

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 P.P. (Pete) Sgt. RANCOURT, #7358

Charges: **Neglect of duty**
Unlawful or unnecessary exercise of authority

Before: **Superintendent Robin D. McElary-Downer**
Ontario Provincial Police

Appearances:

Counsel for the Prosecution: **Ms. Jodi-Lynn Waddilove**
Legal Services Branch, MCSCS and MAG

Counsel for the Defence: **Mr. Gavin May**
Ontario Provincial Police Association

Hearing Dates: **October 9, 10, 11 and November 15, 2012**

PREAMBLE

Sergeant P.P. (Pete) RANCOURT, #7358 faces two Notices of Hearing which allege he committed neglect of duty and unlawful or unnecessary exercise of authority. Both offences are contrary to the Code of Conduct contained in the Schedule to Ontario Regulation 268/10, as amended.

The particulars of the neglect of duty include:

On or about October 24, 2010 you received information about an assault involving J. Morningstar and T. Morningstar. When learning of the location of J. Morningstar, you:

- failed to obtain an arrest warrant; and,
- failed to communicate properly with the officers who attended to assist you.

The particulars of the unlawful or unnecessary exercise of authority include:

On or about October 24, 2010 you unlawfully arrested and applied force upon J. Morningstar. As a result of your actions, A. Morningstar came to the aid of J. Morningstar and assisting officers also arrested and applied force to A. Morningstar.

You knew or ought to have known that your actions were unlawful and unnecessary.

Plea

Sgt. RANCOURT pleaded not guilty to the allegations of misconduct.

Exhibits

The following exhibits were tendered:

- Exhibit #1 – Adjudicator’s Authorization (George)
- Exhibit #2 – Prosecutor’s Authorization (Young)
- Exhibit #3 – Delegation – All Officers
- Exhibit #4 – Adjudicator’s Authorization (Walton)
- Exhibit #5 – Adjudicator’s Authorization (McElary-Downer)
- Exhibit #6 – Prosecutor’s Authorization (Waddilove)
- Exhibit #7 – Agreed Statement of Facts
- Exhibit #8 – Exhibit Book
- Exhibit #9 – Telewarrant to Enter a Dwelling House – Form 7.1
- Exhibit #10 – Warrant to Arrest with Optional Authorization to Enter a Dwelling House – Form 7
- Exhibit #11 – Book of Authorities
 - Tab 1: Legal Aspects of Policing, Paul Ceysens, p. 7-28
 - Tab 2: Legal Aspects of Policing, Paul Ceysens, p.p. 5-122, 5-133
 - Tab 3: *The Law Society of Upper Canada v. Gary Neinstein*, [2007] O.J. No. 958
 - Tab 4: *R. v. Feeney*, [1997] 2 S.C.R. 13
 - Tab 5: *R. v. Wills*, 1992 CanLII 2780 (ON CA)
 - Tab 6: *R. v. Kokesch*, [1990] 3 S.C.R. 3

- Tab 7: *R v. Langan*, 2000 SKQB 67
Tab 8: *Suleiman v. Ottawa Police Service and Lord*, (May 5, 2011), OCPC
Tab 9: *Batista v. Smith and Ottawa Police Service*, (February 22, 2007) OCCPS
Tab 10: *Burgess v. St. Thomas Police Force*, (March 1, 1989), OPC
Tab 11: *Soley v. Ontario Provincial Police*, (February 12, 1996) OCCPS
Tab 12: *R. v. Storrey*, [1990]1 S.C.R. 241
Tab 13: *PG v. Ontario (Attorney General)*, (1996) O.J. 1298
: *R v. White*, (2006) ONCJ 147
: *R. v. Evans*, (1996) 1 S.C.R. 8
: *R v. Nguyen*, (2004) O.J. No. 2698

DECISION

In this matter, Mr. Gavin May represented Sgt. RANCOURT and Ms. Jodi-Lynn Waddilove represented the OPP.

On October 24, 2010 James Morningstar was arrested for spousal assault in his home by Sgt. RANCOURT.

It is the OPP's position the arrest was unlawful because Sgt. RANCOURT had formed reasonable grounds to arrest but failed in his duty to first obtain an arrest warrant *before* entering Morningstar's dwelling. Conversely, it is Defence's position the arrest was lawful because Sgt. RANCOURT did not form reasonable grounds that an offence had been committed until *after* Sgt. RANCOURT entered the dwelling.

The focus of this Tribunal is to determine whether clear and convincing evidence exists to find that Sgt. RANCOURT's arrest of James Morningstar was unlawful. To do so, it must be found that he possessed reasonable grounds to believe James Morningstar committed spousal assault *before* he entered the Morningstar dwelling.

Based on the totality of evidence and upon review of the essential elements of the applicable Code of Conduct charges, the Tribunal found weighty, cogent and reliable evidence which supported Prosecution's position that Sgt. RANCOURT possessed reasonable grounds to believe James Morningstar had committed an offence *before* he entered the Morningstar dwelling. Therefore the Tribunal has found the applicable burden of proof – clear and convincing evidence – was met in that Sgt. RANCOURT was neglectful in his duty and unlawfully arrested James Morningstar.

REASONS for DECISION

Prosecution's Case

Ms. Waddilove began by tendering an Agreed Statement of Facts (ASoF) which was filed as Exhibit #7. The ASoF contained anticipated will states from eight witnesses. The following is a summary of Tammy

Morningstar's will state¹.

On October 23, 2010 she was involved in an argument with her husband. She called her sister, Kim McKenzie to tell her about the incident. Her sister called the police as it was alleged that Tammy's husband, James Morningstar, got physical with her. After the incident with her husband, Tammy Morningstar left the residence and went to her friend, Joanne Atkinson's residence.

On October 24, 2010 three OPP officers, Sgt. RANCOURT, First Nations Constable (FNC) Cada and Constable Dennie attended Kim McKenzie's house to speak with Tammy Morningstar. Tammy was intoxicated. She provided them with a brief explanation of what happened between her and her husband. She stated that she preferred to give them a statement when she was not intoxicated. She confirmed that she was comfortable staying with her friend that night.

Later, on October 24, 2010 Sgt. RANCOURT contacted Tammy Morningstar at Joanne's place and told her that he was going to see James Morningstar at 6 pm that day to question him.

Tammy Morningstar states that Sgt. RANCOURT asked her if James had any guns. She told him she didn't know.

Tammy Morningstar told James about her conversation with Sgt. RANCOURT and that the police were going to their home to take his statement at 6 pm. She states he got mad when she told him this, but that he knew what he did was wrong.

She believes she was at Joanne's house from 4 pm to 8 pm.

Around 8 pm she called the Blind River OPP Detachment to talk to Sgt. RANCOURT and was advised that he was busy. She felt something had gone wrong.

Tammy Morningstar is unsure of the exact time she went to the Blind River OPP detachment to give her statement, but believes it was after 8 pm.

Tammy returned home at 9 pm or 9:15 pm. She observed some blood on the carpet and that the place was a little scuffed up. She believed the police had gone through her closets looking for a gun.

Tammy Morningstar understood that Sgt. RANCOURT was going to 'question', 'take a statement', 'investigate' and 'see him' when he met with James Morningstar.

Witness Ralph Chiblow:

Mr. Chiblow is a resident of Mississauga First Nations and cousin to James and Andrew Morningstar.

On October 24, 2010 at approximately 4 pm, Mr. Chiblow and Andrew Morningstar arrived at James Morningstar's residence at 48 Hamilton Street, Blind River. Mr. Chiblow had learned from Andrew that James wanted company while he waited for the police to come and arrest him.

¹ Exhibit #7, pages 1-5

James, Andrew and Mr. Chiblow sat in the sun room at a table, drank beer and talked. Mr. Chiblow learned from James that his pending arrest stemmed from domestic assault. Mr. Chiblow had one beer and he did not know how many James or Andrew had.

At approximately 6 pm the police arrived. The officers knocked and entered after James opened the door. Mr. Chiblow believed there were six officers and thought one stayed outside while the others came in. He said James Morningstar was in a jovial mood when the police first entered and extended his arms out with his wrists together jokingly like he was ready to be arrested. He heard James say, "Oh sorry officers, wrong way" and then he was tackled.

Mr. Chiblow did not see the officers provide any documentation to James nor did he hear the conversation between James and the police. He and Andrew remained seated at the table. He described the interaction between the police and James as a mad frenzy. He could see James was injured and trying to stand on his feet but he was tasered. Mr. Chiblow said Andy was tasered when he said, "Hey hey, that's my brother – take it easy." Mr. Chiblow testified both Andy and James got pepper sprayed. He believed approximately five minutes had elapsed from when the officers first arrived to when James Morningstar was handcuffed.

Mr. Chiblow stated that the police dragged Andrew and James out of the house after they were handcuffed. He did not think they were injured until he saw Andy's split lip the following day.

After James and Andrew were taken out, Mr. Chiblow testified the police returned looking for firearms. He could tell Sgt. RANCOURT was in charge. He watched the officers remove a rifle or shotgun which had been concealed on the couch. Mr. Chiblow stated he had no conversation with the police while they were in the house. He waited until they left, called a taxi and returned home.

