

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

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

AND

SERGEANT C.D. (CHRISTOPHER) PINKERTON #10856

DISCREDITABLE CONDUCT

DECISION WITH REASONS

Before: Superintendent K. Michael Bickerton
Ontario Provincial Police

Counsel for the Prosecution: Lynn Donnelly/Adrien lafrate

Counsel for the Defence: Genevieve McInnes

Public Complainant: Louise Rollins

Hearing Date: October 15-17, 2018

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

PART I: OVERVIEW

Allegation of Misconduct

Sergeant C.D. (Christopher) Pinkerton #10856 (Sgt. Pinkerton) stands charged with Discreditable Conduct in that he did act in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the Ontario Provincial Police, contrary to Section 2(10(a)(xi) of the Code of Conduct contained in the Schedule to Ontario regulation 268/10 as amended.

The edited particulars of the allegations are as follows:

On or about August 23, 2015, Sgt. Pinkerton's wife was walking along a roadway with her mother and children when she had a confrontation with a neighbour. She called Sgt. Pinkerton who was on duty at the time to explain what had happened. Shortly after speaking to his wife, Sgt. Pinkerton heard a call over the police radio dispatching PC Desjardins to the residence of the neighbour with whom Sgt. Pinkerton's wife had the confrontation. Sgt. Pinkerton is PC Desjardin's immediate supervisor.

It is alleged that Sgt. Pinkerton committed discreditable conduct in the following manner:

- Upon becoming aware that a complaint had been made about his wife, Sgt. Pinkerton ought to have known that his involvement in the investigation would introduce relationship bias. Instead, Sgt. Pinkerton immediately contacted PC Desjardins and had discussions with him about the investigation and shared with him the information that he had just received from his wife.
- PC Desjardin asked Sgt. Pinkerton if he preferred another on duty Sergeant investigate the complaint given the circumstances involving a police officer's wife. Sgt. Pinkerton provided him direction that this was not necessary, explaining to PC Desjardins that there does not appear that there is much to this investigation other than investigating the complainant's wife.
- In doing so Sgt. Pinkerton shifted the focus of the investigation from his wife and her actions and communications onto the complainant's wife. This was inappropriate given PC Desjardins directly reported to him.
- Sgt. Pinkerton made a notebook entry in which he indicated that he informed PC Desjardins about what he deemed to be the most pertinent aspect of the investigation. In doing so he inserted himself into the investigation. Given that Sgt. Pinkerton is PC Desjardin's immediate supervisor, his actions in directing the focus of the investigation interfered with a non- biased police investigation.

Plea

On October 15, 2018, Sgt. Pinkerton pleaded not guilty to the allegation of Discreditable conduct.

Decision

Upon review and careful consideration of the evidence and submissions, I find the evidence falls well short of establishing misconduct. I find Sgt. Pinkerton not guilty of Discreditable Conduct.

PART II: THE HEARING

The hearing commenced on October 15, 2018 and concluded on October 17 2018.

Exhibits

The exhibits for this matter are listed in Appendix A.

Representation

In this matter, Ms. McInnes represented Sgt. Pinkerton and Ms. Donnelly and Mr. Iafrate represented the prosecution. The Public complainant, Louise Rollins appeared unrepresented.

Background

Not all of the facts that follow are directly related to the notice of hearing but may serve to provide context.

On or about August 23, 2015 Shannon Pinkerton, wife of Sgt. Pinkerton, on duty at the time, was walking on the road near the residence of public complainant Louise Rollins and her husband Gerald Rollins. Shannon Pinkerton was walking with her mother Gail Steeves, two young daughters, while pushing a stroller with her third, infant daughter at the time.

Louise Rollins had been cutting "greens" which are plants that she had intended to feed to poultry on her farm. Louise Rollins was in possession of a knife which she had used or intended to use for cutting the plants. Louise Rollins had seen a vehicle drive past her residence and walked toward the road to further investigate the vehicle as there had been, by her paraphrased description, suspicious and allegedly unlawful activity in the vicinity previously. This included past behaviours such as unlawful or questionable hunting practices, the disposal of animal carcasses, and people letting dogs run at large which harassed and annoyed livestock.

When Louise Rollins was near the road she saw Shannon Pinkerton walking on the road accompanied as describe. Louise Rollins felt that Shannon Pinkerton and her mother

appeared to be suspicious and were in the area for an unusual amount of time. She felt that the women were dressed unusually and described their attire as a disguise as the women were wearing large hats, dresses, and sunglasses.

Shannon Pinkerton felt that the manner in which Louise Rollins was behaving at the time was worrisome and threatening as she was holding a knife in a manner that caused her some degree of worry.

Shannon Pinkerton called her husband, Sgt. Pinkerton, who was on duty at the time, but was unable to reach him directly. She attempted to reach at least one other family member unsuccessfully. She then called Gerald Rollins and described what she believed to be Louise Rollins' unusual behaviour. During the conversation, with respect to the incident and specifically to the knife, Shannon Pinkerton told Mr. Rollins words to the effect, by her recollection, if Louise Rollins did that again she would show her where to fucking put it (the knife).

Gerald and Louise Rollins' recollection of what was said differed from that of Shannon Pinkerton and they perceived it as a threat by Shannon Pinkerton to stab Louise Rollins. Louise Rollins called the OPP to report the incident.

In the meantime Shannon Pinkerton was speaking to or had spoken to her husband Sgt. Pinkerton and reported her concerns. Sgt. Pinkerton was going to report the incident on behalf of his wife not knowing that Louise Rollins had already reported the matter. Sgt. Pinkerton then heard a radio call being assigned to PC Desjardins with Louise Rollins being identified as the complainant and naming Shannon Pinkerton as having been involved. Sgt. Pinkerton had a telephone conversation with PC Desjardins during which he mentioned the information received from his wife including that Louise Rollins had been in possession of a knife. He advised PC Desjardins to respond to the call and initiate an investigation. All parties agreed that this substantially ended Sgt. Pinkerton's direct involvement. Sgt. McDonald was working that day and was also PC Desjardins' supervisor.

Shannon Pinkerton's perception of the event was that Louise Rollins was acting in an unusual and intimidating manner while in possession of a knife in the presence of her mother and three young daughters. Louise Rollins' perception of the event was that she had done nothing wrong and that Shannon Pinkerton had threatened to stab her. Louise Rollins expressed that the wife of an OPP officer should know better and expressed conflict of interest concerns in that the wife of an OPP officer was involved.

At the conclusion of the OPP investigation, in consultation with the crown attorney, charges were not laid. The Rollins' laid a private information for the criminal charge of threatening

against Shannon Pinkerton. A trial was initiated but the charge was either withdrawn or was otherwise dismissed.

Witnesses

The following witnesses gave evidence at this hearing:

Prosecution Witnesses

1. Ms. Hema NAGAR
2. Louise ROLLINS (Public Complainant)
3. PC DESJARDINS

Defense Witnesses

1. Shannon PINKERTON
2. Sgt. PINKERTON

Evidence in Chief: Ms. Hema Nagar

Ms. Nagar is currently employed by the Information and Privacy Commission having previously been employed as an investigator with the Office of the Independent Review Director (OIPRD). She was assigned to investigate allegations made against Sgt. Pinkerton by public complainant Louise Rollins and was assisted, at times, by OIPRD investigator Elaine Taylor. She first became aware of the complaint in September 2016. As part of her investigation Ms. Nagar interviewed Louise Rollins, her husband Gerald Rollins, PC Desjardins¹, Sgt. Pinkerton², PC Sabourin and Detective Sergeant (D/Sgt.) Watkins. She received recordings and other material from the OPP.

Ms. Nagar testified that in August of 2016 there was a confrontation between Mrs. Rollins and Sgt. Pinkerton's wife, Shannon Pinkerton which occurred on the roadway near the Rollins' residence. Following the conflict Mrs. Rollins called the (OPP) to report the incident. PC Desjardins was dispatched to the call for service and realized that a potential conflict of interest existed as his supervisor's (Sgt. Pinkerton) wife was involved. Sgt. Pinkerton advised PC Desjardins to attend the call and initiate an investigation. PC Desjardins had indicated that he had inquired about having someone with a higher rank investigate the matter. PC Desjardins reported to two Sergeants on the date of the incident, Sgt. Pinkerton and Sergeant J. McDonald.

As part of her investigation Ms. Nagar received amongst other evidence, a copy of PC Desjardin's notes,³ a Provincial Communications Centre (PCC) recording,⁴ a General

¹ Exhibit 10, PC Desjardins Interview, December 5, 2016

² Exhibit 15, Sgt. Pinkerton Interview, December 5, 2016

³ Exhibit 11, Notes of PC Desjardins

⁴ Exhibit 12, PCC Audio recording, August 23, 2016

Occurrence Report (GOR)⁵ a recording of an interview between Louise Rollins and PC Desjardins,⁶ a copy of Sgt. Pinkerton's notes,⁷ an excerpt from OPP Police Orders section 6.24⁸

As part of her testimony Ms. Nagar stated or acknowledged the following points:

- PC Desjardins was dispatched to respond to the call for service involving a confrontation between Louise Rollins (public complainant) and Shannon Pinkerton who is Sgt. Pinkerton's wife on August 23, 2015.
- PC Desjardins realized a potential conflict of interest as his supervisor's (Sgt. Pinkerton) wife was involved.
- PC Desjardins reported to two Sergeants on the date in question, Sgt. J. McDonald and Sgt. Pinkerton.
- PC Desjardins asked Sgt. Pinkerton if it was okay for him to conduct the investigation which Sgt. Pinkerton approved.
- PC Desjardins wanted the investigation transferred to someone with a higher rank to investigate to avoid the perception of bias or collusion.
- She interviewed Sgt. Pinkerton on December 5, 2016⁹
- From the interview with Sgt. Pinkerton she learned about any involvement of Sgt. Pinkerton from the outset until the time it went to court.
- That Sgt. Pinkerton had missed a call from his wife on the date of the incident (August 23, 2015) and that he called her back.
- That Sgt. Pinkerton was going to call in (to dispatch) to report the incident on behalf of his wife when he heard on the radio that the call was already being dispatched following a call from Ms. Rollins.
- PC Desjardins had been dispatched via the OPP, PCC.
- Sgt. Pinkerton spoke with PC Desjardins and told him what he had learned from his wife.
- Sgt. Pinkerton advised PC Desjardins to continue to the call and to report any results to Sgt. McDonald.
- She considered what Sgt. Pinkerton had done to ensure that he was not involved in the investigation in light of the conflict of interest issue.
- Ms. Nagar had shown Sgt. Pinkerton a copy of OPP policy with respect to conflict of interest.¹⁰ She explained that she had highlighted certain portions of the document in purple because one of Ms. Rollins' concerns was conflict of interest.

⁵ Exhibit 13, General Occurrence Report August 23, 2015

⁶ Exhibit 14, recording of part of an interview between Louise Rollins and PC Desjardins

⁷ Exhibit 16, copy of Sgt. Pinkerton's notes

⁸ Exhibit 17 OPP Police Orders Section 6.24 excerpt

⁹ Exhibit 15, Sgt. Pinkerton Interview, December 5, 2016

¹⁰ Exhibit 17 OPP Police Orders Section 6.24 excerpt

- That there are strict standards to abide by regarding conflict of interest and bias, whether real or perceived and this was an issue that came up often for the OIPRD.
- There is a great deal of public interest regarding OIPRD investigations of bias and conflict of interest and the standards outlined in OPP policy state that police officers are to conduct investigations in an impartial unbiased manner.

There were no question of Ms. Nagar by Louise Rollins.

Cross Examination- Ms. McInnes

In Cross examination Ms. Nagar stated or acknowledged the following points:

- That Sgt. Pinkerton had spoken to his wife who had spoken to Gerald Rollins, husband of Louise Rollins.
- That Louise Rollins' conversation with the police dispatcher was not broadcast over the radio. Some officers were limited to what was transmitted over the police radio while others may have had MDT's (Mobile Data Terminals). The radio call was that Ms. Rollins was reporting an altercation which had occurred between Shannon Pinkerton and Louise Rollins and that Louise Rollins would like to speak to an officer.
- Nothing was broadcast indicating that Shannon Pinkerton had uttered a threat.
- She was shown a Computer Aided Dispatch (CAD) report¹¹. She agreed that the report contained no information regarding a threat to cause bodily harm, no indication that Ms. Rollins had been in possession of a knife, and no allegation of a crime.
- Ms. Nagar agreed that at the time of dispatch there was no indication that Sgt. Pinkerton knew that Ms. Rollins said that Shannon Pinkerton had threatened to stab her. She further agreed that there was no indication, at the time of dispatch, that PC Desjardins knew this either.
- Agreed that there was no indication broadcast from dispatch that Louise Rollins had been in possession of a knife.
- Agreed that Shannon Pinkerton felt threatened by the manner in which Louise Rollins appeared on the road with a knife and that she had conveyed this to Sgt. Pinkerton.
- Agreed that PC Desjardins was dispatched to the call because he was assigned to that zone and that he was not dispatched by Sgt. Pinkerton.
- Agreed that, based upon the dispatch call, there was no reason to believe that the allegation made by Louise Rollins was criminal in nature.
- Agreed that Sgt. Pinkerton had an obligation to advise the responding officer that a knife was involved and that Sgt. Pinkerton had a duty to do so. Ms. Nagar indicated that generally this would be the case but that the conflict of interest policy put him in a difficult situation. She indicated that his obligation to advise another officer regarding a knife and the conflict of interest policy are equally important.

¹¹ Exhibit 18, CAD report, August 23, 2015

- Sgt. Pinkerton did not use the word “brandished” in his notes.
- Ms. Nagar agreed with the suggestion that it would have been neglect of duty for Sgt. Pinkerton not to share the information regarding a knife.
- She investigated the entire manner in which the OPP dealt with the threat complaint from Ms. Rollins. She agreed that other than a single phone call to PC Desjardins there was no indication that Sgt. Pinkerton was involved in any capacity. There was no indication that he attempted to insert himself in any way following the phone call.
- She agreed that it was the opinion of Inspector Wolfe (Detachment Commander) that conflict of interest policy was not breached.
- From the onset of the incident all involved officers knew that it involved the wife of an officer and that a conflict of interest existed.
- Ms. Nagar was referred to the duty report of Sgt. McDonald ¹² and agreed that he had spoken to PC Desjardins before he went to the call. Sgt. McDonald indicated that PC Desjardins needed to attend the call as the initial responder and that a timely response was required due to public safety concerns.
- Sgt. McDonald indicated that criminal allegations would be referred up (the chain of command) while reconfirming that when PC Desjardins was dispatched there was no criminal allegation.
- She acknowledged that Sgt. McDonald indicated that if there appeared to be grounds for enforcement that the investigation would be referred to Command Staff for further assignment.
- With respect to a formal statement or written declaration of conflict of interest as outlined in policy Ms. Nagar indicated that nobody seemed to be aware of this aspect of the policy.
- She agreed that Inspector Wolfe felt that the specific policy was complied with.
- Ms. Nagar agreed that the allegation against Sgt. Pinkerton rests on a comment he made to PC Desjardins, that he intentionally diverted PC Desjardins’ attention improperly and that Sgt. Pinkerton highlighted that Louise Rollins had a knife thus he directed PC Desjardins’ investigation.
- Ms. Nagar agreed that PC Desjardins never suggested that he was being directed by Sgt. Pinkerton.
- Ms. Nagar advised that Louise Rollins had made other unsubstantiated complaints against the OPP including one against D/Sgt. Watkins. She explained that unsubstantiated meant that there was insufficient evidence to conclude that something had occurred.
- Ms. Nagar explained that Gerald Rollins had written a note describing what he believed Shannon Pinkerton had said to him regarding the knife and that at some point Louise Rollins had inserted the word “her” to the note.

