter the apartment and thought the occupants were at risk and someone on the other side of door was involved in a confrontation and if they waited people could lose their lives.

After Constable Hudson's second kick he realized Constable Vo had his baton. Constable Hudson had difficulty forcing the door and he believed he could have done in one or two kicks. Then he assumed someone or something was bracing the door. As they entered he was the last one into the apartment

### Cross Examination Constable Hudson – Issue One

In cross examination by the prosecutor, Constable Hudson said he felt that the music volume was increased intentionally because the occupants heard the knocks at the door, turned it down, came to the door, said 'it's the cops', and then turned it up. At the time he believed it was because they knew that the police were there and didn't care but there was a possibility they were trying to cover up what going on in the apartment. All of the officers had a conversation about the situation. To the point where the door was breached, they were still assessing the situation and there wasn't a plan to breach the door.

In cross-examination by Mr. Butt, Constable Hudson agreed they had discussions about what took this outside of a noise complaint. The music may have masked activity, there was an upset child inside, and there was a tug of war with a baton which was an aggressive act and a cause for concern. It became a time for action.

When examining officer safety and occupant safety, he said that leaving to get a key would take time. He didn't know if the superintendent would be located or if there was a key in the office. He said that it would be unacceptable not to act as that may put people at a further risk of harm.

In cross examination by Ms. Mulcahy, Constable Hudson said he was disturbed by the struggle for the baton and the attempt to disarm a police officer. He believed it had become an emergency and he believed his actions were consistent with his duties.

### Issue Two

Did Constable Hudson use unnecessary force against Ms. Wonita Rajpaul by holding her against a wall while other officers entered the dwelling?

### Evidence in Chief Ms. Rajpaul – Issue Two

Ms. Rajpaul testified in chief that once the door opened, the first officer through grabbed her by her throat, pinned her to the wall, and choked her to the verge of blacking out. He called her a bitch and said that he thought she was a 'gang banger' because she had assaulted him and touched his baton. The officers began searching around the apartment.

Ms. Rajpaul testified that the first officer through the door was a black male and she identified Constable Hudson. She testified that he entered apartment, and before she could say anything, he put both of his arms around her neck, and 'choke-slammed' her against the wall, squeezing her throat and said 'shut the fuck up bitch'. She couldn't breathe and felt like she was going to pass out. He threw her onto the floor. An Asian officer was then at the dining table with Larry and the Indian officer was standing beside him.

She got up and yelled at Constable Hudson, asking why he choked her. After that Larry told her to shut up and relax because she was getting too hysterical. She remembered them saying they were going to call CAS. Officer Hudson looked at [REDACTED], looked in the fridge, and told [REDACTED] to take off his clothes to see if there were bruises. CAS came to her house a few days later and tried to take her child.

She had conversation with Sergeant Morris who told her that she should have opened the door. She told Sergeant Morris that her lawyer had told her she didn't have to open the door.

### Cross Examination Ms. Rajpaul – Issue Two

In cross examination by Mr. Lacy, Ms. Rajpaul said she didn't go to the door and look out. She said that the first officer through the door was the one who had assaulted her and none came through before him. At one point he lifted her off the ground and 'choke-slammed' her against the wall and she agreed that term was used in wrestling.

After viewing the video (Exhibit 23) Ms. Rajpaul agreed that she was wrong about the order of the officers entering and the video of the officers entering her apartment was different than her recollection but that didn't change what the officer did. He was the first one she saw.

In cross examination by Mr. Lacy, Ms. Rajpaul testified that she had marks on her neck when she was examined by a doctor at the hospital and then she said that the doctor told her they were internal. She then agreed with counsel that she had no visible marks on her neck and she said there were no photos of any injuries. She initially said she had the injuries documented and had given the medical report to 31 Division. Then Ms. Rajpaul agreed she hadn't provided a medical report that substantiated any injuries. She said she went to the hospital and agreed there was no document regarding an injury, but there was a medical document from the hospital from a nurse which was provided but it didn't have anything to do with neck injuries.

Ms. Rajpaul said that she had consumed two beers and nothing else. She wasn't intoxicated and didn't have impaired judgement. She got hysterical after she was choked. She was angry and upset and she wanted to hit the officer.

She said she couldn't work because the officer threw her onto a metal heater in the living room. She can't remember how long she was down and she didn't get up right away.

Ms. Rajpaul agreed there was no interaction in the dining area and there was nothing to suggest that officers caused any damage in dining room. Mr. Lacy brought a contradiction in Ms. Rajpaul's original statement to her attention where she had pointed out areas of wall scrapes and she said the officers caused it. Ms. Rajpaul said that night and the next day she was traumatized and she thought the officers had caused the damage. Ms. Rajpaul said Sergeant Rowsome came to the apartment and she told him what had happened. He suggested that she press charges because what the officers did was wrong. Ms. Rajpaul said she couldn't lock her door afterwards because of the damage. It was like that for two months before she got it fixed.

In cross examination by Mr. Butt, Ms. Rajpaul agreed that Sergeant Morris looked at her and found she had no injuries.

### Examination in Chief Sergeant Morris – Issue Two

Sergeant Morris testified that as soon as the officers entered the apartment, a female came towards them. She was angry, sweating, and probably drunk but not falling down drunk. She was dishevelled, there was an odour of alcohol, and her eyes were bloodshot.

She approached Constable Hudson aggressively and he placed his hand to her shirt to hold her back. Sergeant Morris was in a position to hear them and Constable Hudson

didn't say 'shut the fuck up bitch'. Constable Vo was now in the dining area with two men, one identified as Larry, the other as Asif, and a boy identified as [REDACTED].

As the supervisor she was watching both situations. Constable Hudson was talking to the female. She was still upset but not confrontational or aggressive. She calmed down and walked towards the couch area where she tumbled and fell but got back up right away. Constable Hudson was approximately three to six feet away from her and he did not throw her.

The intoxicated female was identified as Ms. Rajpaul. At that point Constable Hudson asked her to speak to Ms. Rajpaul about allegations she was making. Sergeant Morris took Ms. Rajpaul to the kitchen for a one-on-one conversation. She was crying and she said that her lawyer had told her not to open the door. Ms. Rajpaul denied making any allegations against Constable Hudson. Sergeant Morris could not see any marks or redness on her.

Larry came into the kitchen and told Ms. Rajpaul to shut the fuck up and grabbed her lips saying, don't talk to them. It wasn't assaultive and Ms. Rajpaul didn't have to pull away because of pain. Sergeant Morris spoke with Larry and explained why they entered the apartment. She could smell marijuana and alcohol from him.

Sergeant Morris told Constable Pathak to talk to the child to see if he was safe because Constable Pathak had experience in the Family Violence Unit. Sergeant Morris told the occupants that CAS would be called because the situation was not appropriate for a child. She remembered seeing remnants of a marijuana joint and some leaf particles, but not a substantial amount.

Constable Pathak had nothing of concern to report about the child and at that point, her concerns were satisfied. Ms. Rajpaul was not willing to speak and there were no more safety concerns. Sergeant Morris showed the occupants the front door deadbolt. It still worked although the door was cracked, and they exited the apartment. Sergeant Morris said the door looked like it could still be locked.

They returned to the lobby and Constable Vo spoke with the Superintendent, describing the damage to the door.

### Cross Examination Sergeant Morris – Issue Two

In cross-examination by the prosecutor, Sergeant Morris said the purpose of entering the apartment was not to invade the privacy of the occupants but to see if someone needed assistance in the apartment. If the door had not been answered they would have left the location. There was not much they could do.

She looked through the mail slot for approximately five seconds on the first occasion and didn't know why the child on the couch was upset. Sergeant Morris said that Ms. Rajpaul didn't complain about Constable Hudson assaulting her. She was uninjured and stood right back up after she fell. Sergeant Morris said she explored the well-being of the child and the well-being of Ms. Rajpaul in regards to any domestic violence.

In cross examination by Mr. Lacy, Sergeant Morris indicated that Ms. Rajpaul didn't complain about Constable Hudson assaulting her. She stood back up after she fell and didn't appear to have any injuries.