Mr. Chiblow was referred to his OIPRD (Ontario Independent Police Review Director) complaint and stated, "Yeah that's my writing – I am sure that's my writing."

In cross examination, Mr. Chiblow testified Andrew was tasered as he started to get up from his chair. He could not recall which officer used the taser or which officers deployed their pepper spray.

Mr. Chiblow stated Andrew told him that he went to the hospital after he was released by the police. He denied that Sgt. RANCOURT called a taxi or thanked him for not getting involved.

Witness James Morningstar:

James Morningstar resides at 48 Hamilton Street in Blind River. He is fifty-two years old and has been married to Tammy Morningstar for six years. He previously was self-employed but has not worked for the past year and a half.

James Morningstar testified that on October 24, 2010 a friend called him at approximately 3 pm and told him the police were going to his house at 6 pm so he needed to go home. He was at Andy's house when he got the call. James Morningstar told Andy he had to go home because the police were coming. James Morningstar stated he consumed approximately four to five beers at his residence while waiting for the police and he was not intoxicated. At approximately 6:10 pm when the police arrived, James Morningstar testified he opened the door, saw two officers and invited them in. Sgt. RANCOURT stood

on his right and the other officer stood on his left. He acknowledged to the officers he was James Morningstar and Sgt. RANCOURT told him they were there about a complaint about Tammy. James said it was hard to hear the officer because the dog was outside barking.

James Morningstar testified he recalled seeing other officers but could not remember how many. He remembered making a comment about bringing the whole force because he kept seeing more officers arrive. He said he did not mean this as a threat against the police.

James Morningstar testified he told Sgt. RANCOURT that he gave Tammy a slap the night before. Sgt. RANCOURT asked him the whereabouts of his guns. James said he pointed to his couch and told Sgt. RANCOURT there were two guns on the couch. His third gun, a 22 was at his friends place. He said it was like Sgt. RANCOURT didn't believe him about the 22, and kept asking him why he didn't have it with him. James Morningstar testified that when he turned to point to his couch, the officers pulled him to the ground. He tried to push himself up but got kneed, tasered and pepper sprayed. He could not recall if the taser wires made contact.

James Morningstar testified he believed the officers were in his house for about eight to ten minutes arguing about his guns before he was grabbed. He does not recall being told he was under arrest. He was transported to the Blind River detachment and he understood his arrest was for the assault against Tammy.

James Morningstar said his arrest was aggressive and ridiculous because he was ready to go with the officers. He suffered bruised ribs and soreness as a result of the arrest.

James Morningstar confirmed that he completed his OIPRD complaint in his own handwriting.

James Morningstar testified that the seven charges against him and Andy for resisting arrest were dropped and he ended up facing only one charge in relation to Tammy.

In cross examination, James Morningstar disagreed with Mr. May that the handwriting in his, Mr. Chilbow's and Andrew's OIPRD complaint forms appeared similar. He said he did not speak to Tammy the afternoon of October 24, 2010. He testified he did not hold out his arms in the fashion described by Ralph Chilblow.

James Morningstar stated he was sure it was two officers who first came in the door, one behind the other. He did not remember if the officers said they were there to arrest or investigate. He admitted he said to the police, "No that's bullshit." He agreed that his actions and comments could have been perceived as a threat.

Witness Andrew Morningstar:

Andrew Morningstar testified he is fifty years old and lives on Mississauga First Nation. Prior to the incident he was employed as a custodian but has not worked since. His brother Jamie was at his house the morning of October 24, 2010 but left for his own place when he learned the police were coming for him. Before leaving, Jamie consumed two beers and he had three. Andrew Morningstar was not sure if Ralph Chilblow, who was also present, had any beer before leaving for Jamie's.

Andrew Morningstar testified that he and Ralph Chiblow arrived at Jamie's house around 3:30 – 4pm and sat at the table with James.

Andrew Morningstar stated the police arrived at Jamie's house shortly after 6 pm. Jamie answered the door and four officers, all in uniform, came inside. He stated when James extended his arms out to the officers and then placed them at his side an officer threw him to the ground. The other officers then tried to pin Jamie to the ground and pepper sprayed him. Andrew Morningstar stated he got tasered and pepper sprayed when he started to get out of his chair saying, "That's not called for."

Andrew Morningstar estimated the time between the police arriving and getting pepper sprayed was approximately twenty-five minutes. He could not identify the officer who pepper sprayed him. He believed that two officers were involved in his own arrest.

Andrew Morningstar testified that he did not hear any discussion about firearms. After he was taken to the Blind River detachment, the officers took him to the hospital where he received stitches on his lip. He suffered a sore back and two fractured ribs in addition to the split lip when he was arrested.

Ms. Waddilove referred Andrew Morningstar to his OIPRD complaint and asked if he had any assistance completing the form. Andrew Morningstar stated he wrote the complaint out in bullet form and then had a friend make it clearer.

In cross examination, Andrew Morningstar stated James was tasered, pepper sprayed and handcuffed when he was on the floor. He believed the taser came first but could not recall the order of the other two.

Andrew Morningstar stated his girlfriend helped him write his OIPRD complaint.

Andrew Morningstar stated he was pepper sprayed while he was in his chair. He was tasered by an officer who was standing approximately eight feet away. He could not recall the taser prongs coming out or what they looked like.

Andrew Morningstar denied that he grabbed Constable Pritchard's vest. He admitted that he probably told Ralph Chiblow the police had refused to take him to the hospital.

Witness FNC Ty Cada:

FNC Cada is a member of the Mississauga First Nation Police Service and has been since December 2009. He starts and ends his shifts at the Blind River OPP Detachment and in a team approach, the OPP assist him with his calls and he assists the OPP. At the time of the incident, he had not yet completed a full year of policing.

FNC Cada testified that on October 24, 2010 he started his nightshift at 1800 hrs and was at the detachment. Sgt. RANCOURT asked him if he had his cruiser because he wanted to go and talk to James Morningstar. FNC Cada told Sgt. RANCOURT his cruiser wasn't available. He said their conversation was short.

FNC Cada testified he next heard a 10-78 call over the radio, so he hopped in a cruiser with Constable Chorney and followed Constables Munro and Nicole over to 48 Hamilton Street. Upon entering the residence, he saw Sgt. RANCOURT and Constables Pritchard and Ariss. He saw James and Andrew Morningstar handcuffed and Ralph Chiblow seated at the table. He also observed firearms on the couch.

Not long after returning to the detachment, FNC Cada stated Sgt. RANCOURT took a good look at Andrew's lip and said they needed to go the hospital. FNC Cada assisted Sgt. RANCOURT in transporting Andrew Morningstar to the hospital.

FNC Cada testified he and Constable Chorney interviewed Tammy Morningstar at 2015 hours in regard to the incident the previous night.

FNC Cada testified that the night before he attended a domestic with Sgt. RANCOURT and Constable Dennie at 48 Hamilton Street around midnight. No one was at the residence but while there, they learned that Tammy Morningstar was at 20 Wellington Street. They attended the Wellington Street address and located Tammy. She told the officers her husband had backhanded her on the face. She was intoxicated and did not know the whereabouts of James. She said she was going to stay at 20 Wellington Street for the night. Sgt. RANCOURT told Tammy that he would follow up with her when he came back on shift at 1800 hours.

In cross examination, FNC Cada referred to his notebook entry which stated, 'Tammy thinks she was backhanded' and that Sgt. RANCOURT was going to follow up. FNC Cada stated he did not believe he had the R&PG (reasonable and probable grounds) to arrest James at that time.

In re-examination, FNC Cada stated he did not form R&PG to arrest James Morningstar because he did not observe physical signs of injury on Tammy and she was not sure if she had been slapped around. He then went on to say, "She did say she was backhanded. She did say she thought she was backhanded."

Witness Provincial Constable Salim Ariss:

Constable Ariss has been a member of the OPP since 2006 and has served his full career in Blind River as a uniform patrol officer. He stated he had an independent recollection of the events because they were significant.

On October 23, 2010 Constable Ariss testified he worked the night shift and was assigned to patrol Elliot Lake. He recalled hearing Constable Dennie and Sgt. RANCOURT being dispatched to a domestic. He did not recall speaking to either officer about the call before going off shift.

Constable Ariss testified he was again working the nightshift, 6 pm to 6 am on October 24, 2010. At the start of shift, he was in the Constable's office and Sgt. RANCOURT was in his office on the telephone. Sgt. RANCOURT came out and said he had just got off the phone with the female (Tammy Morningstar) who said the male (James Morningstar) is back at the residence and that he was going to arrest the male.

Constable Ariss asked Sgt. RANCOURT if he wanted himself and Constable Pritchard to go with him. Sgt. RANCOURT said yes. Constable Ariss said he found Constable Pritchard and told him they were going to

the residence to arrest the male. He read from his notes, "Sgt. RANCOURT wanted me and Kevin to assist him with arresting a male for a domestic occurrence from the previous night."