¹² Exhibit 20, Duty Report of Sgt. J. McDonald

Prosecution Redirect- Mr. Iafrate

- Ms. Nagar advised that she did not think that Shannon Pinkerton was at home when she had the telephone conversation with Sgt. Pinkerton.
- She did not think that Sgt. Pinkerton knew why Louise Rollins had a knife.
- Upon her review of Sgt. Pinkerton's notes she saw that he had noted that Louise Rollins was cutting greens for turkeys and agreed that it might be a factor for consideration regarding public safety concerns.
- Ms. Nagar indicated that Sgt. Pinkerton told PC Desjardins to attend the call and that this would constitute a direction.
- When interviewed by police, Gerald and Louise Rollins had a conversation on video, when officers had left the interview room, regarding Mr. Rollins recollection of what he had heard Shannon Pinkerton say and that his version changed slightly from what Louise Rollins had recalled him saying previously.

Evidence in Chief: Ms. Louise Rollins

- On August 23, 2015 she called police after reading her husband's note and speaking with him following a conversation he had with Shannon Pinkerton.
- She was concerned as she felt that Shannon Pinkerton had threatened to stab her. Louise Rollins indicated regarding the knife the [police] report said it was "sticking it where the fucking sun don't shine" but that she felt this was not what Shannon Pinkerton said. Her husband wrote a note right away and she read it and was concerned about it.
- She felt that she had not done anything to warrant being threatened.
- That what Shannon Pinkerton had said was unprovoked and irrational.
- She had not had any previous interactions with Shannon Pinkerton.
- PC Desjardins attended her residence in response to her call for service.
- That PC Desjardins had attended her residence twice before in the past.
- She told PC Desjardins what had occurred between herself and Shannon Pinkerton.
- On the date in question (August 23, 2015) she went to cut some feed ("greens") for the poultry on her farm and that she usual brings side cutters for this purpose. She had not brought them with her but her husband was getting ready to depart from the residence and was close by and handed her his jack knife to cut the greens with.
- She had seen "the Pinkertons" (Shannon Pinkerton, her mother and children) walk past her gate.
- A car had driven past very slowly and she went to see what he was doing. She was concerned with what the driver was doing as they had experienced "mischief" in the area in the past.
- She was not sure how to close the knife so she put it along side of her leg so as not to alarm the driver but that she had no intention of doing anything with the knife.

- She managed to get a partial licence plate number of the car that drove past but nobody did anything about it.
- The Pinkertons were on the wrong side of the road and had stopped, blocking her view of the road.
- They (the Pinkertons) had great big hats and great big sunglasses on and she could not hear nor make eye contact with them. She could not hear them if they spoke to her because she is hearing impaired.
- She (Louise Rollins) was very uncomfortable and she (Shannon Pinkerton) was bearing down on her with the stroller. She thought Shannon Pinkerton was going to run her down or run her in the legs with the stroller.
- She could not see the car any more. She could not see the children but did see the two ladies with their huge hats on.
- She returned to her property.
- Louise Rollins listened to an interview tape between herself and PC Desjardins (Exhibit 14). She advised that there were two recordings and that this was the second part of the interview. She testified PC Desjardins kept saying “where the sun don’t shine” hoping she would say it. She explained that she believed that he (PC Desjardins) was hoping that she would say that was what Shannon Pinkerton had said to her husband in relation to the knife.
- Shannon Pinkerton was a Police officer’s wife and was threatening to stab her. Louise Rollins did not want Shannon Pinkerton to receive special consideration because she was a police officer’s wife. Every once in a while they (the OPP) do not come in response to her calls for service. She gave the example that on August 28 she called and no one responded.
- Louise Rollins expressed concerns regarding what the Police report said and how it differed from what she had told PC Desjardins on recording. *(The recording referred to was not presented as evidence in this tribunal. It is apparently the subject of another inquiry)*
- PC Desjardins declined to advise her who his supervisor was. She called the OPP detachment on the following day and was advised by the receptionist that PC Desjardins’ supervisor was Sgt. Chris Pinkerton. She advised that she did not wish to speak to Sgt. Pinkerton as he was involved. Louise Rollins subsequently spoke with Sgt. Gagne. Sgt. Gagne called her back and advised that no charges would be laid.
- Louise Rollins expressed concerns that Sgt. Pinkerton was involved in the decision making process.

Public Complainant Witness Called (herself) - Louise Rollins

Ms. Rollins called herself to the witness stand and offered the following:

- Louise Rollins referred to exhibit 23, the note that was written by her husband Gerald Rollins following his conversation with Shannon Pinkerton.

- She spoke with her husband at the time. He had written that Shannon Pinkerton had said (excerpted) “stick it somewhere it will hurt” or words to that effect. Following the discussion Louise Rollins inserted the word “her” so the import of what was said was “stick her.”
- She testified that there was no malice or ill intent in the insertion of the word but that the Police and later at Court (Shannon Pinkerton’s criminal trial) there was a really big deal made of it.
- She reiterated that the report or the recording had been tampered with as the threat indicated in the report was different from what was said and the OPP apologized for the discrepancy.
- She referenced exhibit 22, an email from Mr. Bryan Baird, principle at the school where Shannon Pinkerton was and remains employed at a teacher. She explained that she had called the school board to redirect her taxes as she did not want her tax money to support the board or the school where Shannon Pinkerton was employed.
- She stated that she was advised by the person at the school board to call the school where Shannon Pinkerton worked. She did so and spoke with Mr. Baird. She took exception to several inaccuracies and untruths with Mr. Baird’s recollection of their conversation in the email he sent to the OPP. One of the issues was that he indicated that Louise Rollins had said Shannon Pinkerton should not be teaching. She explained that she did not say that.
- She said that she had shared her personal theory with Mr. Baird that Shannon Pinkerton was suffering from post partem psychosis or post partem depression, the dangerous kind, and that he failed to mention this in his email to the OPP.

Cross Examination: Ms. McInnes

- Louise Rollins agreed that they (the Rollins’) had made numerous reports to the police in relation to incidents on or near their property. The reports revolved around people unlawfully accessing property, dogs running at large, dumping garbage, arson, shooting, poaching, and dumping carcasses.
- She personally had never stopped anyone on the road for driving slowly but they (inferring herself or Mr. Rollins) will go and see what is going on because it is almost always because they (the person or persons on the road) are about to do something or have done something wrong. She clarified that her inquiries had nothing to do with the lawful use of the road. She indicated that she may go or her husband may go to see what is going on.
- Whenever possible she will try to write down a licence plate number and that, on the date in question, she wanted to get the licence plate of the white car that had been driving in the area.
- She was referred to a transcript (*not entered as an exhibit*) from the trial of Shannon Pinkerton following the Rollins’ laying a private information. She was pointed to an area of cross examination regarding her interest in obtaining a licence plate number of the

white car and that she had to go past the gate on her property in order to try and see it. She clarified that she was on the side of the road.

- She clarified that she keeps a record of licence plate numbers and that her husband does not. She explained that (*paraphrased*) she keeps licence numbers to see if there were prior issues with the vehicle in the area.
- Ms. McInnes suggested that the driver of the white car on the day in question was not behaving suspiciously. Louise Rollins replied that he was driving very, very slowly in an area where a dead dog had been dumped several months earlier. She found it strange and wanted to know what he was doing there.
- She indicated that she found the manner in which Shannon Pinkerton and her mother were dressed was peculiar and bizarre as they were wearing very large hats and great big sunglasses. She indicated that it could have been a disguise because she had no clue who they were.
- She felt that Shannon Pinkerton, her children and her mother were loitering and lurking near her property for no apparent reason. She indicated that Shannon Pinkerton and/or her Mother had indicated that there were turkeys on the road but there weren't any turkeys or she would have seen them.
- Shannon Pinkerton was behaving oddly and approached her in a menacing manner.
- She felt that Shannon Pinkerton had been on the road for several hours and that it was a hot day and she did not know what they were up to. She indicated that nobody walks pushing a stroller for hours and hours.
- She re-stated that she believed Shannon Pinkerton was suffering from post partem psychosis because of the wandering and that she (Shannon Pinkerton) was worried about retaliation and goes to bed with a golf club. She explained that she had kept the knife by her side at the time of her interaction with Shannon Pinkerton.
- She explained that post partem psychosis caused her concerns that Shannon Pinkerton could harm her children because people with this condition are known to have jumped off balconies and in front of trains.
- She expressed concerns that Shannon Pinkerton also uses her maiden name 'Steeves' at times. Shannon Pinkerton teaches under the name Steeves when her name is Pinkerton and that constituted professional misconduct. She felt that Shannon Pinkerton used the name Pinkerton during the incident in question to intimidate.
- She testified that PC Desjardins told her he would not make the decision regarding charges and that he was there to get a statement and obtain the basics for his supervisor.
- She indicated that when D/Sgt. Watkins attended her property to deliver a caution letter for section 88.1 of the criminal code that he was a rude and arrogant SOB although she did not use those words. He started yelling at her and she thought he was going to hit her and he kept yelling at her to read the letter. He said he was shouting because she couldn't hear but it was over the top shouting. He didn't want to hear what she had to say.

Evidence in Chief: PC Desjardins

- He has been a police officer for 22 years.
- On August 23 2015 he was on general law enforcement duties assigned to the patrol zone in the area of the Rollins' residence.
- At 12:31 pm he was dispatched by the PCC (Provincial Communications Centre) to the Rollins' residence as a result of a call made by Louise Rollins. He described being dispatched to a "threats after the fact" which indicated the incident was no longer in progress. The call was further described as a confrontation between the complainant, Louise Rollins and Shannon Pinkerton.
- He started an initial investigation.
- He was shown the CAD report¹³ and interpreted what it had meant to him. He read from the report. He then clarified that the reference to threats on the CAD report meant to him that someone was alleging something was said that was threatening nature.
- He was referred to his notes¹⁴ where he had Louise Rollins identified as the complainant and Shannon Pinkerton as a suspect.
- He knew Shannon Pinkerton and was aware she was Sgt. Pinkerton's wife.
- He spoke to Sgt. Pinkerton before attending the call. He thought that he had initiated the call but upon review of disclosure material he believes that he was incorrect and that Sgt. Pinkerton had actually called him. He did not make notes in relation to the phone call but does recall portions of it.
- He and Sgt. Pinkerton discussed whether or not he (Desjardins) should be going to the call or not. He stated that that was all he could independently recall.
- With respect to the call he understood that it was his job to start and investigation. He had two Sergeants that day, Pinkerton and McDonald. He does occasionally discuss calls with Sergeants prior to attending, depending on the nature of the incident.
- He had a concern being assigned the call in that Sgt. Pinkerton's wife was involved and he did not want the perception of bias or conflict which should be avoided. He explained that the complainant should know everything is above board and that a clear and upright investigation is conducted. If his supervisor was involved then people could perceive bias.
- He was unsure if he had ever received training regarding conflict of interest or bias.
- He believes that there may have been two phone calls with Sergeant Pinkerton and knows there was other "stuff" discussed.
- He didn't recall, independently, discussing Louise Rollins with Sgt. Pinkerton but believes that he did, having reviewed disclosure material.

¹³ Exhibit 18, CAD Report

¹⁴ Exhibit 11, Notes of PC Desjardins

- He didn't recall if Sgt. Pinkerton raised concerns about his (Desjardin's) safety but he had no concerns for his safety. He knew the Rollins family from previous calls in 1998 and he used to live in the area. He had his use of force options with him.
- He spoke to Sgt. McDonald about the incident when he returned to the OPP detachment, sometime after 4:11pm.
- He had no concerns for the safety of those involved as it was after the fact. He had no concerns for the general public as there are not a lot of general public in the area.
- He stopped a speeder on the way to the Rollins' residence.
- He interviewed Louise Rollins.
- He learned Louise Rollins had been given a knife from Gerald Rollins. He wasn't surprised she had a knife as it was farm country and farmers carry knives to cut bailer twine and things of that nature.
- He read from page 3 of a general occurrence report ¹⁵ that he had authored. That portion of the report indicated that the Rollins' wanted charges laid against Shannon Pinkerton. He recalled the Rollins' asking about Sgt. Pinkerton's involvement but could not recall what was discussed. He generally remembered that they were concerned that Shannon Pinkerton's husband was an OPP officer and that nothing would be done.
- He interviewed Shannon Pinkerton and Gail Steeves.
- He was referred to a supplementary report¹⁶ that he authored. He explained that he had written the general occurrence report the previous day and had written down a different threat than what was reported in interviews. He wrote "I'll fucking shove it where the sun don't shine" or words to that effect but testified that that was incorrect. On the supplementary report he indicated that the threats do not fit within the definition under the criminal code.
- He passed the investigation up to Sgt. McDonald. His last involvement was the supplementary report he authored on August 24, 2015.
- He advised Sgt. Pinkerton that the investigation was on going and he wouldn't be reporting up to him. He passed the matter on to Sgt. McDonald and eventually D/Sgt. Watkins was assigned.

Cross Examination, Public Complainant (Louise Rollins)

- PC Desjardins declined to say where he used to live near the Rollins' due to his privacy. (*Louise Rollins agreed it was not relevant*)
- He did not recall her asking him on the date of the incident who his Sergeant was. He testified that he had two supervisors that day.

¹⁵ Exhibit 13, General Occurrence Report

¹⁶ Exhibit 25, Supplementary Report

- He was directed to page 7 of his notes at 1322 hours where he wrote “wife with knife” and he testified that he was referring to Louise Rollins. It was clarified that he wrote down what Mr. Rollins was telling him at the time.