Sergeant Morris had no concerns about the force Constable Hudson used because Ms. Rajpaul was charging at him. His actions were consistent with the training he had received. He never choked or lifted or slammed Ms. Rajpaul against the wall and he did not throw her onto a heater. She was walking backwards and fell on her own and then immediately got up. Sergeant Morris spoke to her and saw there were no marks around her neck. Ms. Rajpaul denied making allegations of force to Constable Hudson.

Sergeant Morris agreed that the conduct of the officers was consistent with their training. They did not gather any evidence. She assigned Constable Pathak to speak with the child, consistent with her initial observations. She indicated that CAS would be notified regarding the music, drinking, late hour, and the marijuana remnants. Larry acknowledged the he grabbed the officer's baton and apologized. He was cautioned regarding assault and mischief.

Sergeant Morris indicated that the purpose of going into the apartment was for the safety of the occupants and they went in to determine the cause of distress. Sergeant Morris didn't believe they had any other options because it was an emergency.

### Examination in Chief Constable Hudson – Issue Two



Constable Hudson testified that as soon as he got into the unit, he observed a female standing there almost face to face with him. She was breathing heavily, her eyes were glassy, and he thought she was crying. He put his baton in his left hand, reached out his right arm, put his hand out, held her, and said 'chill, chill, chill.' Constable Pathak grabbed her right wrist.

Constable Hudson didn't know who she was and had yet to determine what was occurring. Constable Pathak asked if she was good and the female said to him, let go. He felt her body relax so he disengaged, let go, and stepped back.

Ms. Rajpaul said she worked hard five days a week, she only had a few drinks a week, and didn't bother anyone. She smelled of alcohol. He told her they had concerns because there was no response from the child. Constable Hudson asked Ms. Rajpaul about any problems and she denied that there were any child abuse or domestic issues.

He heard yelling and shouting in the back of the apartment. He asked Ms. Rajpaul to take a seat on the couch. She said it was her house and she didn't have to sit down. He saw her tripping and toppling over. Constable Hudson denied grabbing her with two hands, choking or throwing her. He always had his baton in his left hand.

The event turned out to be a radio call for the noise. The complaint from Ms. Rajpaul was a non-issue and he never made reference in his book because it was done. He described Ms. Rajpaul as an emotional rollercoaster, varying between calm and emotional. She was not upset with him but upset at what had happened that night. Constable Hudson said he didn't use any obscenities, did not tell Ms. Rajpaul to shut up, and did not call her a 'gangbanger'.

### Cross Examination Constable Hudson – Issue Two

In cross examination by the prosecutor, Constable Hudson said that when he went into the apartment he encountered Ms. Rajpaul. She was sweating like when one is physically active. It was possible that she had been over a hot stove. Constable Hudson put his hand on her to stop her. He didn't believe that he was pushing on Ms. Rajpaul hard. He did not put his hands on her neck and never had his hands around her neck.

In cross examination by Ms. Mulcahy, Constable Hudson said he was six feet away from her when she fell. He believed she was intoxicated. She exhibited the characteristics of slightly slurred speech, she repeated herself, and when she was walking she tripped over what he thought was the rug.

## Sergeant Rowsome - Examination in chief – Issue Two

Sergeant Rowsome testified that he was a sergeant in 31 Division and had been so for four years at the time. He received a phone call from Ms. Rajpaul on October 5, 2014 at 7:40 a.m.

She told him police had kicked in her door the night before and assaulted her. She said she was grabbed and had minor neck pain and would seek her own medical attention. He told her she could use the Internet to contact the OIPRD. He then attended 4500 Jane 1402 and met with Ms. Rajpaul at 8:25 a.m.

He noted that there was some damage to the apartment door. Some was fresh and some was old. She originally claimed that police were responsible for all of it, but when he questioned her about the old damage, she admitted that some was older and said the police hadn't done that. She showed him scrape marks on the wall near the kitchen and claimed police were responsible for the marks. It was obvious that the scrapes marks were as a result of the kitchen chairs rubbing against the wall. She insisted that police caused that damage. She told him she had been lifted by her neck, off her feet, and then held there until she was about to lose consciousness. Sergeant Rowsome checked her neck for any injuries and there were no marks whatsoever, no swelling, and no injuries.

He concluded that she was exaggerating the events. There was a thin piece of wood missing from the door and he located it on the floor. The locks were still in working condition and the deadbolt was still functional. He closed the door and turned the deadbolt to test it. There was a lock missing and that was old damage.

Sergeant Rowsome noted that Ms. Rajpaul had no marks, no bruising, and no redness on her neck and throat. He did not have any information about any of the officers involved and didn't look up any reports as to who may have attended. He did not know who had been involved. He didn't suggest that Ms. Rajpaul should charge the police.

Ms. Rajpaul did not tell him she had been thrown across the room onto a heater. He made notes about her choking claim and he would have made notes in that regard if she had told him. He then arranged for an officer to attend and take photos.

In cross examination by the prosecutor, Sergeant Rowsome said that part of the lockset was obviously missing and that was old damage. There was no paint and the hardware

was nowhere to be found. There was new damage which included a painted piece of wood was lying on the floor.

### Closing Submissions

I have summarized the closing submissions of all the parties. Where the submissions were repeated I have not duplicated them.

### Closing Submissions – Ms. Rajpaul

Ms. Rajpaul did not seek to make formal submissions and wished that the prosecutor make submissions on her behalf. She said she rejected the assertions of counsel that her child might have been in danger. She denied being intoxicated or balling up her fist when she encountered Constable Hudson. She further indicated that she had asked Asif to attend the tribunal and that he did not wish to do so. Finally, she said that she had been truthful in her responses.

### Closing Submissions – Mr. Butt

Counsel Mr. Butt submitted that there was not clear and convincing evidence to support the prosecution's position. The prosecution evidence that was dependent on the single witness was not credible or reliable and therefore there could not be a finding of misconduct that was solely reliant on that witness. Her unrefreshed memory was four years old and was not supported by contemporaneous notes. Ms. Rajpaul didn't review her initial statement carefully. There was evidence that demonstrated that she was intoxicated at the time. She described herself as hysterical at the time and she was not calm or detached.

He submitted that the entry to the apartment was legal and that no assault occurred. Counsel submitted that there was no Discreditable Conduct which was a separate issue from unlawful entry.

Counsel indicated that Ms. Rajpaul had been certain that Constable Hudson was the first to enter the apartment but she was wrong and he was the last. Counsel submitted that there were multiple implausibilities in her narrative. It was not plausible that Constable Hudson 'choke slammed' her after entering the apartment and that implausibility was

increased because there was no evidence of bruising or injury. There was an allegation of being thrown into a heater and again, there was no injury. The allegation that Constable Hudson used inflammatory discourteous language like 'shut up bitch', before anyone ever said anything was also implausible. It was also not plausible that the police left her with a non-functioning door that neither closed nor locked.

The prosecution witness had a tendency to exaggerate. Ms. Rajpaul said that the police caused both the old and new damage to the door and she tried to attribute dining room chair scuffs on the wall to police behaviour, but Sergeant Rowsome's independent evidence contradicted that.

Counsel submitted that the witness was evasive and didn't make potentially corroborative witnesses, namely her husband Larry and Asif who were in the apartment at the time, available.

The officers' memories were supported by contemporaneous notes and statements. They were sober and there was no issue of extreme emotion that would impair their evidence which had no demonstrable errors. The officers were forthright and acknowledged shortcomings.

Regarding the Notice of Hearing, the framing must be respected. It is particularized as unlawful entry for multiple officers. The officers were making ongoing judgement calls and counsel submitted that their actions didn't rise to the level of Discreditable Conduct. Legally the team stands together on the Discreditable Conduct count however Sergeant Morris acknowledged that she was the leader and took responsibility for her team.

The officers were not conducting a criminal investigation. They were dealing with the safety of a child. Counsel submitted that in regards to public safety, the law and legitimate expectations change and privacy becomes a secondary consideration.