Constable Ariss stated he and Constable Pritchard arrived at 48 Hamilton Street at approximately 1820 – 1825 hours. He saw Sgt. RANCOURT's cruiser in the driveway. He and Constable Pritchard went to the front door, saw it was open and Sgt. RANCOURT standing inside. Constable Ariss entered the door first followed by Constable Pritchard. He observed James Morningstar with Sgt. RANCOURT and both seemed calm and talking freely. He observed two other men seated at a table, one being Andrew Morningstar. There were approximately ten to twelve beer bottles on the table.

Constable Ariss stated the first thing he heard Sgt. RANCOURT say was they were there because of a domestic the night before and that James would have to come with them but he would be released shortly. He did not hear what was said before this. He stated the tone of the conversation changed after Sgt. RANCOURT said this. James Morningstar took an aggressive stance, clenched his fists, put one foot forward and the other back and said, "You only brought three guys, you should have brought fucking eight." Constable Ariss stated both he and Sgt. RANCOURT grabbed James' arms to prevent an assault and attempted to handcuff him.

Constable Ariss then noticed Andrew Morningstar charge toward them but was intercepted by Constable Pritchard. Constable Pritchard pushed Andrew hard toward the corner of a post. Andrew Morningstar and Constable Pritchard went to the ground and Andrew refused to put his hands behind his back. Constable Ariss stated he went to Constable Pritchard's aid and deployed his OC spray on Andrew. Shortly after, they managed to handcuff Andrew.

Constable Ariss stated he saw Sgt. RANCOURT was still struggling with James Morningstar so he and Constable Pritchard went over to assist. Constable Ariss issued a verbal 10-78 on his radio. He and Constable Pritchard kept ordering James Morningstar to put his hands behind his back. He observed Sgt. RANCOURT remove the prongs from his taser and stun gun James Morningstar. Following this, James was handcuffed.

Constable Arris testified that additional officers arrived on scene. He and Constable Pritchard placed Andrew Morningstar in their cruiser. Constable Arris returned to the house where he then observed two guns on the table without trigger locks. He seized the weapons.

Constable Ariss stated he returned to the detachment and assisted in processing James and Andrew Morningstar. While at the detachment he noted James Morningstar was exhibiting signs of intoxication.

Constable Ariss was referred to the following Crown Attorney's email² and asked what it meant.

From: Johnson, William S. (JUS)
Sent: November 12, 2010 4:46 PM
To: Sgt. RANCOURT , Pete (JUS); Pritchard, Kevin (JUS); Ariss, Salim (JUS)
Cc: Hall, C. Andrew (JUS)
Subject: Andrew Morningstar - s. 270(l)(a), 270(l)(b) x2, 129(a) Criminal Code - NP10118682

Csts. Sgt. RANCOURT, Pritchard and Ariss

² Exhibit #8, page 32

This case has been reviewed by senior counsel in this office. The evidence is that after receiving a complaint from Tammy Morningstar at 20 Wellington Street that she had been assaulted by James Morningstar earlier at 48 Hamilton Street, you three officers attended to the door of 48 Hamilton Street the next day. James Morningstar answered the door. The brief indicates that he spoke to Sgt. RANCOURT at the door at which point (there is no indication of an invitation to enter) all three of you officers entered into the residence, where James Morningstar was told he had to come to the detachment. James indicated that you three officers "can't do shit" at which point Sgt. RANCOURT grabbed him by the right hand and Cst. Ariss grabbed him by the left hand. James Morningstar began to resist and Cst. Pritchard came over to assist. During James Morningstar's struggle to avoid being taken out of the house, Andrew Morningstar jumped in saying "you are not taking my brother" and that resulted in Cst. Pritchard intercepting him and eventually a physical altercation by all three officers with him. James Morningstar is charged with assaulting, and resisting you officers in the execution of your duties.

There was no legal authority for you to enter the residence nor any legal authority to attempt to arrest or apprehend James Morningstar in the residence, absent an invitation to enter or prior judicial authorization to enter the residence. Neither of those circumstances existed and there were no exigent circumstances that justified entering the residence. In these circumstances, you were not legally in the execution of your duties in entering the residence to attempt to apprehend James Morningstar if he was not prepared to accompany the police voluntarily. And Andrew Morningstar was lawfully entitled to prevent an assault on his brother. As well in connection with your activities within the residence it cannot be said that Andrew Morningstar was assaulting or resisting any of you as officers in the execution of your duties.

Accordingly, the crown will withdraw these charges against Andrew Morningstar on December 9, 2010 at Blind River Ontario Court of Justice.

William S. Johnson
Crown Attorney
Sault Ste. Marie
(705) 945-8001 ext. 201
Fax (705) 942-6060

Constable Ariss stated the first paragraph pretty much outlined what happened while the second stated they didn't have the lawful grounds to arrest James Morningstar.

Constable Ariss testified that while Sgt. RANCOURT should have given him more detail before they left for the Morningstar residence, he believed he should have asked Sgt. RANCOURT more questions. Constable Ariss admitted he did not know the grounds for the arrest nor did he ask. He advised there was no discussion about a warrant.

Constable Ariss advised he did not hear Sgt. RANCOURT ask James Morningstar about his guns.

Constable Ariss stated Sgt. RANCOURT was an excellent supervisor – one that he could count on.

In cross examination, Constable Ariss advised that while his notes indicated a time of 1815 hours, he actually did not make the notes until after this time. He agreed that he could not recall exactly the words used by Sgt. RANCOURT at the detachment and if in fact Sgt. RANCOURT had actually used the word 'arrest.' Constable Ariss agreed with Mr. May that the policy for domestic calls requires two officers. Constable Ariss advised he normally asks an officer if they need assistance regardless of the type of call.

Constable Ariss agreed with Mr. May that if an officer attends a residence with the intent to arrest, the officer needs a warrant to arrest and a warrant for entry.

Constable Ariss testified that the level of force used against James and Andrew Morningstar was within the Use of Force Continuum. Constable Ariss did not see any confetti discharged when Sgt. RANCOURT used his taser.

In re-examination, Constable Ariss stated the investigating officer of an incident is responsible for completing a crown brief and in this case it was Sgt. RANCOURT's responsibility. Constable Ariss also stated that despite not remembering verbatim his exchange with Sgt. RANCOURT at the office, he knew he was going to the residence to remove a male and based on that, he concluded the male was going to be arrested.

Constable Ariss stated that in his opinion, his notes were accurate. He added that Andrew Morningstar was never tasered.

Witness Provincial Constable Pritchard:

Constable Pritchard has been a member of the OPP since 2006 and he transferred to Blind River in October 2010 after serving four years in the Sioux Lookout detachment.

Constable Pritchard testified he first became aware of the domestic assault investigation the night before when he heard the radio broadcast while working at the Thessalon office. At 6:15 pm on October 24, 2010 Constable Ariss asked him if he wanted to come help with an arrest. They immediately left the detachment and arrived at 48 Hamilton Street at 6:18 pm. When they arrived, Constable Pritchard saw Sgt. RANCOURT at the door of the residence or just climbing the steps that led to the door.

Constable Pritchard stated that when he entered the house, Sgt. RANCOURT was already inside and speaking with the male. He heard Sgt. RANCOURT tell the male that he had to come with the police. The male made a comment to the effect that Sgt. RANCOURT brought only three officers and he should have brought eight. Sgt. RANCOURT reached out and made contact with the male and Constable Pritchard took this to mean the male was under arrest. The male, James Morningstar, extended his arm at a forty-five degree angle and clenched his fist and Constable Ariss grabbed his left arm. Constable Ariss and Sgt. RANCOURT issued verbal commands to James Morningstar to stop resisting.

Constable Pritchard testified he moved closer to the kitchen to keep an eye on the other two males. One of them stood up and said something to the effect, "You can't touch my brother". Despite Constable Pritchard's warning to stay put, the male proceeded toward them. Constable Pritchard is not sure whether the male was rushing toward him or the other officers but stated the male grabbed his vest.

Constable Pritchard testified he applied knee thrusts and a strike in the face to create distance. The male went down and Constable Pritchard went on top to handcuff him but the male resisted. He advised Constable Ariss deployed his OC spray and eventually they managed to handcuff him.

Constable Pritchard went over to James Morningstar and attempted to handcuff him but he resisted. Sgt. RANCOURT applied the stun gun technique and after that they were able to handcuff James Morningstar.

Constable Pritchard advised that he placed Andrew Morningstar under arrest at 1823 hours.

Constable Pritchard advised he had no details of the occurrence when he attended the residence other than he was there to make an arrest. He advised Andrew Morningstar asked him what happened when he was placed in the cruiser. He found Andrew Morningstar intoxicated.

In cross examination, Constable Pritchard confirmed the only information he received about the occurrence was what Constable Ariss had told him.

Summary of Provincial Constables Munro, Chorney, and Nicolle's Will States³:

The officers responded to a 10-78 broadcast and arrived at 48 Hamilton Street between 1824 and 1825 hours. In the residence, they observed the two Morningstars on the floor handcuffed – one had a cut lip and the other, a bloody nose. One officer observed two rifle cases on the couch. There was an odour of OC spray in the air. The officers assisted in searching the residence for firearms, transporting and processing the Morningstars.