Cross Examination: Ms. McInnes

- He thought he had called Sgt. Pinkerton but he now thinks Sgt. Pinkerton called him. When previously interviewed he was unsure who called who. He had nothing in his notes regarding the call.
- He remains somewhat unsure who called who.
- He made notes of a conversation with Sgt. McDonald and that he (McDonald) would notify Inspector Wolfe.
- The chain of command was notified and he requested the investigation be taken away from him.
- He recalled portions, not every aspect, of the conversation with Sgt. Pinkerton that he had prior to attending the call. He recalls conflict of interest being discussed. He indicates that he and Pinkerton were aware of the appearance of bias and the steps that needed to be taken because his (Pinkerton's) wife was involved. He doesn't recall if reporting up to Sgt. McDonald was discussed or not. He doesn't have a good recollection but believes he was told by Sgt. Pinkerton to go ahead and respond to the call.
- He testified that he does not recall specifics of the conversation but stated that Sgt. Pinkerton was not trying to influence him in any way.
- He doesn't recall one way or the other if Sgt. Pinkerton told him about Louise Rollins being in possession of a knife.
- He agreed that for officer safety reasons that it is critical to know if an involved party was in possession of a knife. He agreed that officers are duty bound to share this information and indicated that he would advise others of this fact and would expect to be advised also.
- PC Desjardins was referred to the duty report of Sgt. McDonald¹⁷ and advised he had never seen it before. He was directed to a portion where Sgt. McDonald asserted that he advised PC Desjardins to conduct a basic investigation and then command staff would be consulted. He was also directed to a portion where Sgt. McDonald indicated that he had spoken to PC Desjardins prior to him attending the scene. PC Desjardins testified that he did not recall having that conversation with Sgt. McDonald. He indicated that his memory was that he did not have that conversation but he does not actually recall.
- He took two “audio stick” interviews of Louise and Gerald Rollins. The difference concerning what he had written, what he was told and what was reflected in the report was an inadvertent error.
- He was not advised by Sgt. Pinkerton about how the threat should be reported or recorded.

The public complainant, Louise Rollins asked to pose another question and was permitted to do so. She asked if either she or her husband mentioned anything to him about the OIPRD.

¹⁷ Exhibit 20, Will Say of Sgt. McDonald

PC Desjardins replied that he did not recall.

Louise Rollins sought to enter the interview recording of Gail Steeves. Ms. McInnes consented to the admission of the recording while qualifying that she did not feel it was relevant. It was conceded that the proper way to have entered it would have been through PC Desjardins who conducted the interview. Both the prosecution and defence consented to the recording being played and entered as an exhibit.

Upon completion Louise Rollins, in the form of a submission, drew my attention to the fact that the recording confirms she was not on the road but was on the side of the road. She further indicated that the interview of Gail Steeves confirms that there was a car in the area. She then revisited the events that occurred on the road between her and Shannon Pinkerton.

Defence Evidence

Shannon Pinkerton: Evidence in Chief

- She has been married to Sgt. Pinkerton for 13 years. They have three daughters aged 6 years, 3 years, and a 6 month old.
- She has taught physical education and biology at the local high school for 14 years.
- She grew up in the area where she now lives and where the incident with Louise Rollins occurred.
- On August 23, 2015 she was walking with her mother (Gail Steeves) and her daughters on the road near the farm of Louise and Gerald Rollins. She was pushing her infant daughter in a stroller.
- Following the incident with Louise Rollins she phoned her husband, Sgt. Pinkerton, but he did not answer. She phoned her father in law, again, there was no answer.
- She called Gerald Rollins and told him what had happened on the road and shared her concerns. A few minutes after she spoke with Gerald Rollins her husband Chris (Sgt Pinkerton) returned her call.
- She told her husband that she, her mom and their girls were walking on the road. The Rollins' had driven past them.
- They stopped to have drinks and snacks on the side of the road past the farm gate of the Rollins' property. She saw Louise Rollins with a knife in her hand. Louise Rollins did not acknowledge them. The hair on the back of her neck stood up and she moved herself between her children and Louise Rollins. She offered a greeting to Louise Rollins but there was no response. Louise Rollins lowered the knife and went back onto her property. She told Sgt. Pinkerton that their daughter was upset and was asking questions like what is that woman doing? and why does she have a knife?
- She told Sgt. Pinkerton that she had called him earlier and had called his father. She then called Gerald Rollins.
- Shannon Pinkerton testified that she asked Gerald if he knew his wife was on the side of the road and Gerald said she was cutting greens for the turkeys. She told him that Louise was not doing that when she saw her with the knife raised in her hand.
- Gerald Rollins asked if she knew that Louise was hard of hearing. She replied that Louise was staring directly at them and that Louise had scared he children.

- She asked Gerald Rollins if Louise knew that they (Shannon Pinkerton, her mother and children) were on Township property and he replied yes.
- Shannon Pinkerton testified she told Gerald Rollins “tell your wife if she ever fucking does that again in front of my children I’m going to show her where to put it”.
- Gerald Rollins asked if it was a threat and Shannon Pinkerton replied that it was not but asked him to relay the message.
- Chris asked if they were alright. He said he was going to call it in to dispatch. She believed he was going to report that Louise Rollins had been on the road with a knife in her hand.
- Shannon Pinkerton spoke to Chris again and he told her that the Rollins’ had made a call to police. Chris told her Wayne Desjardins (PC Desjardins) was going to speak with them and they should go to the house and wait for him there.
- PC Desjardins came to her house. He told her that Gerald Rollins had made a threat allegation against her i.e. that she had threatened Louise.
- Shannon Pinkerton was advised of her right to counsel and was cautioned. She provided an audio statement to PC Desjardins.
- PC Desjardins told her that he had a lot of respect for Chris. When the call came in he spoke to Chris and asked him if he wanted him to take the call or someone else to do it. Chris told him to take the call and to treat it like any other call and to report back to John McDonald who was the other Sergeant on the shift.
- She called Chris back and told him that Gerald Rollins had alleged that she had threatened Louise.
- Sgt. Pinkerton never told her what to say to the police. He commented on several occasions for transparency sake he had to stay one hundred percent out of the situation. She received updates on the investigation from (D/Sgt.) Liam Watkins.
- She confirmed it was necessary to mention to Gerald Rollins that she, her children and her mother were on Township property. She explained there was a long history in the community of them (the Rollins’) odd behaviour, questioning people on the roadway, and of Gerald Rollins shooting neighbour’s dogs. This had been discussed amongst numerous neighbours, members of the County, the Township employees, with the Rollins’ blocking access to the road and making accusations and being disruptive at Township meetings.
- The only personal interaction she had with Gerald Rollins was 25 years ago. She was a teenager, walking with a neighbour, his daughter and their dog. Gerald Rollins approached them in his truck and told them that if the dog went near his cattle he would shoot it. Her neighbour told Gerald Rollins that the dog was on a leash and was not interested in the cattle.

There was no cross examination by the Prosecution.

Cross Examination, Public Complainant: Louise Rollins Questions:

- Shannon Pinkerton could not recall what time that she called Chris Pinkerton.
- She did not leave a message for Chris Pinkerton.
- Chris Pinkerton called her back after she spoke to Gerald Rollins.
- She called Chris Pinkerton’s father after she had called Chris. She did not leave a

message. He called her back later in the afternoon.

- She spoke to Chris Pinkerton for three to five minutes.
- She did not submit her phone records as she was never asked for them.
- She did not mention that a car was driving by as she did not think it was pertinent and the car was not near them at the time. She did see a car prior to the confrontation with Louise Rollins.
- She did see a white sports car some time before she saw Louise Rollins on the road. Her mother (Gail Steeves) saw the car as well.
- Her mother was interviewed at her own house. Shannon Pinkerton was at her house with her children, her cousin and her children. Her husband Chris was at work at the time.
- She has never been questioned by Louise Rollins.
- There are numerous people in the community who say that Louise Rollins stopped them on the roadway.
- It was 1993 or 1994 when she was approached on the road by Gerald Rollins. She believed he was in a black truck. She did not see Louise in the field at the time of the 1993 or 1994 incident.
- She did not mention her hat as she did not feel it was peculiar. It was a sun hat and it was a sunny, hot day.
- She did not mention seeing Louise Rollins nod at her mother because she did not notice her nod.
- She did not walk up to Louise Rollins with her stroller. She placed herself between her children and Louise Rollins. She walked in front of the stroller not with the stroller.
- She could not explain why Louise Rollins never saw the other children.
- She went from being very afraid to very angry that Louise Rollins felt it was acceptable to do what she did in front of her children. She then called Gerald Rollins.
- She demonstrated how the knife was held with her right hand raised, bent elbow at 90 degrees to her body.
- She recalled that Louise Rollins had a dog but did not think it was relevant. When Louise Rollins lowered the knife and went back to her property she saw the dog.
- She was about 20 feet from Louise Rollins when the incident occurred. She did not walk up to Louise Rollins. She was placing herself between Louise Rollins and her children.
- She was not aware at the time that Louise Rollins was hearing impaired. She is aware of that now. She agreed that hearing impaired people need to see who they are communicating with.

At this point in the cross examination Louise Rollins wanted to play an excerpt from the audio interview of Shannon Pinkerton by PC Desjardins. The witness was excused while Ms. Rollins request was discussed. Ms. Rollins was permitted to play the audio recording to assist her cross examination. Upon completion of the excerpt being played Shannon Pinkerton gave the following evidence.

- She mistakenly referred to Louise Rollins as Sylvia Rollins during the interview. She is

aware that Sylvia Rollins was Gerald Rollins' mother's name. Her mother knows Louise Rollins name as well.

- She did not walk up to Louise Rollins. She placed herself between Louise Rollins and her children. She did not mention that to PC Desjardins but it was not an intentional omission.
- It was not obvious to her that Louise Rollins was hearing impaired.
- Her children were frightened because seeing a lady on the side of the road with a knife raised and not responding to a greeting is frightening. They were 20 feet away and could see Louise Rollins clearly and her daughter began asking questions about the knife.

At this point I reminded Ms. Rollins that the cross examination questions should be related to the allegations against Sgt. Pinkerton as outlined on the Notice of Hearing (NOH). Ms. Rollins advised that she had no further questions related to the Notice of Hearing. Shannon Pinkerton was excused.

Sgt. Pinkerton: Evidence in Chief

- Sgt. Pinkerton was permitted to refer to his notes.
- He summarized his career and was in his 18th year as a police officer having been promoted to the rank of Sergeant in March of 2014. He had worked in the crime unit.
- On August 23, 2015 he was working day shift from 6:00am to 6:00pm
- Sgt. McDonald was the second supervisor working that day.
- Around 12:00 noon, and approximately around the time of the incident between Shannon Pinkerton and Louise Rollins, he was at Canadian Forces Base Petawawa investigating a missing person matter.
- He noticed that he had missed a telephone call from his wife Shannon. The time of the missed call was 12:03pm.
- He was driving a marked police cruiser which was not equipped with a Mobile Data terminal (MDT)
- Because he was without an MDT he did not have access to CAD information or reports.
- At around 12:17pm he called Shannon back. She told him that she had been involved in an incident on Stafford Second Line involving Louise Rollins.
- She told him that she was on a walk with their two older children and their two month old daughter in a stroller. She was accompanied by her mother, Gail Steeves as well.
- Shannon told him that they had turned around and that she saw Louise Rollins on the road with a knife and that she had been staring at them. Shannon said she was frightened and that she had stepped in front of the kids. She told him that the kids had made comments about Louise Rollins and they were frightened as well. Shannon said that she had tried to speak to Louise Rollins but that there was no response. Louise Rollins returned to her property and Shannon and her mother continued walking with the children. Shannon tried to call Sgt. Pinkerton and his father but there was no answer from either.
- Shannon looked up Gerald Rollins' phone number and called him. She told Gerald what had happened with Louise Rollins. Gerald Rollins said that Louise was cutting greens for the turkeys. Shannon told him that Louise was on the road with a knife.

- Shannon was upset when she called him. She told Gerald that if she (Louise) did it again that she (Shannon) would tell her where to shove it.
- Sgt. Pinkerton told his wife that he wished she hadn't called because the Rollins knew he was a police officer and he was concerned that they would twist it around and take advantage of what she had said. He told her that she wished she had called the police.
- Sgt. Pinkerton testified as to his knowledge of the Rollins' which he had learned from his wife Shannon and other members of the community. He had never spoken to the Rollins himself. He did not know, at the time, what Louise Rollins looked like. He knew what Mr. Rollins looked like as he had seen him driving in the area and had taken hay (with permission) off of his father's field at some point.
- He was told that the Rollins' were known to take exception to people travelling on the roadway near their property. He related an issue involving access to a lake and that the Rollins' were involved in an argument over use of an access road to the lake. The road had been gated and locked and the locks had been cut.
- He heard stories from his wife regarding the Rollins' stopping people on the road. He related a story that he had heard from a neighbour who had been putting their grass clippings from their lawn into the ditch. The neighbour advised that Louise Rollins had sat in the ditch for two hours while they cut their grass in order to ensure that the clippings were not placed there.
- Regarding the phone call from Shannon, he told her that he was going to call it in to the PCC call taker. He felt it necessary that someone look in to what had occurred. He felt someone needed to look into what exactly happened.
- He advised that calling the call taker was something that does happen from time to time and related an incident where it had occurred earlier in the day on an unrelated matter. He has a direct line to the call taker who receives the information and will then send it to dispatch who, in turn will send an officer.
- He intended to call the PCC for Shannon as he thought it would be quicker and that if the incident was ongoing he would have told Shannon to call 911 herself.
- He continued his conversation with a member of the Military Police and while talking, Sgt. Pinkerton overheard a dispatcher on the radio speaking to PC Desjardins. He heard the name Louise Rollins and his wife's name being mentioned. He heard that an altercation of some kind had occurred and that the complainant (Louise Rollins) was looking to speak with an officer.
- He thought that he then called PC Desjardins but now believes PC Desjardins called him.
- PC Desjardins asked if he (Pinkerton) was good with him (Desjardins) attending the call or should Sgt. McDonald attend.
- Sgt. Pinkerton testified that he passed on what Shannon had told him to PC Desjardins because there was a call for service and he had information related to the call for service. He felt that he had a duty to provide the information that could pertain to the call so he passed it on. He told PC Desjardins that he was okay with him attending, at the moment at least, in response to the call. He stated that he reassured PC Desjardins that he could attend the call because, at that time, what he (Pinkerton) was aware of, that there did not seem to be a whole lot to it. Sgt. Pinkerton believed it to be a neighbour dispute and that, other than the fact that there was a knife involved, there did not seem to be a whole lot to it.