In R v. Godoy, (1999) 131 C.C.C. (3d) 129 (SCC) (Exhibit 31, Tab 18) there was a 911 hang-up and the officers legitimately entered a residence on the absence of information for a safety concern. In this case they took a minimally invasive step and looked through the mail slot in the context of solving the problem. There was a child that might have appeared in distress. They knocked repeatedly to try to get the attention of the occupants and waved to them. There was an overt act of aggression when an officer's baton was pulled and the officer's concerns about safety and child safety were developed in a rational way and there were no reasonable alternatives. Mr. Butt submitted that the officers should still not be found guilty even if the entry was unlawful, because good faith errors in judgement do not constitute Discreditable Conduct.

## Closing Submissions – Mr. Lacy

Mr. Lacy submitted that Ms. Rajpaul was not reliable. She attempted to mislead Sergeant Rowsome and there were internal inconsistencies in her evidence. The particulars in Count Two in the Notice of Hearing do not allege that Constable Hudson grabbed her, 'choke-slammed' her against the wall, or threw her across the floor.

Sergeant Morris and Constable Hudson described that Ms. Rajpaul was temporarily held by Constable Hudson and another officer who held her by the wrist and they appropriately defused the situation. What Ms. Rajpaul described was completely different than what Constable Hudson is charged with which spoke to her lack of reliability and lack of credibility.

Mr. Lacy submitted that the officers should not be assessed against a standard of perfection. They applied their training, experience, knowledge of the law, and common sense. Their duty is to protect the public and to protect life. If they erred in their judgement while carrying out their duties, they acted reasonably and in good faith, based on what they knew at the time. Errors in judgement do not constitute misconduct.

They knocked up to seven times and with their batons. The music was turned up and it was not a normal response. Their concern was that someone was trying to disguise what was happening in the apartment. They gathered more information before they took further steps. They didn't want to walk away and they saw the child in an unusual state who was unresponsive to the knocks on the door which caused concern. There was no suggestion that the child was otherwise in distress and needed police action but the officers didn't know that when they were assessing what was happening. The officers thought that the situation had risen to the level of exigency.

There are cases where unlawfulness doesn't equate with professional misconduct in the policing context. As an example there are cases daily in court where police conduct violated the Charter but didn't constitute misconduct. There had to be room for officers to be wrong.

Regarding someone pulling on the baton, Ms. Rajpaul provided varying answers; first she said no one did, then it was possible someone pulled on it. Then she was then shown the video, and it is clear that Constable Vo was struggling with someone on the other side of door. There was inconsistency as to whether she ever looked out the peephole. She had originally told Sergeant Powell that she had looked through the peephole which was different in her evidence before the tribunal.

## Closing Submissions – Mr. Lacy

She claimed there were marks on her neck and injuries, but when Sergeant Rowsome attended he didn't see any marks or injuries. She claimed officers damaged the apartment wall but then acknowledged that it was not as a result of the actions of the officers. She claimed the damage to the door was so extensive that it wouldn't close or lock. Photographic evidence showed the deadbolt was in working order and Sergeant Rowsome confirmed there was no issue with the deadbolt. Finally, Ms. Rajpaul was argumentative and reluctant to acknowledge negative things such as marihuana in the home, or her level of alcohol consumption.

The only credible evidence was that of the officers. As Sergeant Morris was senior, the others were entitled to take guidance from her. Sergeant Morris had experience with child and family services work and it was her belief that breaking the door was appropriate and Constable Hudson was entitled to rely on that.

Mr. Lacy submitted that Ms. Rajpaul's evidence failed on the clear and convincing standard when assessing her credibility, her reliability, and her inability to accurately relay what happened that day.

Mr. Lacy drew my attention to R v. Davidson, 2017 ONCA 257 (Exhibit 31, Tab 23) which noted that the presumptive rule is that police can't forcibly enter someone's home without judicial authorization but one of the exceptions is exigency. The police have a common law duty to protect life or safety which can justify a warrantless entry. Once inside their authority is limited to ascertaining the reason for the call and providing any further assistance. There is no further authority to search or intrude on privacy or property.

Mr. Lacy drew my attention to Godoy and though there was no 911 call in this case, the officers had a reasonable belief that the safety of a person might be in jeopardy and could reasonably infer that there was a concern for safety. In R v. Depace, (2014) ONCA 519 (Exhibit 31, Tab 20) the court noted that officers are entitled to satisfy themselves that everything is in order. The extent of what they may need to do depends on the particular circumstances.

In R v. Lowes, (2016) ONCA 519 (Exhibit 31, Tab 22) the court rejected the idea that police have to engage in less invasive techniques before they decide to gain entry because that was not relevant as to whether the police were under a duty to enter to ensure that there was no one in the premise who was in immediate danger. The police would have been derelict in that case if they failed to enter based on the circumstances.

Simon v. Laurysen and Peel Regional Police, 2008, OCPC (Exhibit 30, Tab 13) discussed the test for Discreditable Conduct as was described in the case of in Girard v. Delaney. Mr. Lacy indicated that the subjective belief of the officers was relevant despite the objective nature of the test.

Mr. Lacy drew my attention to Gillespie v. Shockness and Peel Regional Police, 1994, Board of Enquiry (Exhibit 30, Tab 10) and Rabah v. Cole et al. and Toronto Police Service, 1998, Board of Inquiry (Exhibit 31, Tab 25) to demonstrate that not every violation of section 8 of the Charter constituted professional misconduct. He further indicated that I shouldn't assess the officers' conduct in light of what we know today and drew my attention to Hallam v. College of Physicians and Surgeons of Ontario, (1993) 61 O.A.C.143 (Div. Ct.) (Exhibit 30, Tab 15) where it was noted that courts should not rely on hindsight.

Mr. Lacy submitted that even if the entry in this case was unlawful under the Charter, it did not constitute a disciplinary offence. In Allen v. Alberta (Law Enforcement Review Board) [2013] A.J. No. 553 (ABCA); Engel v. Allen [2013] SCCA No. 347 (SCC) (Exhibit 31, Tab 24) the Alberta Review Board noted that it cannot be the case that a Charter breach is automatically a disciplinary offence. There must be some meaningful level of moral culpability to warrant disciplinary penalties. Police work would become impossible if subjected to disciplinary proceedings every time a judge found a Charter breach

Nguyen v. Chartered Professional Accountants of British Columbia, [2018] B.C.J. No. 699 (Sup. Ct.) (Exhibit 30, Tab 9) discussed that where particulars are alleged in a charge, that the prosecution is bound to prove the particulars as a matter of procedural fairness. Mr. Lacy indicated that one can't find someone guilty outside of the Notice of Hearing and submitted that Constable Hudson didn't restrain Ms. Rajpaul to allow other officers to enter as particularized in the notice.

#### Closing Submissions – Ms. Mulcahy

Ms. Mulcahy adopted and reiterated the submissions of Mr. Butt and Mr. Lacy. She then indicated that they applied equally to Constable Vo and Constable Pathak. Ms. Mulcahy submitted that I must put myself in the shoes of the officers and assess what they were seeing and experiencing. I should not approach this from the perspective of Ms. Rajpaul who didn't see what they did and didn't have the experience or training they had.

The matter of Allan v. Munroe, 1994, Board of Inquiry (Exhibit 30, Tab 3) defined 'clear and convincing evidence' as there must be weighty, cogent and reliable evidence that a

trier of fact, acting with care and caution, can come to the fair and reasonable conclusion with.

Ms. Mulcahy submitted that I had to examine this matter from the eyes of the person who had to make the decision in the heat of the moment. She drew my attention to Magda and Sheppard and Metropolitan Toronto Police, 1992 (Div. Ct.) (Exhibit 30, Tab 14) where the court noted that the board had failed to view the totality of the circumstances:

*'It is the belief of the police officer in the light of the circumstances that is important.'*

Ms. Mulcahy submitted that the prosecution had not tendered any evidence that Sergeant Morris acted in a way that was contrary to her training. Sergeant Morris said she believed the occupants were in distress and they went in to give aid if necessary. Her actions were consistent with her trying to determine if Ms. Rajpaul was safe or was a victim, and whether there were concerns about the child's safety.