Hospital employee Will State⁴:

The hospital employee reported Andrew Morningstar received medical attention on October 24, 25, 26 and 27, 2010 for a cut lip and soreness, numbness and difficulty breathing. On one of his visits to the hospital, he claimed to have been tasered, but he could not remember the incident.

In a Ministry of Community and Social Services Limitations to Participation Report dated November 2010, James Morningstar complained he was experiencing limitations lifting and operating machinery.

Summary of Staff Sergeant Laura HOULISTON's Will State⁵:

In October 2010, Staff Sergeant Laura Houliston was a Detective Sergeant and the Abuse Issues Coordinator for the North East Region. She held that position from July 2007 until April 2012. She has specialized training in criminal investigations, sexual assault and domestic violence.

³ Exhibit #7

⁴ Exhibit #7

⁵ Exhibit #7

On November 17, 2010 at 10:52 am, D/Sgt. Houliston received an email from Sgt. RANCOURT. In her capacity as the Abuse Issues Coordinator, D/Sgt. Houliston regularly received e-mails of this kind from members in the field. She was not aware of the specific incident that Sgt. RANCOURT was referring to and she did not speak to him in person in relation to it.

D/Sgt. Houliston's recollection is that she provided an email response stating that he could have officers wait outside the residence of the accused and conduct a traffic stop upon his departure from the residence, or obtain an entry warrant to arrest the accused.

Defence's Case

Witness Provincial Constable David Dennie:

Constable Dennie testified he has been employed with the OPP for the past ten years, all of which he has served in Blind River.

Constable Dennie testified that on October 24, 2010 he was dispatched to a domestic dispute. He learned from dispatch that Kim McKenzie had called on behalf of her sister, Tammy Morningstar, who had disclosed that she had been assaulted by her husband James Morningstar. Tammy was attempting to leave 48 Hamilton Street - she was afraid her husband would take his gun out.

Constable Dennie stated he attended 48 Hamilton Street and found that all the lights in the house were out. He then learned from dispatch that Tammy Morningstar was at 20 Wellington Street, so he along with Sgt. RANCOURT and FNC Cada attended that location with an arrival time of 0046 hours.

Constable Dennie testified Sgt. RANCOURT spoke to Tammy and asked what happened. He noted that Tammy was intoxicated. She said that James had slapped her on the face because he was upset that she had gone out with her friends. She advised nothing like this had ever happened before and that there was no history of violence. She advised that James did not own any firearms and there were no firearms in the house.

Constable Dennie testified that Tammy Morningstar was upset and crying. She switched from being okay to not okay when asked about the incident. She was unclear what she wanted to do about the report and asked the officers for their opinion about what she should do. At one point, she didn't want to go through it anymore because of possible retaliation.

Constable Dennie stated Tammy Morningstar said she was slapped and then not slapped. He believed she stated she was backhanded but he did not note any injuries. Constable Dennie testified that it was decided because Tammy was unsure whether she wanted to report the incident, Sgt. RANCOURT would follow up with her the next day.

Constable Dennie stated he could not form any grounds that an offence had been committed. He understood that Sgt. RANCOURT would follow up the next shift, get more details and speak to any witnesses.

Constable Dennie confirmed Sgt. RANCOURT was the investigating officer. He advised that had the investigation been his, he would have followed up with the victim the next day, looked for injuries and

canvassed the neighbourhood to see if anyone had seen anything. He also would have talked to James Morningstar if there was no other evidence.

In cross examination, Constable Dennie advised he had no evidence that an assault had taken place. He would feel more comfortable in forming his grounds if he got the other person's version of what happened and hypothetically this meant speaking to James Morningstar.

Constable Dennie stated that Tammy told them she was afraid of James, but she also said she wasn't. Her demeanour changed. She was unsure what to do. He advised she didn't actually say she was scared, but he could see she was. She just didn't know what to do about the reporting.

When asked by Ms. Waddilove if Tammy actually said she preferred not to give a statement when she was intoxicated, Constable Dennie stated, "She agreed she would rather not give a statement when intoxicated."

Ms. Waddilove asked Constable Dennie what constituted R&PG? He stated it is a set of facts or circumstances that would cause an ordinary and prudent person to believe beyond their mere suspicion.

Witness Sgt. RANCOURT:

Sgt. RANCOURT has been employed with the OPP for the past twenty-five years. He served his first three years in Ignace before transferring to the Blind River, Thessalon, and Elliot Lake area. He has been a supervisor for the past five years.

Sgt. RANCOURT testified he was working October 24, 2010 in Blind River with Constable Dennie and FNC Cada. Shortly after midnight, he was dispatched to a domestic dispute at 48 Hamilton Street. He received the following information from the communication centre: The complaint was from a third party who called on behalf of her sister, Tammy Morningstar. Tammy had been hit, and she was scared because there were guns in the house and the male was going to use the guns or take them out.

Sgt. RANCOURT advised he requested Constable Dennie attend the residence with him. It was raining and windy out. When they arrived, FNC Cada showed up. No one answered the door and the doors were locked. He and the officers then proceeded to Wellington Street and met with Tammy Morningstar who told him she had gone out to a bar with her girlfriends and got home around 12:30. She said James slapped her and then paused and said it didn't happen and then again that it had happened.

Sgt. RANCOURT testified he made certain observations in regard to Tammy; her hair was well done, she had make up and earrings on, her clothing was proper and not out of place. He noted she was wearing footwear and walked with a cane. Sgt. RANCOURT said that while he was not saying an assault did not happen, there was nothing to indicate she had been assaulted. When he asked Tammy whether James had guns, she said no. He noted she was intoxicated. He asked her to provide a statement and she declined because of her state of intoxication. They agreed she would stay at her friend's house and Sgt. RANCOURT would contact her the following day.

Sgt. RANCOURT stated he found it odd that while the original dispatch said Tammy was afraid of guns in the house, it did not look like she had run out the house because she wasn't wet and she had her

footwear. Sgt. RANCOURT said he came to no conclusions and had nothing to believe any offence had occurred, and specifically no R&PG to believe a criminal assault had occurred.

Sgt. RANCOURT reported for duty again at 1800 hours. The office was very busy and dayshift was still out with the vehicles. Shortly after 1810 hours, he called Tammy who was still at her friend's house. Tammy told him the same story – she went out and James gave her a backhander in the face. She agreed to come to the office and provide a statement. Tammy told him that James was at home and he would be there for the next thirty minutes drinking beer. She knew that, because she had been there earlier in the day talking to him. Sgt. RANCOURT stated he found it odd that a victim of domestic assault would go back to the house where the male was. The conversation ended with Sgt. RANCOURT telling Tammy he would go the house to get James' side of the story and would call her later.

Sgt. RANCOURT said that following proper domestic policy, an officer would tell the victim that they intended to arrest the suspect and determine what conditions the victim would want upon release. But in this case, he wasn't even sure an assault had occurred and he clearly did not have reasonable grounds to believe that James had committed an assault.

Sgt. RANCOURT testified he told FNC Cada he was going over to James Morningstar's home and asked if he could borrow his cruiser. Cada's cruiser wasn't available, so he got another. Sgt. RANCOURT headed down the hall and Constable Ariss asked him where he was going. Sgt. RANCOURT stated he could not remember his exact words, but told him he was heading over to James Morningstar's residence. Sgt. RANCOURT said he did not use the word arrest because had he used the word arrest, "You need a plan." He added that had he said arrest, it ought to have sparked Constable Ariss to ask, "Where and how are we going to do this?"

Mr. May referred Sgt. RANCOURT to his interview with PSB (Professional Standards Bureau). Sgt. RANCOURT testified that he told PSB he had said to Constable Ariss he was going to talk to James or scoop James. He explained he used the word scoop because he couldn't remember what he said exactly to Constable Ariss and he was just trying to answer a question.

Sgt. RANCOURT testified his intention in going to see James Morningstar was to talk to him and that he did not have reasonable grounds to believe an offence had been committed. Sgt. RANCOURT left the detachment and headed over to 48 Hamilton Street. He was unaware that Constable Ariss had secured the assistance of Constable Pritchard.

Mr. May asked Sgt. RANCOURT that had he had the intention to arrest James, what things would he have done and should have done. Sgt. RANCOURT responded, "If the story was different and I had grounds, you would need a Feeney warrant- it's a telewarrant to enter a dwelling house to believe you have R&PG they committed an offence and R&PG they were in the residence."

Mr. May introduced a blank Telewarrant to Enter Dwelling-House, Form 7.1 and a Warrant for Arrest with Optional Authorization to Enter a Dwelling House, Form 7. They were filed as Exhibits #9 and #10 respectively. Sgt. RANCOURT said he has done many many arrests and many many Feeneys.

Sgt. RANCOURT testified when he arrived at 48 Hamilton Street, James Morningstar answered the door and identified himself verbally. Sgt. RANCOURT stated he stepped inside the door maybe a foot or so. He told James he was there investigating a complaint of domestic assault and specifically told him that

Tammy had complained he had assaulted her. Sgt. RANCOURT asked him what happened and James told him it was bullshit and that nothing went on.