- Sgt. Pinkerton found it necessary to mention the knife as it was important that he (Desjardins) knew it and that he may need to find out why a knife was involved.
- There was no mention of the knife in the dispatch call. Desjardins was responding to the complainant's house and should know for officer safety reasons. Based on how his wife felt and what she had said there was a possible public safety issue based on how his wife had felt.
- Based on his knowledge of the history with the Rollins' in the area and information from his wife there was a possible public safety issue and potential escalation. Louise Rollins had a knife and there was a potential public safety issue for anyone else that may travel on the road and get confronted by the Rollins'.
- Sgt. Pinkerton was referred to page 28 of his notes where he advised PC Desjardins of what his wife Shannon had said. He explained that it was a summary of what he had said, it was not verbatim and was not necessarily in order in which the matter was discussed.
- When he spoke with PC Desjardins he was not aware that the Rollins' were alleging that Shannon had threatened to stab Louise Rollins. He was not aware until later when his wife Shannon told him what the Rollins' were alleging.
- Based on what he was told by Shannon he did not believe that Shannon Pinkerton or Louise Rollins committed a criminal offence. He did feel that the incident warranted looking in to.
- Sgt. Pinkerton stated that if a third party had reported the incident he would do exactly the same thing and would mention that a knife was involved. He did not highlight that a knife was involved in this matter simply because his wife was involved.
- Sgt. Pinkerton testified that if he knew that the Rollins' were alleging that Shannon had threatened to stab Louise he would have told PC Desjardins to stand down because they were alleging a criminal offence. He said would have called Sgt. McDonald. He would still provide the same information that he received from his wife but he would not involve himself.
- Sgt. Pinkerton told PC Desjardins to respond like he normally would as if it were any other member of the public involved and to treat it like it was anybody else.
- It was not at all his intention to influence PC Desjardins by diverting attention away from his wife.
- He told PC Desjardins that he (Sgt. Pinkerton) would not be involved in the investigation because his wife had been named.
- He testified that he called his wife Shannon again and advised her that she had been named in the call. He told her that PC Desjardins would need to speak to her and asked her to go home so he (PC Desjardins) could meet her there. He told Shannon to tell PC Desjardins exactly what happened. He then called PC Desjardins and advised him that Shannon would be at home if he needed to speak with her.
- He then returned to the detachment and completed his notes.¹⁸
- At some point he called Sgt. McDonald and told him about the call for service involving his wife. He told Sgt. McDonald that he (Pinkerton) was staying completely out of it and that PC Desjardins may be seeking his (McDonald's) direction. Sgt. McDonald told him that he (McDonald) would notify the chain of command.

¹⁸ Notes of Sgt. Pinkerton, P28

- Sgt. Pinkerton stated that, in one of the previous conversations with PC Desjardins, that he (Desjardins) should seek direction from Sgt. McDonald.
- Sgt. Pinkerton explained his understanding of conflict of interest, that he was not to become involved, that there was to be no preferential treatment, that the chain of command was to be notified.
- He had no specific training with respect to conflict of interest.
- Sgt. Pinkerton gave an example of when a past conflict of interest had arisen in relation to another officer who was involved in a domestic dispute with his (the officer's) ex-spouse. He explained the steps that were taken in consultation with detachment commander, Inspector Wolfe, to ensure an unbiased, impartial and proper investigation was carried out.
- He advised that at the end of his shift he was approached by PC Desjardins who asked if he wanted to be updated. Sgt. Pinkerton told PC Desjardins not to provide him with an update but to update Sgt. McDonald or Shannon Pinkerton.
- D/Sgt. Watkins had asked him, at some point, if he wanted to be updated. He told D/Sgt. Watkins that he did not want to be involved and to update Sgt. McDonald or Shannon. Sgt. Pinkerton indicated that any updates that he received were from his wife, Shannon Pinkerton.
- Other than the described conversations with Desjardins he had no other involvement in the investigation.
- He told Shannon to tell investigating officers exactly what happened.
- Sgt. Pinkerton testified as to the personal and professional impacts and challenges that this situation had presented. He related strain in his marriage and stress endured for the past three years.

Ms. McInnes sought to introduce character evidence on behalf of Sgt. Pinkerton. Ms. Donnelly, on behalf of the prosecution objected to this evidence being called at this stage of the hearing. Books of authorities had been provided to me earlier by Ms. McInnes¹⁹ and by Ms. Donnelly.²⁰ All materials were reviewed prior to submissions being made to this tribunal. Following examination and consideration of materials provided and submissions by counsel, I ruled as follows:

The matter before this tribunal involves the incidents as well described thus far in the proceedings that occurred on August 23, 2015. The issue I will eventually be deciding upon is whether or not Sergeant Pinkerton committed misconduct as specified on the NOH and specified in the particulars of allegations. I do not find that, at this stage of the hearing, it would assist or guide me to know that the officer was or is of good character or otherwise. I must assess his actions and behaviours surrounding the incident of August 23, 2015 on the evidence, notwithstanding his character before or following the incident. I will therefore not allow character evidence to be admitted at this time.

¹⁹ Exhibit 29, Defense Book of Authorities- Character

²⁰ Exhibit 30, Prosecution Book of Authorities- Character

Sgt. Pinkerton: Prosecution Cross Examination

- Sgt. Pinkerton acknowledged that he was in a conflict of interest situation. He realized that a conflict existed and a bias or perceived bias existed. He was referred to his notes²¹ and recounted the acknowledgement of a conflict of interest if he were to be involved.
- Sgt. Pinkerton explained that it was important to show that an investigation is fairly and factually conducted based on facts collected. He stated that if he were involved there could be a perceived bias which he wanted to avoid.
- He was asked if he believed a conflict of interest can only occur in a criminal investigation to which he replied “no”.
- He did not know where his wife was when she called him.
- There was no imminent danger when his wife called. If there was, he would have told her to call 911.
- He acknowledged that he wrote in his notes that his wife told him that Louise Rollins had a knife and was staring at her. His wife did not tell him that Louise Rollins had threatened her. He clarified that what his wife told him was that what she had had observed was threatening in nature.
- Sgt. Pinkerton indicated that Shannon perceived Louise Rollins’ behaviour as aggressive because of her stance.
- He acknowledged that Louise Rollins had not approached his wife. Louise Rollins had walked back onto her property.
- He agreed that his wife had called Gerald Rollins and that she told him about the conversation.
- He agreed that Gerald Rollins had told his wife that the knife was for cutting greens and that he (Sgt. Pinkerton) knew this before he spoke with PC Desjardins.
- Sgt. Pinkerton acknowledged that farmers use tools including knives and he explained that he grew up on a farm.
- He was not surprised to hear that Louise Rollins was cutting greens with a knife.
- He did not, at the time, know Louise Rollins and had no idea how many times Louise Rollins had called the police.
- He was aware that the Rollins’ had issues with people using the road.
- He was not aware of any criminal charges involving the Rollins’.
- He was not aware of any other incidents of threats or incidents with knives involving the Rollins’.
- He was aware of stories involving the Rollin’s but none involving a knife.
- He agreed that Stafford Second Line is a quiet rural road.
- Sgt. Pinkerton agreed that Gerald Rollins’ explanation regarding Louise having the knife was reasonable.
- He was not aware of any other members of the public in the area.
- He explained that public safety is not just considered in imminent situations. It could occur minutes weeks or more into the future. If not addressed the concern or situation could escalate. According to what his wife had told him (about Louise Rollins), it was an escalation and could be a public safety issue.

²¹ Notes of Sgt. Pinkerton, P 28

- Sgt. Pinkerton agreed that when Louise Rollins turned and went back onto her property that could be considered de-escalation at that specific time.
- He testified that he had officer safety concerns regarding PC Desjardins. He explained that it did not mean that he felt something was going to happen to PC Desjardins but thought he should know that there is a potential weapon involved. He explained that such information is for an officer to keep in the back of their mind for officer safety reasons. Officer safety is not the same as public safety and explained his perception of the difference with an example.
- Sgt. Pinkerton was asked why the officer safety concern was not in his notes and he explained that not everything goes in his notes. When asked why he did not mention officer safety concerns to the OIPRD he explained that he did not think to mention it.
- Sgt. Pinkerton testified that officers sometimes share information amongst each other about calls for service. Views are sometimes shared before a call is attended.
- Sgt. Pinkerton acknowledged confusion as to whether he called PC Desjardins or whether PC Desjardins called him. His notes say that he called Desjardins but he now believes that it was PC Desjardins who called him.
- He acknowledged that when the call was dispatched he understood that Louise Rollins was the complainant, that there was an altercation and that she wanted to speak to an officer.
- He did not know that his wife was a suspect when the call came in.
- Sgt. Pinkerton testified that his notes indicate that he spoke to PC Desjardins at 12:22pm. When he referred to his notes and the CAD report he notes that the call was dispatched at 12:31pm. He then explained that rather than 12:22pm it should have been 12:32pm that he spoke with PC Desjardins. The 12:22pm time was written in error.
- He did not ask PC Desjardins any questions.
- He had worked with PC Desjardins for about two years and had no reason to doubt his integrity. PC Desjardins would have been able to investigate the matter without being provided information.
- He had two telephone conversations with PC Desjardins. He read from his notes and included the portion where he wrote *no need for Sgt. McDonald at the moment. Doesn't appear there is too much to it other than she was holding a knife and staring at them.* "She" was Louise Rollins and "them" was his wife, children and mother in law.
- He agreed that he could have said that without saying it didn't look like there was too much to it. He went on to state that he provided information that was not provided by the dispatcher. He did not know if an offence had occurred but for public safety reasons he pointed out that a knife was involved.
- It was suggested to Sgt. Pinkerton that his comment made his wife and children appear as victims. He responded that his wife felt frightened and upset but that he did not suggest that the Rollins' had done anything wrong.
- He agreed that he suggested that PC Desjardins should determine why Louise Rollins had a knife and explained it was to determine if it was for a legitimate purpose.
- Sgt. Pinkerton did not agree with the suggestion that his comments influenced the investigation.
- It was suggested to Sgt. Pinkerton that his comments indicated that there was not

much to Louise Rollins complaint. He explained he was trying to reassure PC Desjardins as he may have felt uncomfortable. He wanted PC Desjardins to understand that he was comfortable with him (PC Desjardins) responding to the call.

- There was no allegation against his wife that he knew of at that time.
- He did not hear dispatch say “threats” and that information was not provided.
- He explained that the reason PC Desjardins had the word “threat” was probably based on the CAD information which he (Pinkerton) did not have access to at the time.
- He felt that he had a duty to advise PC Desjardins what knew at the time. He did not know the exact words used but believes it was as indicated in his notes “*there doesn’t appear to be too much to it*”, again to reassure PC Desjardins.
- Sgt. Pinkerton agreed that he could have just said Louise Rollins had a knife.
- He acknowledged that he could have called dispatch but he (PC Desjardins) called him and he was on the phone with him. Sgt. Pinkerton speculated that it would have been to his advantage to have called the PCC as the conversation would have been recorded and been more accurate than his recollection of what exactly was said.
- Sgt. Pinkerton’s supervisor was not working at the time. He could have advised Sgt. McDonald.
- PC Desjardins was his subordinate. Although he (PC Desjardins) had not said so, Pinkerton agreed that he had concerns of conflict of interest.
- It was improper for an officer to investigate an incident involving their spouse. When he approved PC Desjardins to go it was to respond to the call for service but that he might have to involve Sgt. McDonald depending on what happened.
- Sgt. Pinkerton told Shannon to go home in case PC Desjardins needed to speak to her. He did not know if PC Desjardins was going to speak to his wife but told her to go home in case he did.
- PC Desjardins asked if he (Sgt. Pinkerton) wanted Sgt. McDonald to attend. Sgt. Pinkerton indicated that with what he knew there was no need for Sgt. McDonald to attend at that time. He did tell PC Desjardins to advise and consult with Sgt. McDonald.
- He acknowledged that he could have asked another officer to attend. He indicated that such a decision would have been Sgt. McDonald’s to make. He did tell PC Desjardins to speak with and report up to Sgt. McDonald.
- Sgt. Pinkerton indicated that the earlier example where an Officer was involved in a domestic dispute with his ex- spouse that the Detachment Commander directed a supervisor to investigate but in that case the OPP officer was directly involved.
- Sgt. Pinkerton acknowledged that a subordinate investigating a supervisor would cause concerns. Investigating the supervisors’ spouse would depend on what the complaint is.

The public complainant, Louise Rollins, had no questions. There was no re-direct by Defence counsel.

I clarified with Sgt. Pinkerton asking him to distinguish in his notes things that were in quotes as opposed to entries not in quotes. He explained that quoted entries are word for word explanations and entries not in quotes were summaries. He clarified that, examples on pages 26 and 28 of his notes that the times did not seem to coincide with events because he

had returned to detachment to make notes and the “LE” meant late entry and indicates the notes are out of sequence.

Part III Submissions, Analysis and Findings.

Defence Submissions:

Ms. McInnes provided her book of authorities (Exhibit 31) and reviewed each case for which I will provide analysis further below in this decision.

Ms. McInnes suggested that the investigation resulted in the improper application of hindsight in assessing the actions of Sgt. Pinkerton. She suggested that, based on the facts known to him at the time, Sgt. Pinkerton’s response was measured, appropriate, and was accordant with policy. His behaviour was not indicative of bias nor did he attempt to improperly influence the investigation. Sgt. Pinkerton self-imposed an immediate recognition of conflict of interest, a view shared by all involved officers. His involvement was limited to a brief conversation with PC Desjardins who was told by Sgt. Pinkerton to report to Sgt. McDonald. Sgt. Pinkerton confirmed his instructions to PC Desjardins with Sgt. McDonald. He sought no personal updates on the investigation.

Ms. McInnes submitted that the actions of Sgt. Pinkerton would not raise the spectre of disrepute. His actions were not problematic to a degree that would cause a reasonable, dispassionate person to conclude that his actions were discreditable. PC Desjardins’ recollection of the facts was limited but there was certainly no clear and convincing evidence that would support a finding that Sgt. Pinkerton directed PC Desjardins. There was no suggestion that an actual bias resulted.

Ms. McInnes drew attention to the fact that Sgt. Pinkerton made notes of his conversation with PC Desjardins but that the notes were not in quotes. Sgt. Pinkerton was forced to make split second decisions while at an unrelated missing person occurrence. No actual bias or impropriety resulted. Whom called whom (Desjardins and Pinkerton) is unknown with certainty but it is the content of the conversations that is important. Sgt. Pinkerton made his notes before he knew that there was an allegation of threats against his wife.

PC Desjardins did not believe that he was given direction by Sgt. Pinkerton other than to attend the call for service. PC Desjardins did not outline or recall any bias or impropriety being introduced by Sgt. Pinkerton. Ms. McInnes suggested that the lack of subjective intentions of Sgt. Pinkerton must be considered and that he did not exaggerate or overstate his perceptions. He made no attempt to cover up his actions or discussions with PC Desjardins and showed a commitment to transparency and went on to say that if Sgt. Pinkerton were up to no good that he would not have recorded it in his notes.

Sgt. Pinkerton’s actions resulted in no actual intent to produce bias and such a conclusion cannot rest solely on an apprehension of bias. Sgt. Pinkerton’s trifling involvement was not sufficient to bring disrepute. There is no support in case law that would support such a finding as cases seem to illustrate clear and sustained action to influence an investigation.