Ms. Mulcahy drew my attention to Monaghan v. Toronto Police Service [2005] O.J. No. 1396 (Div. Ct) (Exhibit 30, Tab 11 where the court discussed that the hearing officer had erred by analysing the wrong issue which led the hearing officer into further error. She spoke to McCoy and Fort Frances Police (1969) O.P.R. 16 (Exhibit 30, Tab 12) to indicate that the actions of the officers must be an offence against the Code and also of Miles v. Krug and Gloucester Police Service, 1993, Board of Inquiry (Exhibit 31, Tab 16) for the proposition that in the absence of a nefarious motive, an error in judgement did not constitute Discreditable Conduct.

She referenced Godoy, which noted that the officers were obliged to investigate further based on the information available to them and entry was necessary to determine the cause of the distress call. A reasonable person would not say the officers should have left and Ms. Mulcahy asked, what other means would there be to determine the cause of distress? The matter of R v. Havelock, (2004) M.J. No. 307 (QB) (Exhibit 31, Tab 19) involved similar issues. Ms. Mulcahy noted that the court in R v. Depace, (2014) ONCA 519 (Exhibit 31, Tab 20) indicated that the police were entitled to satisfy themselves that all was in order in the residence and privacy could not trump safety.

In R v. Alexson, (2015) 320 C.C.C. (3d) 401 (Man. CA) (Exhibit 31, Tab 21) the court indicated that forcibly entering a residence was not limited to situations involving a 911 hang-up call but extended to other safety concerns.



Bobb v. Nicholls and Metropolitan Toronto Police, 1984, Board of Inquiry (Exhibit 31, Tab 29) discussed that there must be some wilful act or omission on the part of the officers before making a finding of misconduct.

R.M. V. C.B. and J.N., 2007, MN Law Enforcement Review Agency (Exhibit 31, Tab 26) noted that police officers would operate under a 'disciplinary chill' if they were subject to disciplinary proceedings every time it was found that an officer had breached an accused person's Charter rights. The Board in Terrio v. Elliott and Niagara Regional Police Service, 1995, Board of Inquiry (Exhibit 31, Tab 30) discussed the issue of good faith and that absolute perfection should not be required when the officer had used their best judgement in potentially dangerous circumstances.

P.G. v. Attorney General of Ontario, 1995, Div. Ct. (Exhibit 31, Tab 33) the court noted that the Board had erred in disregarding that the conduct of the appellant officer had been approved by superiors. In this case, a supervisor, Sergeant Morris, was present and had indicated that the entry to the apartment was lawful.

Ms. Mulcahy submitted that it had not been established on clear and convincing evidence that the entry was unlawful. She indicated that if I found that the entry was unlawful she submitted that the officers had not brought any discredit to the Service.

#### Closing Submissions – Prosecution

The prosecutor indicated that this case did not stem from a 911 call but came from a caller who was outside of the apartment regarding a noisy party (Exhibit 25). He noted that it was low on the priority and seriousness scale. The prosecutor submitted that this event went off the rails when the officers looked through the mail slot.

In R. v. Waterfield [1964] 1 Q.B. 164 (Exhibit 32, Tab B) the court indicated that police powers are derived from specific duties at statute law or common law. The court noted:

*'In most cases it is probably more convenient to consider what the police constable was actually doing and in particular whether such conduct was prima facie an unlawful interference with a person's liberty or property. If so, it is then relevant to consider whether (a) such conduct falls within the general scope of any duty imposed by statute or recognized at common law and (b) whether such conduct, albeit within the general scope of such a duty, involved an unjustifiable use of powers associated with the duty'*

In R v. Dedman [1985] 2 S.C.R. 2 (Exhibit 32, Tab A) the court noted:

*'the common law basis of police power has been derived from the nature and scope of police duty.'*

#### Closing Submissions – Prosecution- Continued

In Hunter v. Southam Inc. [1984] 2 S.C.R. 145 (Exhibit 32, Tab C) the court noted in regards to the Charter:

*'Its purpose is to guarantee and protect, within the limits of reason, the enjoyment of the rights and freedoms it enshrines. It is intended to constrain governmental action inconsistent with those rights and freedoms.'*

The matter of R. v. Evans [1996] 1 S.C.R. 8 (Exhibit 32, Tab D) involved police officers in a drug investigation who relied on the concept of 'implied licence'. They approached the front door, they knocked, and when it was opened they identified themselves as police officers. They smelled marijuana, arrested the occupants and got a search warrant. The issue on appeal was whether the initial actions of the officers constituted a search. The prosecutor noted that the court had said that the 'implied licence' to knock only extended to the purpose of communicating with the occupants and where the police approached the door for an unauthorized purpose, they exceeded the implied invitation. The prosecutor submitted that going beyond knocking on the door by looking in the mail slot constituted a search. The prosecutor submitted that even if it was assumed that the 'implied licence' let them communicate through the door slot, Ms. Rajpaul had taped over the slot to prevent people from looking in.

The prosecutor drew my attention to R v. Tricker, 1995 ONCA 1268 (CanLII) (Exhibit 32, Tab E) and R v. MacDonald [2014] 1 S.C.R. 37 (Exhibit 32, Tab F), which also discussed the concept of 'implied licence'. All members of the public are entitled to walk up to a door and communicate with the occupant for a legitimate purpose. The case also discussed the entitlement of an occupier to withdraw that implied licence at any time. The prosecutor conceded that the act of opening the mail slot and speaking into the apartment were within the conditions of 'implied licence'. But by continuing to look further into apartment when they did not receive an affirmative response, it went beyond communication and he submitted that they became intruders.

In R v. Zarger, 2014 ONSC 1415 (CanLII) (Exhibit 32, Tab G) officers attended for a noise complaint and had conversation inside the doorway of an apartment with the accused who told the officers to get out of the apartment and he pushed the officer to get him out.

He was charged with assault police. The court indicated that speculative concerns about officer safety could not provide justification to forcibly enter private premises. There must be an imminent threat to safety. The prosecutor indicated that Sergeant Morris testified about what might possibly be going on inside the apartment. The prosecutor submitted that it was speculative. It was not a 911 call but a call from a neighbour about noise.

R v. Brownrigg, 2009 ONCJ 558 (CanLII) (Exhibit 32, Tab I) involved a call for a man threatening his neighbour and officers attended a house to speak with Mr. Brownrigg. He told the officers to leave a number of times and they didn't after being told to go. He hit officer with a screen, he spit on an officer, and he smashed a glass pane and glass hit an officer. They officers entered the house and arrested him. The court said the verbal demands to the officers to leave were ignored. The accused was in peaceful possession of his dwelling house and he was entitled to use force against the officers.

#### Closing Submissions – Prosecution - Continued

In this case there was no doubt that the occupants knew the officers were there, and the occupants chose not to open the door but there was no other objective evidence that anything else going on. The prosecutor submitted that it was speculation about why the music was raised. The case law on 'implied licence' noted that the officers should have left.

The prosecutor submitted that grabbing the officer's baton was not an attempt to disarm an officer and pushing or pulling the baton to get it out of the mail slot was a reasonable response to an intrusion to the apartment. The officer's entry was not a reasonable response to what was going on inside as opposed to *Godoy* which dealt with a 911 call originating from the address. There was no call for distress here and the call came from outside.

The officers couldn't justify the entry by saying they had a concern for the child. They were already intruding in the apartment. The prosecutor submitted that there was no objective evidence and it was speculation that led the officers to start connecting things that didn't connect. The prosecutor submitted that the tug of war over the baton set this event off because there was emotion involved. Constable Hudson kicked the door open in a short amount of time and the officers got ahead of themselves.

The prosecutor agreed there were contradictions between the evidence and there were huge issues with reliability but not credibility for Ms. Rajpaul.

The prosecutor submitted that there were concerns that the officers had been allowed to watch the video (Exhibit 23) before their interview with Professional Standards and it

influenced what was contained in their TPS 217 responses (Exhibits 29A, 29B). It had the potential to cause difficulties for the trier of fact to assess what evidence was as a result of their personal memories or their memories after watching the video. It impacted the ability to assess the reliability of their evidence. There was significant information that came out later that was not in the notes.