Sgt. RANCOURT testified he asked about guns and James Morningstar indicated they were at his or his buddy's camp. At this point Sgt. RANCOURT observed Constables Ariss and Pritchard enter the house. He also observed two males sitting in the back of the house consuming beer. He asked James again about the night before and James again said, "Like nothing, that it was bullshit".

Sgt. RANCOURT stated that based on James' demeanour he began to believe Tammy's story. The information James gave him made her story more believable. At that point he had grounds to believe an assault had occurred. He said to James, "Like listen bud, we will go to the office, I will do up a promise to appear, you will be back here in no time."

Sgt. RANCOURT testified that James asked him, "Why three cops?" Sgt. RANCOURT explained the policy and James responded, "Well you should have brought fucking eight," and stepped back and clenched his fists. Sgt. RANCOURT stated he barked at Constable Ariss to grab James. He believed James was about to assault him and or Constable Ariss. He told James he was under arrest and that's when the pushing and fighting started.

Sgt. RANCOURT stated he and Constable Ariss pulled James to the floor. He heard someone in the background yell something like, "You can't do this to my brother." Constable Ariss left to assist Constable Pritchard. Sgt. RANCOURT pepper sprayed and struck James during their struggle. He stated he removed the taser cartridge and tasered James but he did not taser Andrew. He explained prongs and confetti would have discharged had he deployed his taser with the cartridge.

Sgt. RANCOURT testified that after James and Andrew were placed in the cruisers, he returned to the house and noticed two gun cases and a clip with ammunition on the couch. The cases held a pump action shot gun and either a 303 or 308.

Sgt. RANCOURT spoke to Ralph Chiblow and thanked him for not getting involved. He knows Ralph left in a taxi but could not remember who called for it.

After he returned to the detachment, Sgt. RANCOURT testified he and FNC Cada transported Andrew Morningstar to the hospital where he received stitches to his lip.

Sgt. RANCOURT processed the charges against the Morningstars and completed the brief. He stated he later found out in an email from Crown Attorney William Johnson that the charges had been withdrawn for the reason that Sgt. RANCOURT showed up at the house uninvited and he should have gotten a warrant.

Sgt. RANCOURT testified that on November 17, 2010 at 8:56 am he responded by email to Mr. Johnson. At the time he was very angry and frustrated. He explained that the intent of his email was to provoke some discussion. He admitted that a lot of the information he put in the email was inaccurate. He explained he wanted to throw it back in Mr. Johnson's face and get some emails going back and forth so Mr. Johnson could understand the mistake he had made.

Sgt. RANCOURT testified that in the hope of generating some conversation, he then emailed D/Sgt. Houliston. He stated some of the facts he placed in the email were not true and that he was lying,

including the statement, "She further advised that she can't return home as she fears her husband." In regard to the word 'SO', Sgt. RANCOURT said he was just being sarcastic.

Mr. May asked Sgt. RANCOURT what he meant by the last line in his email to D/Sgt. Houliston where he wrote, *'Go to the residence and arrest on RPG for assault if he is there or get a[sic] arrest warrant with a feeny [sic] which will take longer and suspect my [sic] elude police once again.'* Sgt. RANCOURT stated the guy never tried to elude police, but pointed out that he was kind of close when he wrote, *'the victim reports domestic- comes home- husband slaps her face.'* He expected D/Sgt. Houliston to say that because someone is intoxicated and reports a domestic, the officer would have to get the man's side of the story.

Sgt. RANCOURT stated the first time he had R&PG that an offence had been committed was when James Morningstar denied the assault and said it was fucking bullshit. He added that had he planned on arresting James Morningstar after talking to Tammy at 1800 hours, he would have asked FNC Cada to accompany him.

In cross examination, Sgt. RANCOURT agreed with Ms. Waddilove that he wrote in his notebook, 'She went out with the girls at the bar. She states she was slapped once. She does not want to give statement till tomorrow.' He testified his intention when he called her at 6 pm was to find out if she would come in and provide a video statement.

Sgt. RANCOURT testified that he has known Tammy for years and knew she worked at the hospital. He had never seen her intoxicated before and she always had struck him as an intelligent person. After he left Tammy at the Wellington Street residence, he drove around and looked for James. It was quick because Tammy had told him she thought James had taken off to the First Nation territory.

Sgt. RANCOURT stated Tammy was sober when he spoke to her on the phone. She remembered police at her house the night before and she told him James gave her a backhander. Because she flip flopped the night before, Sgt. RANCOURT stated he wondered if she was going to continue with the story because she was afraid of making a false report. Based on this, Sgt. RANCOURT testified he did not have reasonable grounds. He estimated he spoke to Tammy on the phone for three to four minutes and ten to fifteen minutes in person the night before.

Sgt. RANCOURT stated that after he spoke to Tammy on the phone he asked FNC Cada if he knew the Morningstars. Sgt. RANCOURT said he could just as well have asked anyone but FNC Cada was standing right there.

Sgt. RANCOURT testified that if he had planned to arrest James Morningstar he would have obtained a telewarrant. He denied the delay in getting a warrant was the reason why he did not get one.

Sgt. RANCOURT said Constable Ariss was mistaken about what was said in the office but not mistaken about what was said at the house.

Ms. Waddilove asked what Sgt. RANCOURT meant when he told James Morningstar that he had to come with him. Sgt. RANCOURT said he was not real comfortable talking about domestic issues in front of other people. At that point he believed Tammy had been assaulted. He was going to say 'come with me willingly or I will get a warrant' but he never got to that.

Sgt. RANCOURT referred to his notes and read, "I knock. I walk in and advise of allegation of assault and he would have to come with us." Sgt. RANCOURT said he did not make note of James' tone of voice changing when they talked about his wife nor did he make note of James saying three times, "fucking bullshit". Sgt. RANCOURT said that it was after the third "fucking bullshit" that he formed his reasonable grounds, but acknowledged he did not make note of that either.

Sgt. RANCOURT agreed that nowhere in his notes did he record his R&PG. He stated he could have just conducted a full interview with Tammy but he was trying to help James Morningstar.

Sgt. RANCOURT testified that R&PG are a set of facts and circumstances that lead an intelligent and prudent person to believe facts beyond suspicion.

Sgt. RANCOURT agreed that the content of his email to the Crown Attorney was not correct. He advised that something similar had happened in the past where the same Crown said he had laid the wrong charge when in fact he (Sgt. RANCOURT) laid the correct charge. The Crown consequently wrote a letter of apology acknowledging his mistake.

Sgt. RANCOURT agreed his crown brief was vague and he failed to articulate his R&PG.

Submissions

By the Defense

Mr. May began by stating the issue before the Hearing Officer boils down to one question: Whether the force used on the Morningstars was lawful? He submitted some evidence heard was irrelevant to the question that needed to be decided therefore he did not plan to review all evidence in his closing.

Mr. May suggested that some evidence from the Morningstars and Mr. Chiblow was highly suspect. He pointed to the similar handwriting found in all three OIPRD complaints. Andrew Morningstar admitted his girlfriend completed his complaint but James Morningstar and Ralph Chiblow testified they wrote their own. Mr. May suggested that if Ralph and James were untruthful about something so minor, then what else were they untruthful about?

Mr. May referred to when Ralph Chiblow claimed there were five to six officers involved in the fight. Mr. Chiblow also testified James held out his wrists when the police first arrived and that Andrew was tasered – all evidence that was proven to be not true.

Mr. May referred to James Morningstar's claim that he had a long discussion with Sgt. RANCOURT about his guns and he admitted to the Sergeant he had slapped his wife – and yet no one else heard James say this. When James Morningstar was interviewed by PSB, he denied making a comment about how many officers were at his house, but during the Hearing he admitted he did say it.

Mr. May submitted that Andrew Morningstar's evidence was full of contradiction and one found it very difficult to pin him down to any order of events, or what he said or what he was told by others.

Mr. May submitted that while minor differences in witness testimony was the hallmark of honesty, the differences between Andrew, James and Ralph was so great one could drive a truck through it.

Mr. May pointed out commonalities found in Constables Ariss and Pritchard's evidence. They arrived at the front door of the residence and found Sgt. RANCOURT and James in mid conversation. They heard Sgt. RANCOURT say "You have to come with us." They assumed James had been placed under arrest. They heard James comment that Sgt. RANCOURT brought only three officers and should have brought eight. Constable Ariss saw James tense up and feared James was going to attack them. Andrew grabbed ahold of Constable Pritchard and both officers used the appropriate amount of force in response.

Mr. May submitted the case law boils to down one issue: If an officer has reasonable grounds to arrest, he/she cannot go to the residence to affect the arrest unless the proper authorization to enter is obtained. If the officer does not have the authorization, a lawful arrest cannot be affected and therefore force cannot be used. He submitted if it is found that Sgt. RANCOURT had reasonable grounds to arrest James Morningstar before he went to the house, then he must be found guilty and any force used after would be unlawful.

Specific to the charge of neglect of duty, Mr. May suggested that if Sgt. RANCOURT is found guilty of unnecessary exercise of authority, then he should not be found guilty of neglect because it is a subset of the first charge. Secondly, Mr. May pointed out that the charge of neglect of duty, specific to Sgt. RANCOURT's failure to obtain an arrest warrant should not stand, because it is impossible for an officer to obtain a warrant to arrest in Blind River on a Sunday. He submitted the correct wording of the charge should have reflected or included the word telewarrant.