Other than the brief conversation with PC Desjardins, Sgt. Pinkerton did not further involve himself in any manner. An independent investigation resulted. PC Desjardins' involvement was temporary and any enforcement action decisions were taken away from him. Ms. McInnes acknowledged that there may have been a legitimate reason that Louise Rollins was on the road with a knife but it would be absurd to suggest that the police should not be interested in determining what went on.

Ms. McInnes suggested that if Sgt. Pinkerton had not advised PC Desjardins what he knew and an altercation resulted that Sgt. Pinkerton could be in neglect of duty. The information that Sgt. Pinkerton relayed from his wife was frightening and troubling to her. It is significant to note that she (Shannon Pinkerton) is a school teacher, is a respected member of the community not known for hysteria and she found the behaviour of Louise Rollins frightening and concerning.

Ms. McInnes gave a second example of hindsight where Sgt. Pinkerton thought there was a neighbour dispute, not a criminal investigation and felt the call for service should be responded to in order to ensure public safety. Louise Rollins may have explained the innocent purpose for having the knife and the situation would have dissolved or diffused. She emphasised that the type of call is relevant regarding an officer's discretion. Sgt. Pinkerton clearly and unequivocally did not believe that this was a criminal investigation after hearing the radio dispatch call.

Ms. McInnes submitted that when Louise Rollins came upon the Pinkertons on the roadway she was suspicious and concerned. She had a knife and made no friendly overtures, she stared at the Pinkertons in an unfriendly and intense manner. Louise Rollins described Shannon Pinkerton, her mother and children as lurking and loitering and that they were wearing a disguise. Louise Rollins' suspicions would have radiated in her demeanor.

Sgt. Pinkerton was reasonable in accepting his wife's concerns and acted as a reasonable member of the community would expect him to. He was aware that the Rollins' were in odd and confrontational situations with others as outlined in CAD summaries.²² Public Safety was a concern and Sgt. Pinkerton viewed Louise Rollins' actions that day as a possible escalation of previous behaviours. Sgt. Pinkerton does not overstate the actions of Louise Rollins. The expression of anger from Shannon Pinkerton was perhaps uncivil but not criminal. The radio dispatch call does not mention a knife or a threat and Sgt. Pinkerton properly told PC Desjardins what he knew. Sgt. Pinkerton had pertinent information about an active call for service and was duty bound to share it. It was paramount, from a public safety perspective, to determine why Louise Rollins was on the road with a knife.

Ms. McInnes submitted that the cross examination of Sgt. Pinkerton suggested that his officer safety concerns were not legitimate or improper. Under the circumstances, this is not a scenario where he improperly relied on officer safety.

Ms. McInnes suggested that a formal declaration of conflict of interest report was not filed but that he nor any of the officers were aware of this requirement. Ms. Nagar and Inspector Wolfe did not believe that filing the report was required. Any concern of conflict of interest

²² Exhibit 18; CAD report

was mitigated by the fact that all officers were aware that Pinkerton would not be involved and that any enforcement action would involve the chain of command.

N.B. On the issue of the “declaration of conflict of interest” report, I noted that a hyperlink was imbedded in exhibit 17 but the actual declaration form was not included as a hardcopy with exhibit 17. I reviewed the hyperlink and offered an explanation to Louise Rollins, as it had been raised by Ms. McInnes in submissions and in the evidence of Hema Nagar. In my view, the declaration of conflict of interest report did not necessarily apply to the circumstances before this tribunal. It appeared to be a government generated form, not specific to the OPP alone, where an ongoing conflict may exist. I acknowledge, with the benefit of hindsight, that I might have considered asking counsel to submit a hardcopy exhibit of the form. Prosecution indicated on the record that they were not perusing this issue in any event. The form itself has no bearing on the allegations outlined in the NOH before this tribunal.

Prosecution Submissions:

Mr. Iafrate submitted that measured conduct of an officer is paramount as perceived bias or conflict of interest must be avoided and is a reasonable expectation of the community. He suggested that Sgt. Pinkerton realized too late that a bias existed and that the telephone conversation was the only relevant evidence to be considered in relation to the Notice of Hearing (NOH). He reminded the tribunal that that the legal test requires the assessment of conduct against the expectations of the community. Mr. Iafrate pointed to the evidence of Louise Rollins to illustrate why conflict of interest and perceived bias must be avoided.

Mr. Iafrate summarized the investigation of Ms. Nagar, the product of her investigation which was introduced as evidence, and her testimony. He highlighted that in his interview with the OIPRD, PC Desjardins indicated the Sgt. Pinkerton directed him to attend the call. PC Desjardins did not recall if Sgt. Pinkerton had told him what his wife (Shannon Pinkerton) had told him. PC Desjardins recognized a conflict of interest and asked if the investigation should be assigned to someone else. The dispatched call for service referenced a confrontation involving Shannon Pinkerton.

Mr. Iafrate indicated that during his interview with OIPRD investigators Sgt. Pinkerton stated that he should not have called PC Desjardins.

I note that, on review of the interview, the context was that Sgt. Pinkerton responded, when propositioned by OIPRD investigators about making the call, that he “possibly” could have called Sgt. McDonald and that he had made a “split second” decision to call PC Desjardins. This issue was not specifically addressed during Sgt. Pinkerton’s testimony before this tribunal. I drew no conclusions from the exchange with the OIPRD investigators as they were proposing ideas or notions that were, at times, adopted, directly or indirectly, by Sgt. Pinkerton. I place more weight on evidence presented at this tribunal.

Mr. Iafrate re-visited the testimony of Ms. Nagar with respect to her understanding of OPP Policy regarding conflict of interest. He confirmed that PC Desjardins stated that Louise Rollins was the complainant in an alleged threat occurrence and that Louise Rollins was

concerned that her complaint would not be taken seriously. She was aware that Shannon Pinkerton was the wife of a police officer. PC Desjardins knew that Shannon Pinkerton was his supervisor's wife and asked Sgt. Pinkerton if Sgt. McDonald should attend.

PC Desjardins had previously stated that he believed that Sgt. Pinkerton had called him but PC Desjardins now believes that he called Sgt. Pinkerton. PC Desjardins was concerned that his supervisor's wife was involved and expressed concerns regarding bias and conflict of interest. PC Desjardins did not view the call as serious and made a traffic stop while on route to the Rollins' residence. PC Desjardins had no concerns for public safety or his own. PC Desjardins did not agree with portions of Sgt. McDonald's duty report with respect to the chain of events.

Sgt. McDonald did not appear as a witness in this matter so any suggestion of inconsistency could not be explored.

Mr. Iafrate submitted that Sgt. Pinkerton knew that a conflict of interest and perception of bias existed and explained why it is important to avoid both. Louise Rollins was a complainant and Sgt. Pinkerton's subordinate was dispatched. Sgt. Pinkerton was not told that Louise Rollins had threatened or approached his wife. He had no knowledge of Louise Rollins ever previously threatening anyone with a knife. Sgt. Pinkerton agreed that having a knife to cut "greens" was a reasonable explanation.

Mr. Iafrate suggested that Sgt. Pinkerton's concerns for officer safety had not previously been mentioned. Mr. Iafrate drew my attention to page 27 of Sgt. Pinkerton's notes²³ regarding the conversation he had with PC Desjardins.

Sgt. Pinkerton agreed when testifying that he could have provided PC Desjardins information about the knife rather than all of the information from his wife. Sgt. Pinkerton agreed that he could have made a radio call and might have considered having another officer attend the call.

Public Complainant, Louise Rollins Submissions:

Mrs. Rollins began her submissions by requesting an amendment to the NOH. Mrs. Rollins requested that the NOH reflect the "peculiar dress" worn by Shannon Pinkerton. She also suggested that the term "neighbour" was improperly used in the particulars of allegation because she and the Pinkerton's live 3 kilometers apart.

It was explained to Louise Rollins that these issues did not directly relate to the allegations against Sgt. Pinkerton and that the requested amendments would be inconsequential.

Mrs. Rollins submitted that exhibit 16, page 24, (notes of Sgt. Pinkerton) did not indicate that a late entry was made. She suggested that the entry was false and that he could not have missed the call as indicated. She specified that the confrontation between her and Shannon Pinkerton occurred between 12:12pm and 12:15pm to 12:20pm. This conflicts with the 12:03pm time in Sgt. Pinkerton's notes. She suggested that this was confirmed by PC

²³ Exhibit 16, Notes of Sgt. Pinkerton

Desjardins.

Louise Rollins suggested that Sgt. Pinkerton made a false statement to the OIPRD regarding the sequence of calls made by Shannon Pinkerton. She pointed out that no cell phone records were submitted to verify the sequence of calls. She pointed out that Gail Steeves (not a witness in these proceedings) stated that Shannon called Gerald Rollins not Chris Pinkerton.²⁴

Louise Rollins pointed out a number of issues she had with Sgt. Pinkerton's notes and felt there were purposeful omissions made. She felt his notes were made in a manner that confused the issue intentionally. She pointed out several entries that she felt were incorrect. She indicated that Shannon Pinkerton and Chris Pinkerton's recollection of the calls and the times of the calls were incorrect and misleading.

Louise Rollins found it highly questionable that Sgt. Pinkerton wrote 48 or 54 lines in his notebook about what Shannon Pinkerton had told him. It was submitted that the call for service was dispatched at 12:31pm. Sgt. Pinkerton fabricated in his notes, things that Louise Rollins did.

Louise Rollins submitted that Sgt. Pinkerton and/or PC Desjardin fabricated or intentionally misled regarding the issue of who called who i.e. PC Desjardins calling Sgt. Pinkerton or vice versa. On page 28 of his notes Sgt. Pinkerton was "playing" with his notes with respect to his conversation with Sgt. McDonald. She felt that the notes had been tailored to suit the circumstances or that they had gone back and corrected their notes.

Louise Rollins submitted that Sgt. Pinkerton gave his perception to PC Desjardins and downplayed his wife's role and in doing so shifted the focus onto the complainant (Louise Rollins). She submitted that she received a caution letter (exhibit 24) but that she did not do anything wrong as the investigation determined why she was holding a knife.

Louise Rollins submitted that on page 31 of Sgt. Pinkerton's notes, he signed them falsely attesting to the accuracy of the notes. Sgt. McDonald's notes do not say that he spoke with Sgt. Pinkerton. There is no evidence that Sgt. McDonald supervised the investigation. She referred to exhibit 11, page 11 of the notes of PC Desjardins when he made an entry about a conversation with Sgt. Pinkerton. She submitted that it was the only entry that suggested PC Desjardins and Sgt. Pinkerton had a conversation. She submitted that Sgt. Pinkerton's notes were withheld from her and that she felt this indicated "massive" involvement on the part of Sgt. Pinkerton.

Louise Rollins indicated that she was upset by the fact that there was no entry in Sgt. Pinkerton's notes about the conversation that he had with PC Desjardin and the end of their shift. She suggested that Sgt. Pinkerton and D/Sgt. Watkins knew each other and that they have worked together for years. She stated that she had nothing but problems as a result and that was why she did not get anywhere with her investigation referring to this as the "blue wall". She was intimidated by D/Sgt. Watkins and felt that he was trying to get her to go away.

²⁴ Exhibit 26, interview of Gail Steeves

Louise Rollins suggested that there was no evidence that her complaint went up the chain of command. She expressed concerns that PC Desjardins would not tell her where he lived when he stated in evidence that he used to live in the neighbourhood. She suggested that there is every possibility that he was living with Sgt. Pinkerton. She indicated that she has not called the police recently just the RCMP and she indicated she does not trust the OPP and will not call the Upper Ottawa Valley detachment as long as Sgt. Pinkerton is there.

I note that some of Louise Rollins submissions were not addressed through witnesses while others had been. Some of her concerns, particularly with officer's notes could have been addressed in cross examination but were not. Others issues with notes were addressed and explained or identified as errors in the testimony of other witnesses. The suggested amendments were denied.

Ms. McInnes- Reply Submissions

Ms. McInnes submitted that the type of call being dispatched is relevant to these circumstances. She suggested that nothing on the CAD occurrence appeared urgent or serious that would have dictated a different response. There is no cogent or reliable evidence to suggest that Sgt. Pinkerton downplayed the seriousness of the call for service when he spoke to PC Desjardins.

Ms. McInnes submitted that no member of the public would be offended by Sgt. Pinkerton's concern to address public safety. She suggested that PC Desjardins did not ask to be re-assigned but rather if Sgt. Pinkerton was okay with him attending the call for service. She referred to the statement of Sgt McDonald (exhibit 20) and pointed out the Sgt. McDonald felt that a timely response was required under the circumstances.

PC Desjardin's evidence that he had no personal safety nor public safety concerns is irrelevant. She re-stated that everybody recognized from the very outset that a conflict of interest existed. She reminded the tribunal that the standard is "likely" to bring discredit and not "could" bring discredit.

Ms. McInnes submitted that all facts and circumstances are relevant and that Sgt. Pinkerton's behaviour was unimpeachable in not involving himself.

Defence Cases and Analysis – Discreditable Conduct. (For full case names and citations see Appendix.)

Tab1: *Jacobs v Ottawa Police Service.*

The Jacobs Case, an Ontario Court of appeal decision, identifies the standard of proof in Police Disciplinary Hearings as *clear and convincing* as further articulated and or quoted in case law. I am guided by the identified standard in this and every case that I adjudicate. Excerpted as follows:

"As the Court of Appeal recognized, because the PSA requires that misconduct by a police officer be "proved on clear and convincing evidence" (s.64(10)), it follows that

such a conclusion might, depending upon the nature of the factual findings, properly preclude relitigation of the issue of liability in a civil action where the balance of probabilities — a lower standard of proof — would apply. However, this cannot be said in the case of an acquittal. The prosecutor’s failure to prove the charges by “clear and convincing evidence” does not necessarily mean that those same allegations could not be established on a balance of probabilities. Given the different standards of proof, there would have been no reason for a complainant to expect that issue estoppel would apply if the officers were acquitted... Thus, the parties could not reasonably have contemplated that the acquittal of the officers at the disciplinary hearing would be determinative of the outcome of Mr. Penner’s civil action.”²⁵

Tab 2: Monaghan- OSCJ

This is a case where a hearing officer failed to adequately consider the subjective intention.

Paragraph 8: Despite this broad wording of the charge, it is evident that the case against the appellant was not based on any evidence that he had acted “in a disorderly manner” or “in a manner prejudicial to discipline”. Rather, the case against the appellant was based solely on that part of the charge that alleged that he had acted “in a manner likely to bring discredit upon the reputation of the police force” and this appeal was confined in a similar manner.

This is similar to what the Notice of Hearing against Sgt. Pinkerton outlines.