### Closing Submissions – Prosecution

The prosecutor drew my attention to Schaeffer et al. v. Wood et al., 2011 ONCA 716 (CanLII) (Exhibit 32, Tab J) which noted:

*'If the officer's notes are prepared without any indication of which is the officer's independent recollection and which is [page 742] somebody else's recollection, there is every likelihood that that officer at trial will be "refreshing" his or her own memory with observations made by someone else.'*

The prosecutor submitted that there needed to be an objective basis for the trier of fact to examine the evidence as to what the officers recalled without assistance and if they had assistance, to note that what they wrote following that point was with that assistance.

The prosecutor also drew my attention to the decision in Wood v. Schaeffer [2013] 3 S.C.R. 1053 (Exhibit 32, Tab K) to indicate that the focus of an officer's notes must be on their public duty to create accurate, detailed, and comprehensive notes, and not move toward their private interest i.e. justifying what had taken place. The prosecutor submitted that it would only be natural for the officers to record what they saw on the video.

The prosecutor agreed that there were issues with how Ms. Rajpaul gave her evidence and it was fair for counsel to criticize and suggest she was evasive. Unlike the officers, she had no experience in testifying and she had some emotions with having experienced this event.

The prosecutor drew my attention to the test of a witness's credibility in Faryna v. Chorny [1952] 2 D.L.R. 354 (Exhibit 32, Tab L) which noted that it required an assessment of whether the testimony was consistent with the preponderance of evidence in the case.

The prosecutor conceded that he was not relying on Ms. Rajpaul's evidence regarding her interaction with Constable Hudson once he was in the apartment. The prosecutor stated that he accepted Constable Hudson's evidence on its face in that regard. He put his hand on her as they entered the apartment as he was trained to do to hold her back

while they got control of the situation. The prosecutor submitted that however, at that point the officers were already unlawfully placed in the apartment and putting his hand on Ms. Rajpaul was the misconduct and it was discreditable.

The prosecutor submitted that I should examine the objective reasonableness of the officers' actions. The prosecutor indicated that this event started and ended as a noise complaint. He submitted that the officers violated the privacy of Ms. Rajpaul's home when they kicked in her door. No member of the community who was aware of the circumstances would think that was reasonable. The officers failed to stop themselves and consider disengagement. Their actions were not reasonable.

### Analysis and Decision - Issues 1 and 2

Four witnesses testified in this matter. I have reviewed all of the evidence presented including the testimony of the witnesses, and the exhibits. The case of *Faryna vs Chorny* discussed the test that should be used to determine the credibility of a witness. In that case the court noted:

*'In short the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.'*

I found Sergeant Morris' testimony to be reliable and credible. She had made contemporaneous notes on the date of the occurrence and used those to assist with her testimony. She did not provide contradictory answers and those that she provided were fair answers to the questions posed of her. I found that she did not embellish or exaggerate and she made concessions when appropriate. Examples included when she said she didn't see the speakers in the apartment until she saw them in the photos (Exhibits 13, 21) and also when she said that Larry didn't cause pain when he held Ms. Rajpaul's lips closed. In cross examination by the prosecutor and by Mr. Lacy, Sergeant Morris fairly acknowledged that initially, if the door had not been answered they would have left the location as there was not much they could do. She conceded that she was not aware of any previous child welfare issues at the address prior to her arrival. All of her responses gave me confidence that her testimony was credible and reliable. The evidence of Sergeant Morris was largely consistent with the testimony of other witnesses, other evidence, and was at most times supported by the hallway video.

Constable Hudson also testified in a clear and straightforward manner. He conceded issues when he was not aware of something or when there could have been another

explanation such as the reason that Ms. Rajpaul was sweating could have been because she had been at the stove, or when Constable Hudson said he did not have any historical information regarding violence at the address. I did not find that he embellished his evidence though I do question his statement that he was worried that life may be at risk in the apartment

### Analysis and Decision - Issues 1 and 2 - Continued

The fourth witness, Sergeant Rowsome, provided straightforward and clear testimony. It corroborated the other officers and disproved some of Ms. Rajpaul's allegations especially when she later agreed in her testimony that they were incorrect after she was confronted with objective evidence.

I will commence my analysis of the evidence in regards to Count Two against Constable Hudson. The majority of the testimony from Ms. Rajpaul pertained to that count. It will be helpful to deal with this issue first as well as to deal with the issues of Ms. Rajpaul's reliability and credibility as a witness at the same time. The particulars in Count Two of the Notice of Hearing allege that Constable Hudson unlawfully entered the apartment of Ms. Rajpaul and held her against a wall while other officers entered the apartment.

Ms. Rajpaul had testified that Constable Hudson was the first officer to enter the apartment but it could be seen in the video that he wasn't (Exhibit 23). He was in fact the last officer to enter. Whether he was the first one to enter as described by Ms. Rajpaul or was the last to enter as seen in the video, that does not have a specific bearing on Ms. Rajpaul's credibility, only her reliability. From her testimony it was apparent to me that he was the first officer she encountered and if he was the first one she saw, it is reasonable that it caused her to believe he was the first officer through the door. That distinction is not a consideration in my decision.

Beyond that point, there were a number of examples which more accurately demonstrated that her testimony was not credible. Ms. Rajpaul initially testified that she checked the door when she heard knocking and she saw that it was the police. She later contradicted that and said she did not check the door but her son [REDACTED] had checked it. She said that scrapes on the dining room walls had been caused by the officers and she later agreed that the officers had not caused them when it was demonstrated to her that the officers had not caused them. During cross examination, Ms. Rajpaul contradicted herself when she said that when the knocking began at the door, the thought of police was not going through her mind and in the next response she answered that it passed through her mind it could be the police. For the first time, during this hearing, Ms. Rajpaul said that Constable Hudson had thrown her to the floor and she fell onto a metal heater which caused injuries to her. She had made no mention of that in her initial complaint or

her investigative interview conducted by Sergeant Powell (Exhibit 22). If that had occurred, it would likely have been a significant event and for her not to bring it up previously gave me added concern in regards to her credibility. She said that there was a medical report available which described injuries that she had sustained when Constable Hudson choked her and picked up by her neck. No such medical report was available and she later agreed that she had no visible injuries. Ms. Rajpaul told Sergeant Rowsome that she had sustained injuries yet when she met with him the day after the event, he could find no such injuries. Some of her responses in the tribunal contradicted the answers she provided during her investigative interview and some of her responses contradicted her earlier testimony. Those examples speak to her credibility.

In regards to her reliability, Ms. Rajpaul said that on the date of this occurrence, her music wasn't turned up loud but she acknowledged that police had been called to her apartment five or six times in the past for noise complainants. The fact that police had again been called to her apartment when her music was playing discounted her statements that her music wasn't loud and she wasn't bothering her neighbours. Based on the previous occasions that police had been called to her residence for similar noise complaints, it should have been clear to Ms. Rajpaul that she was again disturbing her neighbours when the police once again attended. There was more than one occasion during her testimony when she provided a response to a question by defence counsel which she later withdrew when objective evidence to the contrary was put to her. I could not rely on much of her testimony in relation to specific details, especially when it was not corroborated by other evidence. I am not swayed by much of the evidence provided by Ms. Rajpaul. The allegation that Constable Hudson used unnecessary force against Ms. Rajpaul is not supported and I agree with counsel that I cannot rely on her testimony to prove an allegation that is completely reliant on her evidence. As such, I do not accept that Constable Hudson picked up Ms. Rajpaul by the throat, choked her, told her to 'shut-up bitch', threw her against a wall, and then threw her to the floor where she landed on a metal heater and sustained injuries as a result. I do accept that she was upset by the actions of the officers who forcibly entered her apartment and as described by her, she was hysterical as a result and wanted to hit the officer. I cannot determine her level of alcohol consumption but she had consumed a quantity alcohol on the date of the event, didn't review her initial statement prior to testifying, was sometimes evasive in her testimony, and her allegations appeared at times to be self-serving.