Mr. May argued in the matter at hand, however, Sgt. RANCOURT did not have reasonable grounds to arrest when he first attended the residence, therefore he was acting lawfully. He referred to *the Fraser Kelly* document⁶ where it states:

...On the other hand, where the police have approached the residence with a bona fide investigative inquiry, and have not yet formed the grounds to arrest, the communicative nature of the activity would seem to render it permissible on the basis of the Evans principle.

Mr. May submitted that Sgt. RANCOURT did not form reasonable grounds until after he was invited into the residence and spoke with James Morningstar. He stated the force used on James was reasonable based on James' response – a response that even caused Constable Ariss to fear for his safety. Mr. May conceded there were injuries but there was nothing wrong with what the officers did that day. He argued that if I find Sgt. RANCOURT did not have reasonable grounds when he first attended the residence then I must find him not guilty of unnecessary exercise of authority.

Mr. May referred to *Storrey*⁷ and explained the two part test for an arrest. He asserted the officer must be convinced personally that they have the grounds before the objective test would apply. In the case at hand, the objective test would not apply because Sgt. RANCOURT never reached the subjective part of the test.

In support of the test that needs to be met for arrest, Mr. May pointed to *Feeney*⁸ where it stated, amongst other things:

⁶ Exhibit #8, Entry into Dwellings without Feeney Warrants, Volume #III December 2008

⁷ Exhibit #11, Tab 12, para. 17

⁸ Exhibit #11, Tab 11, pages 3-4

...An objective standard cannot be exclusively relied on because its addition to the requirements for valid arrest at common law did not displace the subjective requirement. Indeed, it would be inconsistent with the spirit of the Charter to permit a police officer to make an arrest without a warrant even though he or she does not believe reasonable grounds for the arrest exist.

Mr. May submitted that Sgt. RANCOURT was unshaken in his evidence that he did not have reasonable grounds to arrest. He pointed to the evidence of Constable Dennie and FNC Cada, who too testified they did not have reasonable grounds. He pointed to the evidence of Tammy Morningstar which corroborated Sgt. RANCOURT's evidence. He pointed to Sgt. RANCOURT never asking Tammy Morningstar about release conditions, something he normally does when he is going to arrest a suspect in domestic violence cases. Mr. May submitted that all this points and supports Sgt. RANCOURT's evidence that he did not have reasonable grounds.

Mr. May conceded that there was some evidence however that indicated Sgt. RANCOURT had the intent to arrest. He referred to the evidence of Constable Ariss, and Sgt. RANCOURT who told the PSB investigator he may have said "scoop" to the officer.

Other pieces of evidence were the emails Sgt. RANCOURT sent one month after, but Sergeant RANCOURT testified he was angry and frustrated and the emails were not indicative of what was in his head the night of the incident. Rather Sgt. RANCOURT sent the emails to create a robust discussion. Mr. May pointed out that the issues the Crown Attorney raised were based on an opinion gleaned from the crown brief and Sgt. RANCOURT was never asked to articulate the entry nor was he aware that the entry was an issue when he completed his brief.

Mr. May concluded by urging the Tribunal to find that the steps Sgt. RANCOURT took were lawful and to render a not guilty finding.

By the Prosecution

Ms. Waddilove provided a summary of the incident and reviewed the witness testimony. She submitted Ralph Chiblow was consistent in relation to his earlier statement and suggested he was a credible witness. She referred to the testimony of Andrew Morningstar who said the events all happened very quickly. It was evident he was unsure on some points but he had no aid to assist with his memory.

Ms. Waddilove referred to James Morningstar. She submitted he was forthright in regard to his conduct with his wife and that he had made no attempt to elude the police. Despite the discrepancies in the evidence of the Morningstars and Mr. Chiblow, all three were clear in what had happened was unnecessary.

Ms. Waddilove referred to the evidence of Constable Dennie and FNC Cada and submitted that the focus on whether they had reasonable grounds was irrelevant.

Ms. Waddilove reviewed the testimony of Sgt. RANCOURT. He spoke to Tammy Morningstar and found she was intoxicated. She disclosed she had been assaulted by her husband. Tammy told him that James had left the residence in a taxi. Sgt. RANCOURT patrolled the neighborhood but he didn't know what he looked like.

Ms. Waddilove submitted that Sgt. RANCOURT testified that he and Tammy later spoke at 6 pm. Tammy said she had been assaulted and agreed to provide a statement. Ms. Waddilove took issue with Sgt. RANCOURT when he said he was still contemplating whether an assault had actually occurred and wondered if Tammy was just saying it did because she thought she had to follow through from the night before. As Sgt. RANCOURT was leaving the office he said to Constable Ariss something to the effect of scoop him, pick him up or arrest.

Ms. Waddilove argued that Sgt. RANCOURT 's notebook, 'Knocked at door. James opens door. We talk. I walk in and advise of allegation of assault and he would have to come with us' was inconsistent with his assertion that he was going to the Morningstar's to get James's side of the story.

Ms. Waddilove referred to the emails and submitted that Sgt. RANCOURT admitted to making inaccurate statements and lying. She submitted that it would be difficult to accept any evidence as credible after that. Ms. Waddilove suggested that the emails were direct evidence that Sgt. RANCOURT had reasonable grounds to arrest prior to attending the residence.

Ms. Waddilove submitted that Crown Attorney Johnson concluded Sgt. RANCOURT had no legal authority to be in the house and as a result withdrew the charges.

Ms. Waddilove referred to the evidence of Constables Arriss and Pritchard and submitted they both understood that Sgt. RANCOURT was the investigating officer. Despite this, Sgt. RANCOURT did not tell the officers his concern in regard to the firearms. Sgt. RANCOURT told Constable Ariss he was going to arrest Morningstar and although the exact words were not clear, Constable Ariss said it was clear in his mind he was going to arrest the male. Both Constables Ariss and Pritchard were quite clear that Sgt. RANCOURT said James was going to be released on a promise to appear.

Ms. Waddilove pointed out Sgt. RANCOURT claimed he went to the residence to interview James but he had no forms with him to indicate he was there to take a statement. There was no evidence that Sgt. RANCOURT cautioned James. She submitted that any suggestion that Sgt. RANCOURT did not have reasonable grounds is just convenient.

Ms. Waddilove submitted that by virtue of Sgt. RANCOURT's training and position, he should have known to get a Feeney. Given these facts, Sgt. RANCOURT was neglectful in his duty and he and the officers were unlawful in their exercise of authority.

Ms. Waddilove drew on a number of cases in support of her argument.

By the Public Complainants

On behalf of James and Andrew Morningstar, Ms. Waddilove presented the Morningstar's submissions. In summary they said:

Sgt. RANCOURT admitted to lying – he lied twice. He lied to the Crown Attorney and lied to D/Sgt. Houlston. How do we know he is not lying when he says he is was not coming to my house to arrest me? What he did was illegal and wrong. The other officers said they thought they were coming to arrest me.

I went home to face the police. I am glad my brother and friend were there. They saw what happened. Now that we complained he got caught. He was wrong to arrest me - it was wrong to arrest Andrew. He must pay for what he has done.

We were honest. Yes I can't read, I can't write. No one told me she could not write the complaint.

Defence's Response to Prosecution's and Public Complainants' Submissions

In response to the Prosecution and Public Complainants' submissions, Mr. May made the following points.

- The point he intended to prove with the OIPRD forms was Ralph Chiblow and James Morningstar could have at least been truthful in regard to who completed their forms – and they were not;
- James Morningstar testified he told Sgt. RANCOURT that he slapped his wife but this was not true. This points to his credibility not his character;
- Contrary to the Prosecution's position, Constable Dennie and FNC Cada's failure to form reasonable grounds is relevant to the second part of the two part test;
- The fact that Constable Ariss heard Sgt. RANCOURT say, "You have to come with us and you will be released after the paperwork" fails to prove he had reasonable grounds to arrest when he first arrived at the residence; and,
- While Prosecution asserted that Sgt. RANCOURT's notes were consistent with reasonable grounds it is Defence's position they were inconsistent.

Analysis

The Tribunal wishes to thank Counsel and the Public Complainants for the manner in which they presented the case. All of the material has been reviewed and considered.

In brief, Sgt. RANCOURT faces two allegations of misconduct, one being neglect of duty and the second, unlawful or unnecessary exercise of authority. The allegations stem from the arrest of James Morningstar in the Morningstar residence.

During the Hearing, Sgt. RANCOURT remained unshaken in his testimony that he did not have reasonable grounds to arrest James Morningstar prior to attending Morningstar's home. Rather, he contended he attended to investigate Tammy Morningstar's earlier complaint that her spouse, James, had struck her. Once inside the residence and only after James denied anything had taken place did Sgt. RANCOURT form reasonable grounds to believe that James had in fact assaulted Tammy.

If Sgt. RANCOURT's evidence is accepted, then it would be found that the burden of proof had not been met on both allegations. However, the Tribunal must first look to and consider all evidence.