Paragraphs 17, 18, and 19: It is noteworthy that the hearing officer made no reference in her reasons for decision to the evidence of the appellant that his conversation with the constable was not a reprisal to the constable’s original complaint and that it was not done in retaliation. Rather, according to his evidence, it was his purpose in speaking with the constable was to obtain a clear understanding of why the constable chose to return to his platoon and to make sure the constable knew that the appellant’s management policies would continue as they had been before.

The appellant’s denial that he had engaged in a reprisal against the constable was supported by Officer Brosnan whose evidence was that he “truly did not understand what was so wrong”. The hearing officer concluded that Brosnan “was a very credible witness who was honest, forthright, spoke his mind and did his utmost to assist the Tribunal to understand the atmosphere of the platoon at the time of the complaint and the meeting”.

A reprisal is defined in The Concise Oxford Dictionary as “an act of retaliation” and retaliate is defined as “repay an injury, insult, etc. in kind: attack in return; make reprisals”. Therefore, in order for the appellant’s conduct to have amounted to a reprisal, it was necessary for the appellant to intend to get even with the constable for what the

²⁵ Exhibit 31, Tab1, Constable Jacobs V Ottawa Police Service

constable had done to him before and the statement made by the hearing officer set out above in paragraph 15 c) was wrong.

The facts in the Monaghan case are not similar to those in Sgt. Pinkerton's. I do note however, that the Court indicates that consideration of intent is warranted. Indeed paragraph 20 expands on this notion:

This error led the hearing officer to fall into further error by reconciling her finding that the appellant's "comments and actions" constituted a reprisal with her acceptance of the appellant's evidence which included a denial of any reprisal. The record is clear that, rather than focus on the appellant's intention at the time of the meeting with the constable to determine what his intention was, she ignored that and focused instead on the subjective impact of the appellant's conduct on the constable. It was the appellant's conduct that was the subject of the charge and not the constable's perception. As well by making this error, she disregarded entirely the reasonable possibility that the constable might have responded to the appellant's conduct in exactly the same manner even if it had not amounted to a reprisal.

While respectful of the subjective perception maintained by Louise Rollins that Sgt. Pinkerton inserted himself into the investigation and influenced the direction and so forth, I must also consider the objective intention and outcome of Sgt. Pinkerton's actions and behaviour.

Paragraph 21:

Even though the hearing officer found that the appellant had engaged in disreputable conduct as alleged, her reasons for decision reveal no indication whatsoever that she considered whether it had been proven that the appellant's conduct "was likely to bring discredit to the police force" which was an essential element of the alleged offence. For the purpose of this analysis I make no determination whether this element had to be proven in a literal way requiring evidence or in a notional way requiring the hearing officer only to apply some reasonable standard in predicting what the likely impact would be. However, in the circumstances disclosed by the evidence, on any reasonable interpretation of the law it is hard to imagine how the reputation of the police force would likely have been affected in the slightest by what had occurred between the appellant and the constable.

Paragraph 26:

*Unfortunately, by analyzing the evidence by reference to these characterizations of the critical essential element of the offence alleged, the Tribunal lost sight that it was necessary for the prosecutor to prove that the appellant's conduct **would likely** (emphasis added) bring discredit upon the police force and that it was not sufficient for the prosecutor to prove that it was only a possibility. By employing this language and applying the tests set out, the Tribunal fell into reversible error.*

The above excerpts indicate that I must consider evidence and weigh in my mind how Sgt. Pinkerton's behaviour did or may have likely affected the reputation of the OPP. There must be a likelihood of discredit rather than a mere possibility.

Paragraph 29:

As well, just because the constable found the appellant's conduct during the meeting to be a reprisal does not mean that it was. And, even if it was, it does not follow that that kind of reprisal was necessarily sufficient to elevate it to conduct "likely to bring discredit upon the reputation of the police force."

Again, while respectful of Louise Rollins' feelings, I must consider all of the evidence to assess whether or not misconduct occurred.

Tab 3: *Mousseau*

Paragraph 6:

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

I must take my mind to the circumstances Sgt. Pinkerton was faced with at the time and not restrict my analysis solely with the benefit of hindsight.

Tab 4: *Galassi*

Paragraph 15:

*With respect to counts one and two, the issue really turns upon the test of what might reasonably be expected to bring discredit upon the reputation of the HWPS. The test is well enunciated in the decision of *Girard v Delaney* (1995) 2 PLR 337 (Board of Inquiry), and page 349 as follows:*

- 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 apprised 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 appropriate rules and regulations in force at that 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 his discretion.*

The excerpts assist and guide me in applying the test as outlined.

Tab 5: *Laryssen*

This 2008 case revisits the test identified in Galassi (above) et al.

Tab 6: *Mulholland*

Paragraph 14:

The Hearing Officer expressly stated in his decision that for him to register a finding of guilt with respect to the charge of attempting to dissuade the laying of criminal charges that there would have to be clear and convincing evidence that Constable Mulholland attempted to get Constable Sjaarda to change her belief as to charging A.C. criminally and that there was some improper or illegal purpose for him to do so. While the Hearing Officer noted some inconsistencies in the testimony of Constable Sjaarda, he accepted her evidence that she believed Constable Mulholland was attempting to dissuade her from laying criminal charges against A.C. and that Constable Mulholland was persistent in attempting to influence her with respect to laying of charges against AC. He concluded based upon the totality of the evidence that Constable Mulholland was acting for personal and not strictly professional reasons. He specifically noted that Constable Mulholland went beyond what he believed was reasonable and normal convention and that he allowed personal factors and considerations to cause him to attempt to dissuade Constable Sjaarda from charging A.C. criminally.

Paragraph 43:

With respect to the allegation of attempting to dissuade Constable Sjaarda from laying criminal charges, the Hearing Officer made it clear that in order to make a finding of guilt there would have to be clear and convincing evidence that Constable Mulholland both attempted to dissuade Constable Sjaarda to change her belief as to the laying of criminal charges and that there had to be some improper or illegal purpose for so doing. The Hearing Officer further recognized that this case depended to a large extent on credibility since many of the facts central to the key issues were in dispute and the testimony of Constable Mulholland and Constable Sjaarda was in direct conflict. There was also an absence of any independent collaboration on many issues.

The Mulholland matter is dissimilar in that it involved an allegation of attempting to dissuade a fellow officer from laying charges. There is no evidence that Sgt. Pinkerton

attempted any such thing. Key principles gleaned are (not limited to) the attempt to dissuade charges being laid and the attempts were for an improper or illegal purpose. The officers' actions went beyond a reasonable and normal convention.

Tab 7: Lloyd

Paragraph 62:

"We believe that the test of whether particular conduct brings discredit upon the reputation of the police service must be how a member of the public would perceive the situation."

Tab 8: Mulligan

Paragraphs 35- 39

*We agree that the test for discreditable conduct is an objective one. The objective test would require that the Hearing Officer place a dispassionate reasonable person fully apprised of the same facts and circumstances, aware of the applicable rules and regulations, in the same situation to assess whether the conduct in question was discreditable. See: **Toy v. Edmonton (City) Police Service**[2014] A.J. No. 1191 at para. 11 and **Mulville and Azaryev and York Regional Police Service**, 2017 CanLII 19496 (ON CPC) at para 45.*

We also agree that the Hearing Officer did not apply an objective, reasonable person test when assessing whether Sgt. Mulligan's conduct was discreditable. Rather, he made the subjective conclusion that members of the public would have been "shocked" to hear a member of the OPP make a presentation in favour of legalising marijuana. At page 22 of his decision, he stated:

I am of the view there is a strong likelihood that members of the public in attendance at the conference would have been shocked to hear a serving member of the OPP speak out against existing legislation he is sworn to enforce. I state this fully aware of the ongoing public debate on the issue at the time. Insp. Andrews walked away from Sgt. Mulligan's presentation questioning his resolve to uphold this aspect of the law so I can only conclude members of the public would similarly question it. This in itself is evidence to support the behaviour of Sgt. Mulligan was likely to bring discredit upon the reputation of the OPP.

There was no evidence before the Hearing Officer that members of the public in attendance at the conference were "shocked" to hear Sgt. Mulligan speak in favour of legalising marijuana. Given the very nature of the conference, this could hardly be a reasonable conclusion.

To have applied an objective test, the Hearing Officer would have needed to analyse and explain why the dispassionate, reasonable person would have determined that

the appellant speaking at the conference in favour of the legalisation of marijuana, would likely bring discredit upon the reputation of the respondent.

Further, the Hearing Officer would have needed to consider the views of the dispassionate reasonable person in the context of the evidence introduced by the defense, evidence which was not refuted by the prosecution, that the majority of Canadians and the federal government supported the legalization of marijuana. The Hearing Officer did not engage in this type of reasonable person analysis.

The Mulligan matter revisits the test that should be applied when assessing the conduct of an officer.

Tab 9: *Gallant*

Paragraphs 37 and 38 speak to the previously identified objective test. Paragraph 49 suggests that the context of a matter, in entirety, must be considered.

Tab 10: *Hampel*

On page 5 Mr. Black for the appellant officer quoted the decision in Donoghue and the Toronto police as follows:

Mr. Black submitted that the Hearing Officer failed to apply the case law provided to him which supported Constable Hampel's position. He noted that the hearing officer in Donoghue and Metropolitan Toronto Police Service (26 June, 1997, Hearing Officer Kelly) acquitted an officer on a similar charge and stated "that the officer was justified in that he was acting in good faith to advance a legitimate investigation, albeit personal in nature". In his view, the evidence in this case showed that Constable Hampel was acting in good faith to advance a legitimate investigation.

The OCPC did not directly respond to this submission but did write:

The integrity of the policing system requires that the community has an absolute trust in an unbiased police system. There is a clear apprehension of bias in situations where a police officer, using resources available only by virtue of his or her office, pursues a matter in which she or he has a personal interest.

The conflict of interest is clear. Save for the most exceptional circumstances, a police officer should not pursue, in his or her capacity as a police officer, any matter in which she or he has a personal interest.

Constable Hampel performed the CPIC searches at the request of his wife, to determine whether his ex-wife had undertaken improper CPIC searches. In doing this, he committed misconduct. It was exacerbated because he shared the results with his wife, a civilian, with no right to have access to that confidential police information.

The facts in Hampel case are dissimilar but did involve a conflict of interest. In Hampel the officer took a number of overt investigative steps including improperly running CPIC checks for reasons that were personal in nature.

Ms. McInnes made the following submissions with respect to the prosecution book of authorities:

Tab 3: *Delaney*

The 1995 Delaney decision identifies that context, seriousness, and intentions are relevant considerations. Intent is relevant to consider but not paramount nor required.

Tab 7: *Kelly*

This case did not have paragraph numbers but does indicate that the context of an investigation and actions are relevant and that lack of prudence does not constitute misconduct.

Tab 11: *Pacheco*

Ms. McInnes suggested that the behaviour of Sgt. Pacheco was markedly different than Sgt. Pinkerton. The actions of Sgt. Pacheco rose to the level of discreditable conduct in that he was attempting to use his police status to influence and investigation.

Prosecution Cases and Analysis – Discreditable Conduct. (*For full case names and citations see Appendix.*)

Tab 1: *Penner*

In this Supreme Court of Canada decision the Court stated:

Paragraph 60

In our opinion, this analysis is flawed. It can not necessarily be said that issue estoppel "is a two-way street" in this case. As acknowledged by the Court of Appeal, since the PSL requires that the misconduct of a police officer be "proven on the basis of clear and convincing evidence" (clause 64 (10).), it follows that the finding of misconduct, depending on the nature of the findings of fact, could prevent the issue of liability from being reconsidered in a civil action, where the balance of probabilities, a less demanding standard of proof. However, the same is not true of the acquittal. It should not be inferred from the fact that the prosecutor did not prove the charges on the basis of "clear and convincing evidence" that they could not have been established on a balance of probabilities. Given the different standards of evidence, the complainant would have no reason to believe that issue estoppel would apply in the case of acquittal of police officers. Indeed, in Porter, the court refused to apply this doctrine following an acquittal at the conclusion of a police disciplinary hearing because the hearings officer had rendered his decision on the basis of a [TRANSLATION] "standard of proof and that its decision could be different if the officer had applied the lower

standard than the civil procedure command": s. 11. Therefore, the parties could not reasonably consider that the acquittal of the police officers at the conclusion of the disciplinary hearing would be determinative of the outcome of Mr. Penner's civil action.

Tab 2: *Jacobs*

Both Penner and Jacobs affirm the standard of proof by which I am guided.

Tab 3: *Delaney and Girard*

This case, a neglect of duty charge involving a tragic motor vehicle collision, however it also states the "test" as outlined on page 30 and 31 of this decision. The Court also identified that even without bad faith recklessness an officers *neglect of duty* could bring discredit upon the reputation of a police force.

Tab 4: *Mancini and Courage*

This matter involved a police officer's personal relationship and the underlying facts are markedly dissimilar to the matter before this tribunal. Officer Courage was charged with discreditable conduct.

The following excerpts offer some guidance as to how the Commission considered certain points in *Courage* that I can take my mind to in deliberation of the matter before me.

Page 13

"The concept of discreditable conduct covers a wide range of potential behaviours. The test to be applied is primarily an objective one. The conduct in question must be measured against the reasonable expectation of the community.

It is not necessary to establish actual discredit. As the Commission noted in Silverman and Ontario Provincial Police (1997), 3 O.P.R. 1181 (O.C.C.P.S.) at 1187: "The measure used to determine whether or not conduct is discreditable is the extent of the potential damage to the reputation and image of the service should the action become public knowledge."

Page 14

"Also, it is not necessary in order to sustain a finding of discreditable conduct to prove each and every allegation contained in a Statement of Particulars or that there be ongoing offensive behaviour. If a Hearing Officer finds that any one or more of the allegations is proven, then the Hearing Officer can find discreditable conduct. See Hewitt and Devine and Toronto Police Service (1999), 3 O.P.R. 1372 (O.C.C.P.S.)"

Page 16

"The proper question is whether or not a reasonable person in the community would find that the conduct of the officer (if it were to be made public) would likely discredit the reputation of the police force."

Tab 5: Saxon

This was a discreditable conduct matter, the facts of which are not comparable to those before me. The alleged behavior in Saxon was much more overt. The following passages offer guidance:

Page 8

“The most recent application of the test for discreditable conduct in Ontario confirms that the test is “primarily an objective one” and that the conduct must be measured against the “reasonable expectations of the community”.

The Ontario Commission on Police Services has articulated the following approach regarding the meaning of “likely” to bring discredit upon the reputation of the police force:

The measure used to determine whether conduct has been discreditable is the extent of the potential damage to the reputation and image of the service should the action become public knowledge.”

Page 10-11

“This demonstrates very clearly that the Hearing Officer assessed the inconsistencies in Ms. LeBlanc’s evidence and found them not to be fatal. That being said, a hearing Officer does not have to deal with every single piece of evidence to support his or her decision.”