Sergeant Rowsome was not present for the events of October 4, 2014 but he attended the next morning and spoke with Ms. Rajpaul. He made observations of actual and claimed damage and claimed injuries. His testimony supported that Constable Hudson did not choke Ms. Rajpaul or lift her by the neck and that she did not sustain physical injuries that she alleged were caused by Constable Hudson. I find Sergeant Rowsome's

evidence to be reliable and credible. It was clear, consistent and supported by other objective evidence.

#### Analysis and Decision - Issues 1 and 2 - Continued

Constable Hudson testified that when he first encountered Ms. Rajpaul he put his hand on her to stop her advance and Constable Pathak held her wrist until both officers were satisfied that she would no longer take action against them. Taken in conjunction with the testimony of Sergeant Morris, Sergeant Rowsome, and the lack of any injuries to Ms. Rajpaul, I am satisfied the contact occurred in this manner. Those steps were reasonable actions in the circumstances and were not intended to be an application of force against Ms. Rajpaul. In regards to Count 2 in relation to Constable Hudson, I find him not guilty.

In contrast, Count One for all four officers is not dependent on most of Ms. Rajpaul's testimony but can be determined primarily with the balance of the available evidence. Count One deals with whether the officers were justified in entering the apartment in the first instance.

Police officers are often faced with situations where they have to make a decision as to how to proceed. Often those decisions must be made at the spur of the moment without time to consider the various options available to them. In this case, a radio call for a noise complaint presented additional circumstances that were out of the ordinary and required the officers to take further action.

There is evidence which supports the prosecution position and it comes in the form of the hallway video (Exhibit 23) and the testimony of Sergeant Morris and Constable Hudson. It is also supported in part by the evidence of Ms. Rajpaul but primarily in relation to the lack of acknowledgement from the apartment occupants and the subsequent forcing of the door.

The evidence is in relation to the radio call for a noise complaint (Exhibits 24, 25); the officers encountering loud music; receiving no response at the door after repeatedly knocking; the occupants being aware of the police presence and ignoring them; and officers waving at the peephole when an unknown person looked out. Officers subsequently looked into the apartment through the mail slot as Constable Vo propped it open with his baton. He struggled to regain control of his baton and pulled it back through the door to retrieve it. There was discussion amongst the officers during the events, and Sergeant Morris indicated the location on the door where Constable Hudson should focus his energy. Those things were clear and the issue to be decided is not what occurred but rather, whether the officers were justified in forcing open the door and entering the apartment in the circumstances.



## Analysis and Decision - Issues 1 and 2 - Continued

The testimony of Sergeant Morris and Constable Hudson indicated that the option to depart the location without taking further action, after having made observations into the apartment, and after Constable Vo struggled to retain possession of his baton, was not appropriate in the circumstances. I concur. However, the question remains, were the steps that they took in the circumstances both lawful, and not likely to bring discredit upon the reputation of the Service?

The case of *Waterfield* discussed police duties as governed by statute or recognized at common law and also the manner in which police discharged their duties. The case of *Dedman* separated the 'Waterfield Test' in two parts:

- a) Did the conduct of the officers fall within the scope of any duty imposed by statute or recognized at common law
- b) Whether such conduct, albeit within the general scope of such a duty, involved an unjustifiable use of powers associated with the duty.

The court in *Dedman* further clarified the test and noted that the police interference must be necessary for the purpose of carrying out the duty and it must be reasonable having regard to the liberty interfered with and the importance of the public purpose served by the interference.

The analysis of Count One for all of the officers requires an examination of all of the circumstances and the applicable statute or case law to determine if their actions were unlawful or potentially brought discredit to the reputation of the Service. In this matter I was not presented with any statute which authorized the entry to the apartment so the common law must be examined to determine whether the conduct of the officers fell within the scope of a police duty and whether it was an unjustifiable use of powers associated with the duty. I will discuss the cases presented to me which I found to have the most relevance to this matter.

This matter began as a radio call for a noise complaint. There was no apparent safety issue at the time of the initial call in contrast to the matter of *Godoy* which involved a 911 call and a potential call for assistance. Despite this event not involving a 911 call for assistance, *Godoy* still supports a forcible entry when officers discover something after they arrive at a location that leads them to reasonably believe that the life or safety of a person inside the home is in danger. As was also discussed in *Davidson* and further in *Depace*, the police have a common law duty to protect life or safety which would justify a warrantless forced entry into a home but that was dependent on the existence of exigent

circumstances. *Depace* also noted that the police are entitled to satisfy themselves that everything is in order but the extent of what they need to do is also dependent on the circumstances.

### Analysis and Decision - Issues 1 and 2 - Continued

In regards to the concept of 'implied licence' as discussed in *MacDonald* and *Tricker*, I agree that the officers in this case had the authority to go to the apartment door as would any citizen. Because their attempts at communication were not acknowledged by the occupants, they looked through the mail slot to determine what was occurring inside in a further attempt to communicate. I also find that to be reasonable in the circumstances and in keeping with 'implied licence'. The implied licence had not been revoked and their attempts at communication continued. The actions of the officers were not for the purpose of a search. In contrast to the cases of *Evans* and *MacDonald*, the officers did not look into the apartment mail slot or enter for the purpose of gathering evidence. The issue of the occupant's privacy as it relates to a search is not relevant in this case. The public does expect that police officers will put the welfare of the occupants before that of their privacy as supported by *Davidson*. In contrast to the prosecutor's submissions, I do not concur that the officers became intruders when they continued to look through the mail slot. However, because the occupants continued to ignore the police, it did not give the officers additional grounds for entry to the apartment and they clearly became intruders after they forced the door open.

In this case, the officers had an initial duty to deal with the noise disturbance and to keep the peace for other apartment residents. Based on what they observed at the location, they became aware of an additional duty to ensure the safety of a child in the apartment. In order to perform all of those duties it was necessary to communicate with the occupants. They were frustrated in those duties by the actions of the occupants in not answering the door and refusing to communicate with the officers. It became necessary to remain at the scene for them to perform their duties.

The final part of the 'Waterfield Test' is the question; were the actions of the officers reasonable? I answer that in the negative. I find it was unreasonable to kick open the door based on what they were faced with at that moment. Despite the testimony of the officers, there was no evidence of a discernible emergency. They were faced with a child who was not acknowledging their loud knocking on the door and who was not looking in their direction. I was not presented with any indication that the child was in need of protection or that the safety of the child was at issue.

Mr. Butt in his submissions fairly indicated that there was a child that might have appeared in distress. In his submissions, Mr Lacy asked, what if the child was in distress? That was

not known and the officers were speculating at that point. When the officers looked through the mail slot, they could see the child and other than not acknowledging them, the officers fairly conceded that the child didn't appear to be in distress. They acknowledged that at that point, there was no reason to make a forcible entry. As was noted in *Magda and Sheppard and Metropolitan Toronto Police*, it is the belief of the police officer in light of the circumstances that must be considered however, prior to Constable Vo having to struggle for his baton, the belief of the officers did not warrant a forced entry to the apartment.

#### Analysis and Decision - Issues 1 and 2 - Continued

As the officers were considering their next steps and a struggle ensued for Constable Vo's baton, that did not change the circumstances of the child and I ask how an emergent situation was thus created? The door was forced open almost immediately afterwards. There was no emergency to begin with and other than the officers being unable to determine why the child was not responding to them, they could see the child was not in any emergent situation.

In *Zarger*, the court indicated that speculative concerns about officer safety could not provide justification to forcibly enter private premises. There must be an imminent threat to safety and that could also extend to any occupant. Sergeant Morris testified about what might possibly be going on inside the apartment. Other than what could be seen of the child not responding to the officers, the situation in the apartment was not known.

Sergeant Morris said that the entry to the apartment was to see if the occupants needed assistance, and to address any safety concerns. In cross examination by the prosecutor and by Mr. Lacy, Sergeant Morris fairly acknowledged that in the first instance, if the door had not been answered they would have left the location. There was not much they could do initially and they had no reason to force the door open then. All the things that the officers learned once inside the apartment regarding the occupants such as potential marijuana use in the apartment, alcohol consumption, loud music, Larry's criminal history, or a potential domestic incident, had no relevance to this hearing despite the actions they took after leaving by notifying the CAS. The information that the officers learned after they entered the apartment does not add support to their reasons for forcing the door in the first instance and cannot be considered as additional justification for the entry. Their actions must be assessed in light of what they knew before the entry.