The Tribunal has distilled this matter down to one key question - Did Sgt. RANCOURT have reasonable grounds to believe James Morningstar assaulted Tammy Morningstar before he arrived at the residence? Once a finding of fact is made in this regard, the remaining analysis will flow. In the process

of fact finding, relevant legislation and case law will be reviewed, followed by an analysis of the evidence as it fell during the first and second contact with Tammy Morningstar and arrest of James Morningstar.

Please note the words, 'reasonable grounds' and 'intent to arrest' will be used interchangeably and bear the same meaning.

Statutory Authority to Arrest and Relevant Case Law

Sections 495(1) and 514(1) of the Criminal Code provide the statutory authority for police officers to arrest with or without warrant. Each authority requires an officer to possess 'reasonable grounds' to believe an offence has been committed before affecting the arrest or obtaining a warrant.

Reasonable grounds are more than a mere suspicion and the Tribunal agrees with Mr. May they are personal. They are dependent on the officer's experience, training, perceptive, observant and interpretive skills. It is for this reason, it is quite natural to find two officers, faced with the same set of circumstances reach 'reasonable grounds' at different times.

To ensure an arrest is lawful, two elements must be met. The elements are best characterized in *Storrey*⁹: 1) The officer must subjectively believe he or she has reasonable grounds for the arrest, and; 2) The grounds must be justifiable from an objective point of view. That is to say, a reasonable person placed in the position of the officer must be able to conclude that there were indeed reasonable and probable grounds for the arrest. A prima facie case does not need to be established at the time an arrest is affected.

Section 529(1) of the Criminal Code provides the authority for an officer to enter a dwelling to effect an arrest. Essentially the authority states that if an officer has reasonable grounds to believe an offence has been committed and the individual is in a dwelling, the officer must obtain an entry warrant, commonly known as the Feeney. Exigent circumstances are the exception to the Feeney.

In summary, an officer must possess reasonable grounds before affecting an arrest. The arrest is deemed lawful if the two part– subjective and objective - test is met. An officer needs a Feeney warrant if the arrest is to be affected in a dwelling house.

First contact with Tammy Morningstar

Shortly after midnight on October 24, 2010 Sgt. RANCOURT, Constable Dennie and FNC Cada attended the Morningstar home in Blind River in response to a domestic dispute. The complainant, Kim McKenzie, reported her sister Tammy Morningstar had been hit and she was afraid her husband was going to take out his gun. The officers located Tammy Morningstar at her friend's home, Joanne Atkinson, at approximately 12:45 am.

The three officers testified Tammy complained her husband, James Morningstar, had backhanded her. They said Tammy was intoxicated and her story switched back and forth – one minute she claimed to have been hit and the next minute not.

⁹ Exhibit #11, tab 12

Sgt. RANCOURT provided the Tribunal a number of reasons why he was not sure whether to believe Tammy's story. He spoke of her physical appearance including footwear and found they were inconsistent with a victim who had just fled her home in the rain. In Sgt. RANCOURT's own words, he fell short of forming reasonable grounds to believe that James Morningstar had assaulted Tammy. He needed to get James' side of the story before he could come to any conclusion. After interviewing Tammy for approximately twenty minutes, he arranged to contact her at the start of his next shift when she sobered.

For the moment the Tribunal will accept Sgt. RANCOURT did not have reasonable grounds. However, what is difficult to reconcile is his apparent failure or oversight to interview Joanne Atkinson or Kim McKenzie that night, if he in fact questioned the validity of Tammy's complaint. There is no evidence to suggest any effort was made of this kind. While neither woman witnessed the actual assault, they no doubt may have provided valuable insight into the issues Sgt. RANCOURT was struggling with and quite possibly may have reduced or reinforced his concerns with respect to the truthfulness of Tammy's complaint.

The Tribunal does not consider Constable Dennie's testimony as confirmation that insufficient evidence existed to lead an officer to forming reasonable grounds. Contrary to Sgt. RANCOURT's evidence, his reasons for not forming reasonable grounds conspicuously paled. Amongst other things, Constable Dennie said Tammy was fearful and concerned about retribution, and she looked to the officers for advice. Constable Dennie's observations neatly fit the usual characteristics and demeanour of a spousal assault victim. The Tribunal believes that other officers in the same situation and seeing the same evidence through Constable Dennie's eyes would have concluded reasonable grounds existed.

Further, Constable Dennie's credibility was shaken when he went on to testify that had he been the lead investigator he would have, amongst other things, conducted a neighbourhood canvass. The Tribunal found this to be misleading and an overstatement of the work that lay ahead for two reasons: Constable Dennie told the Tribunal earlier that Tammy said there were no witnesses or history of spousal assault, and; the canvass was an extraordinary exercise given he failed to consider witnesses, McKenzie and Atkinson, who were right under his nose. For the reasons noted, the Tribunal did not find Constable Dennie credible and rejects his evidence.

In reference to FNC Cada, he testified he did not form reasonable grounds that Tammy Morningstar had been assaulted because she lacked visible injury. The Tribunal takes into consideration FNC Cada's limited experience as a police officer. Officers generally know the lack of visible injury is not reason to prevent one from forming reasonable grounds, especially when evidence to the contrary exists. Based on FNC Cada's evident inexperience, the Tribunal did not find him reliable at this juncture.

In summary, the Tribunal accepts for the moment Sgt. RANCOURT did not form reasonable grounds that an offence had been committed, however, the evidence of the other two officers rocks his credibility.

Next contact with Tammy Morningstar and arrest of James Morningstar

At 6:10 pm later the same day, Sgt. RANCOURT again spoke to Tammy Morningstar. She was still at Joanne's place. Tammy's story remained unchanged in that James Morningstar backhanded her in the face. Sgt. RANCOURT said Tammy seemed sober and she agreed to come in and provide a statement. Tammy informed Sgt. RANCOURT that James would be at their home drinking beer for the next thirty

minutes. Sgt. RANCOURT testified that even after talking to Tammy this second time, he did not form reasonable grounds to arrest James Morningstar. The Tribunal found his rationale - *he wondered if she was going to continue with the story because she was afraid of making a false report* - a stretch, to say the least.

The Tribunal rejects Sgt. RANCOURT's evidence based on the following finding of facts:

The Tribunal finds that Sgt. RANCOURT's failure to disclose to Tammy his intent to arrest is not proof of his intention not to arrest. Quite often officers purposely do not announce in advance their intent to arrest for a variety of reasons, one being officer safety. Sgt. RANCOURT said he found it odd that Tammy had spoken to James earlier in the day. It stands to reason therefore he did not communicate to Tammy the real purpose for seeing James.

The Tribunal finds that Sgt. RANCOURT's failure to ask Tammy about release conditions is not proof of his lack of intent to arrest. Sgt. RANCOURT experienced no difficulty in tracking Tammy down at the start of his shift. His conversation ended with the agreement that he would contact Tammy after he met with James. Therefore a plan was in place to obtain the necessary information at a later time.

The Tribunal disagrees with Mr. May's submission that Sgt. RANCOURT's intent to just talk to James was proven because he said *talk* rather than *arrest* to FNC Cada.

Sgt. RANCOURT was under the belief James Morningstar was going to depart his residence in thirty minutes. He needed a cruiser so he approached FNC Cada and asked to borrow his. Neither FNC Cada's cruiser nor any cruiser was available at the moment, so Sgt. RANCOURT and FNC Cada engaged in some small talk. The discussion amounted to no more than Sgt. RANCOURT telling him he was going to talk to James and wondered if he knew the Morningstars. During their exchange a cruiser became available so Sgt. RANCOURT elaborated no further. The Tribunal gave no weight to the fact Sgt. RANCOURT did not say arrest – he simply was in a hurry to get to the Morningstars.

The Tribunal found Sgt. RANCOURT's testimony in sharp contradiction to his claim that the time delay involved in obtaining a Feeney was not the reason why he failed to obtain one. As evidenced in *his* email to D/Sgt. Houliston¹⁰ weeks later, he clearly did consider the Feeney, and discounted it due to the delay:

...Go to the residence and arrest on RPG for assault if he is there or get a *[sic]* arrest warrant with a *[sic]* feeny *[sic]* which will take longer and suspect my*[sic]* elude police once again.

Next, the Tribunal found the evidence of Constable Ariss and Sgt. RANCOURT was not entirely at odds and it pointed to Sgt. RANCOURT's intent to arrest James Morningstar before he left the office.

Constable Ariss testified Sgt. RANCOURT told him he was going to arrest James Morningstar and then qualified this by saying he was not one hundred percent sure of the exact words used. Sgt. RANCOURT told the PSB investigator he may have used the word 'scoop.' While neither officer can remember exactly what was said, the Tribunal finds Sgt. RANCOURT undoubtedly said one or a combination of the three, 'scoop, pick up or arrest.' As evidenced in Constable Ariss' testimony there was no ambiguity

¹⁰ Exhibit #8, pages 33-34

about what had been said and as a result, his mission was crystal clear - he was going to assist the Sergeant with an arrest. Constable Ariss' notes support this and Constable Pritchard's testimony supported Constable Ariss. Further, Sgt. RANCOURT's notes are consistent with Constable Ariss' frame of mind, and void of any evidence that he was went to investigate:

"Knocked at door. James opens door. We talk. I walk in and advise of allegation of assault and he would have to come with us."