Page 14

On the latter point, we agree that the public expects police officers to be held to the highest level of civil conduct. When this does not occur, the public has a right to be concerned and discredit to the reputation of a police service may result. In this case many witnesses spoke to the inappropriate behaviour of Sergeant Saxon.

Tab 6: Cheung and McGrath

This matter involves an arrest and use of force situation unlike the matter before me. It does revisit “*Girard and Delaney test*” and considerations to be applied to cases assessing discreditable conduct. The following excerpt was brought to my attention for consideration by Mr. Lafrate. It offers guidance to me when considering context whether or not wrongful intent was established.

Paragraph 96

“For example in Leone v. Catalano the Ontario Board of Inquiry stated at pages 578 and 579:

... the Code of Offences... include offences which do not require a wrongful intent. For example, under s. 1(i) ...

acts which are “likely to bring discredit upon the reputation of the police force” are discreditable conduct. Such an offence clearly does not contain a requirement of wrongful intent. The offence is based on the concept that if an action has the appearance of wrongful conduct, such as the appearance of suppressing evidence or inappropriately failing to act, then it may be held to be misconduct, regardless of the intent, because may bring discredit on the force by virtue of its appearance. ...it is the Board’s view that the conduct of the officers should be judged against the standard of reasonableness...This is not the highest possible standard...Nor is it to impose the standard referred to earlier, that wrongful intent must be found. Rather it is to impose the standard which requires the officers to act in accordance with the reasonable expectations of society and to judge their conduct against that standard.”

Tab 7: *Kelly*

Mr. Iafrate drew my attention to a quote on page 13, R v. Valente. This reference and the following paragraph seem to refer to the bias and impartiality of a tribunal, hearing officer/adjudicator. Kelly is a conflict of interest case but short of that similarity I do not find particular guidance from it. It is worthy of noting that the officer, who’s acquittal of misconduct was upheld on appeal, was actively engaged in an investigation where a person with whom he had a personal relationship, was a witness. I do note that this case references the quote from *Mousseau* regarding avoidance of the improper application of hindsight.

Tab 8: *Valente*

This is a Supreme Court of Canada decision addressing issues surrounding whether or not a Judge of the Provincial Court, Criminal Division is an independent tribunal and the issue of judicial independence. While generally informative I did not find specific guidance from this submission.

Tab 9: *Monaghan (OCPC)* See defence tab 2 for OJ decision on appeal of OCPC finding.

In submitting this case Mr. Iafrate again drew my attention to a passage referring to bias on the part of an adjudicator in a tribunal. I am mindful of these considerations. In *Monaghan*, the Court pointed out on appeal of the OCPC decision, that the hearing officer had become an employee of OCPC. Ultimately OCPC identified or otherwise addressed the issue in a satisfactory and acceptable manner as stated by the Court. Further analysis is above under Defence Tab 2.

Tab 10: *Waller*

In this case PC Waller attended a school to assist his wife with their sick child. In order to achieve this PC Waller directed school bus drivers to move their busses to let his wife out. This was contrary to the drivers’ wishes and to policy. PC Waller became frustrated at times. Mr. Iafrate drew my attention to a passage on page 7 of the decision summarizing PC Waller’s comments to the tribunal. PC Waller had plead guilty to Discreditable conduct.

The facts of the Waller case are quite dissimilar to those before me. I do not find particular guidance from this submission.

Tab 11: *Pacheco (OPP decision)*

This was a matter where an officer, on behalf of his wife actively intervened and gave direction or otherwise offered criticism in an investigation being conducted by another police service. The officer became upset at times. He was found guilty of misconduct.

Mr. lafrate drew my attention to the following passage:
Page 13:

Society expects that police investigations are conducted with integrity and without improper influence. Society further expects that police officers conduct themselves in a non-biased, independent way in order to ensure public trust.

I am aware of the principles outlined in the passage as in many other cases, and will apply them accordingly.

Tab 12: *Port Moody*

This was a Police Union and Police Board at odds over police officers soliciting for funds by telephone (fund raising) which the board felt was contrary to policy. There is reference to "Order 132" which was a policy to prevent abuse of office and made reference to solicitation by police officers. Mr. lafrate drew my attention to paragraph 73 of the decision. The British Columbia Court of appeal was speaking specifically to a Charter of Rights issue when they wrote paragraph 73. It speaks to the integrity of members of the police force. As the paragraph was written in the context as described, I find it minimally obliging.

Analysis:

I will begin my analysis by stating that the issue at hand is the conduct of Sgt. Pinkerton and evidence related to the Notice of Hearing. There were a number of issues raised in evidence and submissions that spoke to the confrontation between Louise Rollins and Shannon Pinkerton that are not directly related to the misconduct allegation before me. It was not necessary for me to consider witness credibility in great depth in order to address key issues and arrive at my finding.

I consider credibility, from a lay person's perspective, to be when a witness presents that they sincerely believe they are speaking the truth as he/she believes it to be. Reliability relates to the actual accuracy of their testimony. In determining this, I consider a witness's ability to accurately observe, recall and recount the events in issue. A credible witness may give, in some cases, unreliable evidence. In the matter before me I found all witnesses credible on the salient issues in the NOH. Reliability varied due to memory and emotions associated to the underlying issue. As mentioned, I did not find it necessary or of assistance to assess these areas individually because the evidence was clear as it related to the NOH and in areas relied upon to reach my conclusion. All evidence and testimony was consistent

in this regard.

The issues:

1. The ultimate issue to be determined is did Sergeant Pinkerton act in a disorderly manner or in a manner prejudicial to discipline or likely to bring discredit upon the reputation of the Ontario Provincial Police?

In reaching my decision I considered:

- a. Did Sgt. Pinkerton introduce relationship bias?
- b. Did Sgt. Pinkerton's actions shift the focus of the investigation from his wife and her actions and communications onto the complainant's wife?
- c. Did Sgt. Pinkerton's insert himself into the investigation?
- d. Did Sgt. Pinkerton interfere with a non- biased police investigation?

In order to address these issues I will begin by summarizing the facts accepted as factual based on testimony and/or evidence.

- On August 23, 2015 Shannon Pinkerton, her 2 young daughters, infant daughter and her mother Gail Steeves were walking on the road near the property of the public complainant Louise Rollins and her husband Gerald Rollins.
- It was approximately late morning or early afternoon on a sunny summer day.
- Louise Rollins had been cutting lambs quarters, also referred to as "greens" which she had intended to feed to poultry. She was using a folding jack knife to cut the plants.
- Louise Rollins had seen a white vehicle drive along the road. She felt it was suspicious or was otherwise worthy of further exploration on her part. She approached the road for this purpose.
- Round about the same time Shannon Pinkerton and family had reached a point on the road that was near the farm gate to the Rollins' property.
- Shannon Pinkerton and Louise Rollins ended up in a verbal confrontation. Shannon Pinkerton felt wronged by Louise Rollins. Louise Rollins felt wronged by Shannon Pinkerton.
- Louise Rollins returned to her farm property and Shannon Pinkerton continued walking toward her residence.
- Shannon Pinkerton attempted to call Sgt. Chris Pinkerton. He did not answer. She then tried to call her father in law who did not answer. She then called and spoke with Gerald Rollins, the husband of Louise Rollins.
 - *The order and exact times of the calls was not absolutely determined but was not specifically pertinent to the allegations on the NOH.*
- Sgt. Pinkerton was on duty and had been on an unrelated missing person occurrence at Canadian Forces Base Pettawawa when his wife initially called him and he was unable to answer or otherwise missed the call.
- Sgt. Pinkerton noticed that he had missed the call and called his wife back. During the conversation Sgt. Pinkerton received information from his wife about her confrontation with Louise Rollins earlier.

- Shannon Pinkerton had described what she had seen, how she had felt, and what her children had said.
- Shannon Pinkerton told Sgt. Pinkerton details of her conversation with Gerald Rollins.
- Sergeant Pinkerton confirmed that Shannon and their children were okay and told her or otherwise left her with the impression that he would call the incident in to the Provincial Communications Centre (PCC) on her behalf.
- In the interim Gerald Rollins had spoken to Louise Rollins and had relayed what Shannon Pinkerton had said to them on the phone. The Rollin's had concerns about what was said that caused them sufficient angst which led Louise Rollins to call the PCC. She did so before Sgt. Pinkerton had the opportunity to call the matter in to the PCC.

Louise Rollins was aware that Shannon Pinkerton was the wife of an OPP officer and expressed concerns on her initial call to the PCC regarding conflict of interest and bias, not in those words. She expressed concerns during her call with the PCC that her concerns would not be taken seriously because a police officer or his family member were involved.²⁶

- PC Desjardins was dispatched to the Rollin's residence. The call was reported as a "threats not in progress" and was described as some type of "confrontation" by the dispatcher.²⁷ It was broadcast that Shannon Pinkerton was involved and that the complainant was Louise Rollins.

PC Desjardins was equipped with an in car mobile data terminal (MDT) that day which allowed him to read computer aided dispatch (CAD) details. The CAD reports²⁸ often, and in this instance did contain more information than what is actually verbalized by the dispatcher over the air on the radio dispatch call. Sgt. Pinkerton did not have an MDT in his police vehicle on August 23, 2015. His information regarding the nature of the call was limited to what was broadcast by the dispatcher.

- Sgt. Pinkerton heard PC Desjardin being dispatched to the incident over the radio.

Sgt. Pinkerton testified that he heard the call dispatched as some sort of confrontation between the complainant and his wife. He did not believe that the call was urgent but that it warranted further inquiry from a public safety perspective because Louise Rollins had a knife. He testified that he felt that Louise Rollins' behaviour was an escalation from past incidents that he was aware of. He acknowledged in his testimony that her explanation for having the knife to cut greens was reasonable but, based on his wife's concerns, he felt it warranted being looked into.

- Not long after the radio dispatch call PC Desjardins and Sgt. Pinkerton spoke over the telephone.

²⁶ Exhibit 12, PCC recording

²⁷ Exhibit 12, PCC recording

²⁸ Exhibit 18, CAD reports

In testimony before this tribunal, and in previous statements, there was some confusion from both Sgt. Pinkerton and PC Desjardins as to who called whom and neither could be certain as to the answer. I consider this to be the result of a gap in note taking and in memory and is not of significance with respect to the NOH allegations. Who initiated the call is not important. What is vital to my deliberation is the conversation between them.

PC Desjardins' evidence in chief and cross examination was that he had concerns about attending the call due to conflict of interest and the possible perceived bias as his supervisors' wife was involved. He felt that it was his role to respond to the call for service and initiate an investigation. He stated that this was all that he could independently recall but that he had the opportunity to read disclosure materials. He surmised but was not certain if he spoke to Sgt. Pinkerton once or twice prior to attending the Rollins' residence. He could not recall much of the conversation with Sgt. Pinkerton. He did recall speaking with Sgt. McDonald sometime after 4:11 pm on August 23, 2015 in relation to the incident. The investigation was re-assigned to Sgt. McDonald and eventually to D/Sgt. Watkins and that the chain of command was notified. PC Desjardins, in cross examination, indicated that after speaking with Sgt. Pinkerton, he (Desjardins) was to respond to the call for service at the Rollins' residence and recalled discussing conflict of interest. He did not recall what Sgt. Pinkerton told him about the knife. He testified that he did not feel or perceive Sgt. Pinkerton was trying to influence him in any way.

Sgt. Pinkerton testified that PC Desjardins asked if he (Sgt. Pinkerton) was good with him (PC Desjardins) attending the call and inquired if Sgt. McDonald should attend. He passed on what Shannon had told him to PC Desjardins because there was a call for service and he had information related to the call for service. He told PC Desjardins that he was okay with him attending at that time at least in response to the call. He stated that he reassured PC Desjardins that he could attend the call because, at that time, what he (Sgt. Pinkerton) was aware of, that there did not seem to be a whole lot to it. Sgt. Pinkerton believed it to be a neighbour dispute and that, other than the fact that there was a knife involved, there did not seem to be "a whole lot to it." Sgt. Pinkerton found it necessary to mention the knife as it was important that he (PC Desjardins) knew it and that he may need to find out why a knife was involved. Sgt. Pinkerton related officer safety and public safety concerns.

There was no mention of the knife in the dispatch call. PC Desjardins was responding to the complainant's house and should know for officer safety reasons. Based on how his wife felt and what she had said there was a possible public safety issue based on how his wife had felt and what she had seen. When Sgt. Pinkerton spoke with PC Desjardins he was not aware that the Rollins' were alleging Shannon had threatened to stab Louise Rollins. He was not aware until later when his wife Shannon told him. Based on what he was told by Shannon he did not believe that Shannon Pinkerton or Louise Rollins committed a criminal offence. He did feel that the incident warranted looking in to.

Sgt. Pinkerton then called his wife Shannon and asked to her to return to their home. He told her that PC Desjardins had been assigned and that he may need to speak with her.

- PC Desjardins eventually attended the Rollins's residence after making a traffic stop. He obtained statements from Louise and Gerald Rollins.

- PC Desjardin's attended the Pinkerton residence and interviewed Shannon Pinkerton. The interview was obtained after Shannon Pinkerton was advised of her Right to Counsel and Caution for the criminal offence of threatening. Shannon Pinkerton provided a statement.
- Gail Steeves had also been interviewed by PC Desjardins.
- PC Desjardin later returned to the OPP detachment and had a conversation with Sgt McDonald. PC Desjardin completed reports summarizing his involvement and information obtained.
- The OPP chain of Command was notified and ultimately D/Sgt. Watkins was assigned the investigation.

D/Sgt. Watkins did not appear as a witness before this tribunal. Information in relation to his involvement is gleaned from documents and from witness testimony other than his own.

- As part of his investigation D/Sgt. Watkins delivered a letter ²⁹ to Louise Rollins. Ostensibly the letter was a warning to Louise Rollins for the criminal offence of "Weapons Dangerous."
- In January of 2016 D/Sgt. Watkins advised Ms. Rollins³⁰ that, in consultation with the Crown Attorney, charges would not be laid against Shannon Pinkerton.
- At some point (specific evidence not called) a private information was sworn against Shannon Pinkerton for the criminal offence of threatening. This charge was dismissed or withdrawn; in any event to not proceed.

Did Sgt. Pinkerton introduce relationship bias?

Sgt. Pinkerton outlined that his motivation for sharing information with PC Desjardins included an obligation to share information in his possession in relation to an active call for service, public safety concerns based on what his wife had relayed to him, and officer safety concerns as one of the people involved was in possession of a knife. His wife, Shannon Pinkerton, advised him that she was frightened and upset by the actions of Louise Rollins and the manner in which she held the knife. PC Desjardins testified that he knew who Shannon Pinkerton was i.e. his supervisor's wife.

From the testimony and demeanor of Shannon Pinkerton before this tribunal I see no reason why Sgt. Pinkerton or any police officer would not have taken her concerns seriously just as they should have and did with the concerns raised by Louise Rollins. The facts as related by Louise Rollins and those by Shannon Pinkerton, whether viewed in combination or individually, clearly warranted further inquiry by the police.