While the officers were looking through the mail slot, Larry likely attempted to take Constable Vo's baton as it protruded into the slot. Constable Vo had to struggle to recover it. For the purpose of this decision, I proceed with the acceptance that Larry tried to pull Constable Vo's baton away. Again, that did not change the circumstances of the child.

## Analysis and Decision - Issues 1 and 2 - Continued

Sergeant Morris said that the privacy of the occupants was outweighed by their safety. She said the option of getting a key for the apartment was taken away from her by the aggressive act. Constable Hudson said that the situation had become an emergency because someone had tried to disarm a police officer. I also cannot conclude that was the case. Despite the fact that Constable Vo used his Service-issued baton to prop open the slot, hypothetically, had he used a random object to do so, there would not now be a submission that someone had tried to disarm a police officer. From the occupants' point of view, it was a foreign object protruding through the apartment door but I have not been presented with evidence to indicate that the occupants knew what the object was.

I address the submissions of Ms. Mulcahy and ask myself, did Larry commit a criminal offence by trying to disarm a police officer? There was no evidence presented to indicate that Larry was aware at the time that the object which protruded through the mail slot was potentially a weapon or even the property of the police. I do not see the action of pulling on an unknown object that was being pushed through one's door as an attempt to disarm a police officer, especially in light of the unlikely possibility that the apartment occupants could see through the solid apartment door and know what the object was.

Even though the situation had not been resolved, the circumstances had not materially changed after Constable Vo was able to recover his baton. I do not agree that it had then become an emergency. The officers were still in the apartment hallway and were faced with loud music coming from a closed apartment. The occupants would not acknowledge them, including a young child who was seated in the apartment who also would not acknowledge them. They were separated from the occupants by a locked apartment door and Constable Vo again had possession of his equipment. At that point, the officers were back to the circumstances where they initially looked through the mail slot. It was time to take a step back and consider their next course of action.

As noted in *Allan v. Munroe*, 'clear and convincing evidence' must consist of weighty cogent and reliable evidence with which a trier of fact, acting with care and caution, can come to the fair and reasonable conclusion that the officer is guilty of misconduct. While I have found that there was no clear and convincing evidence to support Count Two against Constable Hudson, the evidence is clear and convincing in relation to Count One involving all officers.

The prosecutor had drawn my attention to the matters of *Schaeffer et al. v. Wood et al.* and *Wood v. Schaeffer* and submitted that the officers in this case had viewed the apartment video prior to their interviews with Professional Standards. He submitted that

their statements should have been provided from an independent recollection and not with that assistance. I am cognizant of that but also note that the video did not provide any further justification to the officers for their entry and was limited to showing the sequence of events in this instance.

#### Analysis and Decision - Issues 1 and 2 - Continued

I did not find the case of *Lowes* to be helpful in this circumstance. In *Lowes*, the police were investigating a 911 call for help. In that case it would have been derelict on their part had the officers not entered the residence when they were faced with circumstances that indicated that the victim of a domestic assault was not being truthful to them about the event which created an immediate safety concern. The case before me did not involve a compelling circumstance where the officers would have been neglectful had they not immediately forced the apartment door open.

The matter of *Hallam v. College of Physicians and Surgeons of Ontario* noted that courts should not consider actions in the perfect vision of hindsight but assess them in light of the norms of the average doctor. In this case I do not suggest how else the officers in this matter should have taken action or ask what else they could have done with the benefit of hindsight.

The test for whether conduct could be considered discreditable as noted in *Girard v. Delaney* was repeated in *Simon v. Laurysse and Peel Regional Police* and consisted of five components.

1. *The test is primarily an objective one.*
2. *The Board must measure the conduct of the officer by the reasonable expectations of the community.*
3. *In determining the reasonable expectations of the community, the Board may use its own judgment, in the absence of evidence as to what the reasonable expectations are. The Board must place itself in the position of the reasonable person in the community, dispassionate and fully appraised of the circumstances of the case.*
4. *In applying this standard the Board should consider not only the immediate facts surrounding the case but also any applicable rules and regulations in force at the time.*
5. *Because of the objective nature of the test, the subjective element of good faith (referred to in the Shockness case) is an appropriate consideration where the officer is required by the circumstances to exercise discretion.*

## Analysis and Decision - Issues 1 and 2 – Continued

In examining this matter from an objective viewpoint, I do not find support for the contention that the circumstances became an emergency after Constable Vo struggled for his baton and that the door needed to be forced open because of a public safety concern. Though the community expects police officers to ensure public safety, the community would also not expect police officers to force open the door to their home in similar circumstances. No statute law supported that course of action and the common law, though supporting a forced entry in limited circumstances, also did not support the entry in this case. As for the fifth component of the test, I find no evidence that any of the officers acted in bad faith. Though that does not act as a *carte blanche* excusal for their actions, it does provide context and mitigation in the circumstances. The subjective element of good faith is a consideration but I find that the rapid manner in which the door was forced open after Constable Vo struggled for his baton detracts somewhat from the good faith element and points to their subsequent use of force to open the door as being reactionary and hasty. I do not find that their action of forcing open the door to a private dwelling was lawful in the circumstances and as such it had the potential to bring discredit to the reputation of the Service. Having noted that, I also find that this event was at the lowest end of the seriousness scale.

Police officers have a number of duties under statute law and the common law and one of them is to ensure public safety. I would expect the officers to use all appropriate means at their disposal to perform their duties. I concur with counsel that it would have been neglectful for the officers to have walked away from the call without taking further action based on the circumstances they encountered. The fact they had duties to perform however, did not provide unlimited licence in the manner in which they performed those duties.

In this matter, it is clear that the apartment door of Ms. Rajpaul was kicked open by Constable Hudson under the direction of Sergeant Morris. Sergeant Morris fairly acknowledged that she was the supervisor at the scene and was responsible for the actions of her subordinates. I acknowledge the submissions of Mr. Butt who noted that legally the team stands together on the Discreditable Conduct count but that Sergeant Morris acknowledged that she was the leader and took responsibility for her team. It is reasonable that her subordinates should rely on her decisions as their supervisor, especially in dynamic circumstances. As supported by *P.G. v. Attorney General of Ontario*<sup>1</sup>, the officers were entitled to rely on their superior. In this case their supervisor, Sergeant Morris, was present and had indicated to the officers that entry to the apartment was the course of action to take.

I also want to acknowledge that it is to the credit of Sergeant Morris that as a supervisor, she took responsibility for her team. She did not attempt to place the burden of responsibility other than on her shoulders. I commend her for that. It is a sign of a leader.

I have carefully considered the facts presented in this matter and conclude there is clear and convincing evidence to support the finding and I find that Sergeant Morris is guilty of Discreditable Conduct as described in the Notice of Hearing.

This matter will be returned for submissions to penalty at a future date.

A handwritten signature in black ink, appearing to read "Richard Hegedus", written in a cursive style.