The Tribunal accepts Constable Ariss' evidence over Sgt. RANCOURT's. He had no motivation to mislead, in fact given the high regard he held for Sgt. RANCOURT, the Tribunal recognized the difficult situation he was in. Constable Ariss' candour was appreciated.

The Tribunal found contradiction in Sgt. RANCOURT's evidence that he was just going to talk with James Morningstar given he entered the home without interview or statement forms. Sgt. RANCOURT testified it would have been awkward interviewing James Morningstar in the presence of his company, but he would not have known their presence until after he entered the dwelling.

The Tribunal found that Constables Ariss and Pritchard were present for the entire verbal exchange between Sgt. RANCOURT and James Morningstar, other than perhaps the preliminary introductions. This finding is based on Constable Pritchard seeing Sgt. RANCOURT outside the house when he first arrived, the front door still open when Constables Pritchard and Ariss entered and James Morningstar believing two officers entered his house when he first opened the door.

The Tribunal found the two officers' evidence disputed Sgt. RANCOURT's with respect to James Morningstar's demeanour. They said Morningstar's demeanour changed for the worse as soon as Sgt. RANCOURT told him he had to go with them. In contrast, Sgt. RANCOURT said James' demeanour grew worse each time he raised the domestic situation. The Tribunal accepts Constables Ariss and Pritchard's evidence over Sgt. RANCOURT's. Their version is remarkably consistent with Sgt. RANCOURT's notes in that he entered the dwelling and told James he would have to go with them.

The Tribunal did not find Sgt. RANCOURT's notebook entry consistent with his stated purpose to investigate. Absent from his notes was any evidence that he conducted an investigation. To the contrary, his notes are consistent with an officer affecting an arrest almost immediately upon entering the residence.

The Tribunal found the timelines consistent with Prosecution's position that Sgt. RANCOURT went to the Morningstar residence with the intent to arrest. At most, the three officers were inside the dwelling no more than four to five minutes before the 10-78 was activated. Given the significant physical altercation that occurred, it is fair to infer that very little time was dedicated to talk.

The Tribunal finds that in addition to the noted findings of fact, Sgt. RANCOURT's emails to Crown Attorney Johnson¹¹ and D/Sgt. Houliston¹² provide clear and convincing evidence that he attended the Morningstar residence on October 24, 2010 with the intent to arrest.

¹¹ Exhibit #8, pgs. 31-32

¹² Exhibit #8, pgs. 33-34

On November 17, 2010 after learning from Crown Attorney Johnston his entry and arrest of both Morningstar's was unlawful, Sgt. RANCOURT wrote:

Mr. Johnson

I attended at the Morningstar residence later the same day not the next day. It was the first time I had been able to get the suspects location and acted on the information provided by the victim. I acted as I did to protect the victim Tammy who was the victim of a domestic assault and feared returning to her own residence. Clearly your office is of the opinion I had no legal authority to enter the residence and so be it, however, should the same facts present themselves again i.e.. Female victim complains of domestic assault, fears husband and advises he has just returned to the residence what steps would you like police to take.

Thanks in advance, Pete

Two hours later, Sgt. RANCOURT wrote a second email, this time to D/Sgt. Houliston.

Laura

Just need your input when you get a chance.

I had a situation were [sic] a female victim called police to report a domestic assault. Police attended and spoke to the victim who was intoxicated and learned the following, victim had gone out drinking with friends, came home at 01:00 hrs and got into an argument with husband, husband slaps her across face, she leaves residence and goes to a friends to call police. Police attend, due to her intoxication she will not provide statement until sober. Victim advises suspect has probably left the scene. Le 239 etc. is completed and victim is left at a friends residence for her safety. Police attempt to locate suspect but fail, suspect has criminal record and 3 firearms registered to him according to CPIC.

*At 18:00 hrs the same day police contact victim who was still at the friends residence and questioned her about the assault. Victim advised police she was assaulted and will provide video statement. She further advised that she can't return home as she fears her husband. Police asked as to the whereabouts of the suspect to which she replies he's at home right now drinking beer, he should be there for another half hour. **SO** what action would you recommend next in relation to the suspect. Go to the residence and arrest on RPG for assault if he is there or get a[sic] arrest warrant with a feeny[sic] which will take longer and suspect my [sic] elude police once again.*

Pete

The Tribunal accepts Prosecution's position that the emails are direct evidence. They expose Sgt. RANCOURT's frame of mind, in that he intended to arrest James Morningstar before he attended the residence. Sgt. RANCOURT cannot escape what he wrote, nor can he hide behind the faint hope that the Tribunal will accept his explanation. The Tribunal found that any credibility he had left at this point, evaporated.

This was Sgt. RANCOURT's opportunity to set the record straight with the Crown Attorney, as he has done in the past. Sgt. RANCOURT stopped short of correcting anything the Crown wrote other than to

point out the wrong date. The Tribunal finds the evidence irrevocable that Sgt. RANCOURT intended to arrest James Morningstar before he left the office.

The Tribunal rejects Sgt. RANCOURT's explanation - to generate a conversation – as a viable and truthful explanation. The fact that he turned to D/Sgt. Houlston for her expertise, and then fabricates the very circumstances he wanted her to decide on, lacks “harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable”¹³.

The Tribunal finds in totality of the evidence examined, that Sgt. RANCOURT had reasonable grounds to believe James Morningstar committed spousal assault before he attended the Morningstar residence.

The Tribunal now turns to the essential elements of the charges.

Neglect of duty

To be guilty of neglect of duty, it must be shown that Sgt. RANCOURT was required to perform a duty, and without lawful excuse, he failed to perform the duty because of neglect, or did not perform the duty in a prompt or diligent manner.

- Prosecution and Defense both agreed that if Sgt. RANCOURT had the intent to arrest before he attended the Morningstar residence, he was under a lawful obligation – a duty – to obtain an arrest warrant. A Feeney would have flowed from the arrest warrant. Exigent circumstances, which would have excused Sgt. RANCOURT from obtaining a warrant, did not exist. The Tribunal is satisfied the burden of proof has been met in regard to his failure to obtain an arrest warrant.
- Evidence confirms that Sgt. RANCOURT communicated his intention to Constable Ariss. Unfortunately, had he provided more detail, Constable Ariss would not have been under the mistaken belief that exigent circumstances existed. The Tribunal wonders that had Constable Ariss known this, perhaps he may have convinced the Sergeant to step back and reconsider. The Tribunal finds the burden of proof with respect to Sgt. RANCOURT failing to communicate properly, specific to Constable Ariss has been met.

Unlawful or unnecessary exercise of authority

The Code of Conduct states that an officer commits misconduct if he or she engages in “unlawful or unnecessary exercise of authority, in that he or she, without good and sufficient cause makes an unlawful or unnecessary arrest.”¹⁴

In this matter, Sgt. RANCOURT did not have lawful authority to enter the Morningstar residence and arrest James Morningstar. No evidence was led to satisfy the Tribunal that he acted with good and sufficient cause. Sgt. RANCOURT testified he was experienced in the execution of arrest warrants and Feeneys and therefore he ought to have known better. James Morningstar had a lawful right to resist his unlawful arrest and by extension, Andrew Morningstar had the lawful right to come to his brother's aid.

¹³ *Faryna v. Chorney*, [1951] B.C.J. No. 152 para 11

¹⁴ Exhibit #11, Tab 8 para 71

The Tribunal cannot accept Mr. May's submission that the charges are a subset of each other. The offences in the Code of Conduct each bear their own distinct elements. Mr. May is encouraged, however, to bring this same argument forward during disposition arguments.

Closing comments

*Lord*¹⁵ serves as a bald reminder to Tribunals to stay on course and not lose sight of the key issue(s) that need to be decided – in this case it was Sgt. RANCOURT's intent. Similar to *Lord*, this matter did not turn on the creditability or reliability of the public complainants or testimony of Ralph Chiblow. Had this been the case, the Tribunal would have guardedly given weight to their evidence because it was generally found to be unbelievable, unreliable and contemptuous. The Tribunal is not convinced that even if Sgt. RANCOURT had obtained proper authorization before he arrested James Morningstar the physical altercation would have been avoided. But this was not the focus of the Tribunal.

FINDINGS

I have carefully considered the facts presented in this matter and conclude there is clear and convincing evidence to support a finding of guilty of neglect of duty against Sgt. RANCOURT, contrary to section 2(1)(c)(i) of the Code of Conduct contained in the Schedule to Ontario Reg. 268/10.

I have carefully considered the facts presented in this matter and conclude there is clear and convincing evidence to support a finding of guilty of unlawful or unnecessary exercise of authority against Sgt. RANCOURT, contrary to section 2(1)(g)(ii) of the Code of Conduct contained in the Schedule to Ontario Reg. 268/10.



Robin D. McElary-Downer
Superintendent
OPP Adjudicator

Date decision electronically delivered: December 10, 2012

¹⁵ Exhibit #11, Tab 8