I will address what Sgt. Pinkerton said to PC Desjardins elsewhere in my decision, however, Sgt. Pinkerton had information that pertained to an active call for service to which another officer was dispatched. He had an obligation or duty to share at least some of what he knew with that officer, in this case PC Desjardins. OIPRD investigator, Ms. Hema Nagar, agreed with this fact in her testimony. The element that Sgt. Pinkerton's wife was involved does not

²⁹ Exhibit 24, Letter to Louise Rollins from D/Sgt. Pinkerton

³⁰ Exhibit 21, Email from D/Sgt. Watkins to Louise Rollins

negate or nullify this obligation. Shannon Pinkerton was involved and that could not be changed. This, together with the fact that PC Desjardin previously knew who Shannon Pinkerton makes it apparent that Sgt. Pinkerton, himself, did not create the conflict of interest nor introduce bias or the possibility of a perception of bias. These possibilities already existed notwithstanding Sgt. Pinkerton's involvement.

Louise Rollins was aware that Shannon Pinkerton was an OPP officers' wife when she called the matter in to the PCC³¹. Before any officer was assigned, she expressed her concerns of conflict of interest and bias to the call taker. The conflict of interest and possible perception of bias was already a live issue from the moment a police officers' spouse became involved. Sgt. Pinkerton did not introduce relationships bias.

Did Sgt. Pinkerton's actions shift the focus of the investigation from his wife and her actions and communications onto the complainant's wife?

While not a crucial point, I do note that this particular bullet in the particulars of the allegations in the NOH erroneously refers to "the complainant's wife." All parties agree that Louise Rollins not Gerald Rollins, was the complainant.

PC Desjardins responded to the Rollins' residence after speaking with Sgt. Pinkerton. He interviewed Gerald and Louise Rollins. As a result of information received from the Rollins' when PC Desjardins interviewed Shannon Pinkerton, he advised her of her Right to Counsel and Caution for a Criminal Offence. This indicates that PC Desjardins considered what the Rollins had told him to be serious and that the focus was on Shannon Pinkerton for a criminal offence at that point in time.

D/Sgt. Watkins as part of his investigative steps, consulted a Crown Attorney prior to reaching the decision not to charge Shannon Pinkerton. It seems abundantly clear to me that the Rollins' allegations were taken seriously at every stage and that significant attention remained on investigating Shannon Pinkerton.

There is no evidence before me that would suggest that the focus of the investigation was affected in any way by the actions or words of Sgt. Pinkerton. There is no evidence that Sgt. Pinkerton attempted to shift the focus of the investigation in any manner. There is no evidence that Sgt. Pinkerton, at the time he spoke with PC Desjardins, was armed with any information that would prompt him to conclude that he would need to shift the focus of the investigation.

Sgt. Pinkerton did not shift the focus of the investigation from Shannon Pinkerton onto Louise Rollins.

³¹ Exhibit 12 PCC Recording

***Did Sgt. Pinkerton's insert himself into the investigation?
Did Sgt. Pinkerton interfere with a non- biased police investigation?***

Sgt. Pinkerton received information from his wife and passed it on to PC Desjardins who was assigned to the call for service. He did mention that Louise Rollins had a knife and that for public safety and officer safety reasons he felt obligated to pass this information on to PC Desjardins. He expanded on what was going through his mind at the time.

Ms. Nagar stated that Sgt. Pinkerton was in a difficult situation between his self-identified conflict of interest and perceive bias concerns and his duty to share information with PC Desjardins. She also agreed that it could have been perceived as neglectful had he not shared at least some of the information with PC Desjardin.

The extent of Sgt. Pinkerton's involvement was to pass on information his wife had told him; information he had intended to share with the PCC in order to have an officer dispatched. Louise Rollins reached the PCC and her call for service was dispatched before Sgt. Pinkerton could contact the PCC. He heard PC Desjardins being dispatched and passed the information onto him directly. This ended his involvement.

Sgt. Pinkerton's actions under the circumstance at the time fall well short of what I could consider inserting himself into the investigation. I must also acknowledge that the concept of "inserting oneself into an investigation" is open to interpretation from a semantical perspective and was never clearly defined or specifically addressed by the parties. I consider that to have inserted himself, Sgt. Pinkerton would have had to join in the investigation process in an active manner. I do not consider his brief conversation with PC Desjardin to fit this definition. For reasons previously outlined there was no evidence presented that would cause me to conclude that Sgt. Pinkerton's actions in any way interfered with or influenced the investigation in any way.

Conclusion.

Louise Rollin's concerns of conflict of interest and her perception of bias are understandable. She was involved in a confrontation with and felt wronged by the spouse of a police officer who worked in the area where the incident occurred. The outcome of the investigation may have, from her perspective, served to bolster her perception of bias.

Sgt. Pinkerton, PC Desjardins, Sgt. McDonald³², and Inspector Wolfe³³ all realized the conflict of interest and possible perception of bias from the very onset of the scenario and put steps in motion to mitigate these concerns. This occurred in a relatively small community where police officers more frequently find themselves involved in situations and investigations where they have personal or other relationships with the folks involved. This is not to say that it cannot happen in larger centers as illustrated in prosecution and defence case submissions, but, are more likely to happen with greater frequency in smaller centers.

³² Exhibit 24, Statement of Sgt. McDonald

³³ Exhibit 19, Statement of Inspector Wolfe.

I will make a general observation not related to the allegations against Sgt. Pinkerton before this tribunal but connected to the underlying incident between Shannon Pinkerton and Louise Rollins. It may have been more strategic to have further removed the assignment of the investigation from the detachment area. Louise Rollins has expressed concerns that D/Sgt. Watkins and Sgt. Pinkerton knew each other as they work or have worked in the same detachment groups. There is no evidence before me as to history of the working relationship between Sgt. Pinkerton and D/Sgt. Watkins and it has no bearing, as mentioned, on the matter before me. I am simply suggesting that, in the future, it may be advisable for the OPP to be mindful of such contingencies and to consider possibilities. With that said, I am aware from evidence before me, that D/Sgt. Watkins, in consultation with his chain of command, conferred with and sought advice and direction from a Crown Attorney as part of his decision making process. This is indicative of the fact that the OPP was mindful of transparency and that decisions were not made arbitrarily by D/Sgt. Watkins.

Sgt. Pinkerton received information from his wife Shannon Pinkerton. He relayed the information as outlined, to PC Desjardins. He quickly identified the existence of a conflict of interest and possible perception of bias and immediately began to put steps in place to address this challenge. He specifically asked not to be involved and sought no further updates or information from other OPP members. He made it clearly known to PC Desjardins and others that he did not want to be involved, updated, consulted or apprised of any aspect of the investigation regarding the incident between Shannon Pinkerton and Louise Rollins. The only information that he received about the matter, by his own insistence and actions, were from his wife, Shannon. There is no evidence whatsoever to suggest that Sgt. Pinkerton had any involvement in the investigation, beyond the brief conversation that he had with PC Desjardins.

There is no evidence that PC Desjardins or any other police officer was even indirectly influenced by anything said or done by Sgt. Pinkerton. In his own words Sgt. Pinkerton acknowledged that there are things, looking back with the benefit of hindsight, which he might have done differently. That does not mean that he made a mistake or committed misconduct. In disciplinary tribunals we must, at times, apply hindsight but it must be done with great care. More importantly, past cases have channelled considerations to be in view of the circumstance the officer was faced with at the time that decisions were made as stated in the Mousseau case:

The reasonableness of an officer's conduct must be examined in light of the circumstances as they exist at a particular time. An officer is expected to use discretion and judgment in the course of his duties on many occasions. The police officer's discretion or judgment ought not to be examined scrupulously by the benefit of hindsight, but it is essential to examine the circumstances under which the officer exercised discretion or independent judgment to see to what extent discretion was warranted.³⁴

In factually considering all of the evidence presented and applying the test in Galassi:

³⁴ PC S. Mousseau and the Metropolitan Toronto Police, CanLII 3042 (ONCPC)

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 apprised 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 appropriate rules and regulations in force at that 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 his discretion.*

There is no evidence before me that the reputation of the OPP in the eyes of the community has been actually adversely affected in any way. I then bring my mind to the established test of considering if a dispassionate reasonable person in the community being fully aware of the circumstance before this tribunal would find that Sgt. Pinkerton conducted himself in a manner that would likely result in damage or discredit to the reputation of the OPP. I find that they would not. Sgt. Pinkerton had a duty to share the information in his possession related to an active call for service with the responding officer, PC Desjardins. While he may have considered different words or course of action, the actions he chose on August 23, 2015 were not a mistake nor do they constitute any form of misconduct. There is no evidence that would cause me to apply the objective reasonable person test and find that Sgt. Pinkerton's conduct would likely bring discredit upon the OPP.

As previously stated I understand why Louise Rollins may have felt (or may still feel) that bias and conflict of interest existed which prejudiced the outcome of the investigation of the confrontation between she and Shannon Pinkerton unfavorably from her expectations. I cannot, however, consider Louise Rollins to be dispassionate or detached in this matter, on the contrary for obvious and plausible reasons. There is, however, no evidence to suggest that Sgt. Pinkerton did anything that influenced the investigation in any significant way.

I agree with Ms. McInnes' submission that Sgt. Pinkerton immediately recognized the conflict of interest and self-imposed safeguards in order to mitigate any negative impact of bias. His actions demonstrated what is required in policy and what is expected by the community.

Part IV: Disposition:

Upon review and careful consideration of the evidence and submissions, I find that the evidence falls well short of establishing misconduct. I find Sgt. Pinkerton not guilty of Discreditable Conduct.

2019-01-07

X 

Signed by: Mike Bickerton M (M)

K.M. Bickerton
Superintendent
OPP Adjudicator

Date electronically delivered: January 7, 2019

Appendix A

The following exhibits were tendered during the hearing:

- 1: Delegation of Adjudicator; Supt. Walton
- 2: Designation Prosecutor; Insp. Young
- 3: Delegation- All Officers
- 4: Delegation of Adjudicator; Supt. Taylor
- 5: Designation Prosecutor; Insp. Tovell
- 6: Designation Prosecutor; Insp. Doonan
- 7: Delegation of Adjudicator; Supt. Bickerton
- 8: Designation Prosecutor; Mr. Iafrate
- 9: Designation of Prosecutor; Ms. Donnelly
- 10: PC Desjardins Interview Recording
- 11: PC Desjardins notes
- 12: Provincial Communications Centre Recording
- 13: General Occurrence Report
- 14: Mrs. L. Rollins Interview Recording
- 15: Sgt. Pinkerton Interview Recording
- 16: Sgt. Pinkerton Notes
- 17: Police Orders 6.24 Excerpt
- 18: CAD Dispatch Report
- 19: Duty Report A/Insp. Wolfe
- 20: Duty Report Sgt. J.C. McDonald
- 21: D/Sgt. Watkins Email of 19 January, 2016
- 22: Mr. Baird email to D/Sgt. Watkins
- 23: Note and partial transcript of September 14, 2015 Rollins interview
- 24: Letter from D/Sgt. Watkins of August 28, 2015
- 25: Supplementary Report of August 24, 2015
- 26: G. Steeves audio Interview of August 20, 2015
- 27: Interview excerpt from Rollins recorded interview
- 28: Shannon Pinkerton Interview recording
- 29: Book of Authorities (Character) – Ms. McInnes
 - o Tab 1: Supt. Paul Gottschalk and the Toronto Police Service, 2003 ONCPC 2
 - o Tab 2: Regina v. Elmorsi, 1985 CanLII3545 (ON CA)
 - o Tab 3: Terry Bengt Hanson and the Council of the College of Teachers, 1993 CanLII 1035 (BC CA)
- 30: Book of Authorities (Character) – Ms. Donnelly/Mr. Iafrate
 - o Tab 1: Chapter 10, The Law of Evidence in Canada, 5th Edition
 - o Tab 2: Rawdah v. Evans [1994] O.J. No. 3322
 - o Tab 3: Deep v. Wood [1983] O.J. No. 23
 - o Tab 4: Constable Joseph Cardi and the Peel Regional Police , 2013 ONCPC 10(CanLII)

31: Book of Authorities (Discreditable Conduct) – Ms. McInnes

- Tab 1: Constable Kevin Jacobs and Ottawa Police Service, 2016 ONCA 345 (CanLII)
- Tab 2: Monaghan v. Toronto Police Service,[2005] O.J. No. 1396
- Tab 3: Constable Steven Mousseau, 1981 CanLII 3042, ONCPC
- Tab 4: Constable Craig Galassi and the Hamilton Police Service, 2003 CanLII 75459 (ONCPC)
- Tab 5: Constable Dawn Laurysen and Peel Regional Police Service 2008 ONCPC 7, CanLII
- Tab 6: Constable Vincent Mullholland and the Halton Regional Police Service, 2003 CanLII 75468 (ONCPC)
- Tab 7: Constable Maxwell Lloyd and London Police Service, 1999 CanLII 31609 (ONCPC)
- Tab 8: Sgt. Dan Mulligan and the Ontario Provincial Police, 2017 ONCPC 19 (CanLII)
- Tab 9: Constable Marc Gallant and the Ontario Provincial Police, 2017 ONCPC 16 (CanLII)
- Tab 10: Constable Scott Hampel and Toronto Police Service, 2008 ONCPC 6 (CanLII)

32: Book of Authorities (Discreditable Conduct) – Mr. Iafrate/Ms. Donnelly

- Tab 1: Penner v Niagara, 2013 S.C.J. No.19
- Tab 2: Constable Kevin Jacobs and Ottawa Police Service, 2016 O.J. No. 2431
- Tab 3: P.C. William Delaney and Michael Girard, BOI 95-26, Ontario Board of Inquiry, June 13, 1995
- Tab 4: Constable Martin Courage v Susan Mancini, OCCPS #04-09
- Tab 5: Sergeant James Saxon v Amherstburg Police, OCPC #11-02
- Tab 6: Constables Nick Chung and Sean McGrath and Toronto Police Service, OCCPS #10-03, 2010 CanLII101274(ONCPC)
- Tab 7: Humphries v Constable Bruce Kelly, 2003 ONCPC 19, 2003 CanLII87668(ONCPC)
- Tab 8: R v Valente, [1985] 2 S.C.R. 673, file:17583
- Tab 9: Staff Sergeant James Monaghan and the Toronto Police Service, OCPC 03-013, 2003 CanLII 75467 (ONCPC)
- Tab 10: OPP and Provincial Constable Stephen Weller, April 19, 2011, Insp. Paul Kelly
- Tab 11: OPP and Sergeant R.F. Pacheco, April 16, 2012, Supt. S.C. George
- Tab 12: Port Moody District 43, Police Service Union v Police Board, CA011236, 1991 CanLII 5715 (BCCA)