Richard Hegedus  
Acting Superintendent  
Hearing Officer

Decision delivered electronically: July 22, 2019

## Appendix 'A'

### List of Exhibits

16.2015 Sergeant Mandy Morris, 17.2015 Constable Noel Hudson, 18.2015 Constable Samip Pathak, 19.2015 Constable Thao Vo

Hearing Officer Letter of Delegation S. Eley (Exhibit 1)  
Hearing Officer Letter of Delegation R. Hegedus (Exhibit 2)  
Prosecutor Letter of Designation P. Callaghan (Exhibit 3)  
Diagram of Apartment on Yellow Paper (Exhibit 4)  
Picture 9661 – Door (Exhibit 5)  
Picture 9657 – Apartment Door Outside 1402 (Exhibit 6)  
Picture 9660 – Apartment Door Inner Breakage (Exhibit 7)  
Picture 9662 – Apartment Door Close-up Inner Breakage (Exhibit 8)  
Picture 9664 – Apartment Door Lock Profile (Exhibit 9)  
Picture – Apartment Door Outside Mail Slot (Exhibit 10)  
Picture – Apartment Door Outside Mail Slot View (Exhibit 11)  
Picture – View Into Apartment Door (Exhibit 12)  
Picture – Dining Area Chairs (Exhibit 13)  
Picture – Dining Area Chairs and Marks on Wall (Exhibit 14)  
Picture – Marks on Wall (Exhibit 15)  
Picture – Floor 14 Plan 4500 Jane Street (Exhibit 16)  
Picture – Floor 15 Plan 4500 Jane Street (Exhibit 17)  
Picture – Floor Plan Apartment Unmarked (Exhibit 18)  
Picture – Kitchen (Exhibit 19)  
Picture – Floor Plan Apartment - Marked (Exhibit 20)  
Picture – Dining Area Chairs - Marked (Exhibit 21)  
USB – Audio Powell Interview (Exhibit 22)  
CD – Hallway Video 4500 Jane Street (Exhibit 23)  
CD – Communications Phone Call / Dispatch Audio (Exhibit 24)  
ICAD Report – Event 3043552 October 4, 2014 (Exhibit 25)  
ADS Summary – File 3599-2015 (Exhibit 26)  
CD – ADS File 3599-2015 - 4500 Jane Street October 4, 2014 (Exhibit 27)  
Memorandum Book Notes Sgt. Morris #94994 October 4, 2014 (Exhibit 28a)  
Memorandum Book Notes PC Hudson #10248 October 4, 2014 (Exhibit 28b)  
Memorandum Book Notes PC Vo # 7897 October 4, 2014 (Exhibit 28c)  
Memorandum Book Notes PC Pathak #9663 October 4, 2014 (Exhibit 28d)  
Statement Complaint Response Sgt. Morris #94994 (Exhibit 29a)  
Statement Complaint Response PC Hudson #10248 (Exhibit 29b)  
Statement Complaint Response PC Vo # 7897 (Exhibit 29c)



Statement Complaint Response PC Pathak #9663 (Exhibit 29d)

Defence Book of Authorities Volume 1 (Exhibit 30)

Penner v. Niagara (Regional Police Services Board), [2013] S.C.J. No. 19  
(Exhibit 30, Tab 1)

Ottawa (City) Police Service v. Ottawa (City Police Service), [2016] O.J. No. 2431  
(C.A.) (Exhibit 30, Tab 2)

Allan v. Munroe, 1994, Board of Inquiry (Exhibit 30, Tab 3)

Greater Sudbury (City) Police Service v. Greater Sudbury (City) Police Service,  
[2010] O.J. No 793 (Div. Ct.) (Exhibit 30, Tab 4)

Golomb and College of Physicians and Surgeons Ontario (1996) 12 O.R. (2d) 73  
(Div. Ct) (Exhibit 30, Tab 5)

Smith v. Murdock, (1987) 25 O.A.C. 246 (Div. Ct.) (Exhibit 30, Tab 6)

Wang and Toronto Police Service, 2015 (Exhibit 30, Tab 7)

Katsoulakos v. Assn. of Professional Engineers of Ontario, [2014] O.J. No. 4430  
(Div. Ct.) (Exhibit 30, Tab 8)

Nguyen v. Chartered Professional Accountants of British Columbia, [2018] B.C.J.  
No. 699 (Sup. Ct.) (Exhibit 30, Tab 9)

Gillespie v. Shockness and Peel Regional Police, 1994, Board of Enquiry (Exhibit  
30, Tab 10)

Monaghan v. Toronto Police Service [2005] O.J. No. 1396 (Div. Ct) (Exhibit 30,  
Tab 11)

McCoy and Fort Frances Police (1969) O.P.R. 16 (Exhibit 30, Tab 12)

Simon v. Laurysen and Peel Regional Police, 2008, OCPC (Exhibit 30, Tab 13)

Magda and Sheppard and Metropolitan Toronto Police, 1992 (Div. Ct.) (Exhibit  
30, Tab 14)

Hallam v. College of Physicians and Surgeons of Ontario, (1993) 61 O.A.C.143  
(Div. Ct.) (Exhibit 30, Tab 15)

Defence Book of Authorities Volume 2 (Exhibit 31)

Miles v. Krug and Gloucester Police Service, 1993, Board of Inquiry (Exhibit 31,  
Tab 16)

R v. Godoy, (1997) 115 C.C.C. (3d) 272 (ONCA) (Exhibit 31, Tab 17)

R v. Godoy, (1999) 131 C.C.C. (3d) 129 (SCC) (Exhibit 31, Tab 18)

R v. Havelock, (2004) M.J. No. 307 (QB) (Exhibit 31, Tab 19)

R v. Depace, (2014) ONCA 519 (Exhibit 31, Tab 20)

R v. Alexson, (2015) 320 C.C.C. (3d) 401 (Man. CA) (Exhibit 31, Tab 21)

R v. Lowes, (2016) ONCA 519 (Exhibit 31, Tab 22)

R v. Davidson, 2017 ONCA 257 (Exhibit 31, Tab 23)

Allen v. Alberta (Law Enforcement Review Board) [2013] A.J. No. 553 (ABCA);  
Engel v. Allen [2013] SCCA No. 347 (SCC) (Exhibit 31, Tab 24)  
Rabah v. Cole et al. and Toronto Police Service, 1998, Board of Inquiry (Exhibit 31, Tab 25)  
R.M. V. C.B. and J.N., 2007, MN Law Enforcement Review Agency (Exhibit 31, Tab 26)  
Thistle and McGrath and Royal Newfoundland Constabulary, 1996 (Exhibit 31, Tab 27)  
Bishop v. Buckle and Royal Newfoundland Constabulary, 2000 (Exhibit 31, Tab 28)  
Bobb v. Nicholls and Metropolitan Toronto Police, 1984, Board of Inquiry (Exhibit 31, Tab 29)  
Terrio v. Elliott and Niagara Regional Police Service, 1995, Board of Inquiry (Exhibit 31, Tab 30)  
Whitney v. Gonzalez and Ontario Provincial Police, 2006, OCCPS; Whitney v. Ontario (Provincial Police) [2007] O.J. No. 2668 (Div. Ct.) (Exhibit 31, Tab 31)  
Fletcher v. Collins et al. (1968) O.J. No. 1206 (Exhibit 31, Tab 32)  
P.G. v. Attorney General of Ontario, 1995, Div. Ct. (Exhibit 31, Tab 33)  
Ontario Police Services Act s 42 (Exhibit 31, Tab 34)

Prosecution Book of Authorities (Exhibit 32)

R v. Dedman [1985] 2 S.C.R. 2 (Exhibit 32, Tab A)  
R. v. Waterfield [1964] 1 Q.B. 164 (Exhibit 32, Tab B)  
Hunter v. Southam Inc. [1984] 2 S.C.R. 145 (Exhibit 32, Tab C)  
R. v. Evans [1996] 1 S.C.R. 8 (Exhibit 32, Tab D)  
R v. Tricker, 1995 ONCA 1268 (CanLII) (Exhibit 32, Tab E)  
R v. MacDonald [2014] 1 S.C.R. 37 (Exhibit 32, Tab F)  
R v. Zarger, 2014 ONSC 1415 (CanLII) (Exhibit 32, Tab G)  
R v. Godoy [1999] 1 S.C.R. 311 (Exhibit 32, Tab H)  
R v. Brownrigg, 2009 ONCJ 558 (CanLII) (Exhibit 32, Tab I)  
Schaeffer et al. v. Wood et al., 2011 ONCA 716 (CanLII) (Exhibit 32, Tab J)  
Wood v. Schaeffer [2013] 3 S.C.R. 1053 (Exhibit 32, Tab K)  
Faryna v. Chorny [1952] 2 D.L.R. 354 (Exhibit 32, Tab L)  
R v. Davidson, 2017 ONCA 257 (CanLII) (Exhibit 32, Tab M)