



**HEARING DECISION
JUDGEMENT**

Name: Mark WANG

Rank: Police Constable

Badge Number: 9294

Case Number: 21/2014

Hearing Date: 2015.10.22

Hearing Officer: Superintendent G. WALTON

Prosecutor: Inspector D. SINOPOLI

**Defence Counsel:
Or Representative** Ms. J. MULCAHY

TORONTO POLICE SERVICE DISCIPLINE HEARING

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

AND IN THE MATTER OF

POLICE CONSTABLE MARK WANG #9294

AND THE TORONTO POLICE SERVICE

CHARGE: DISCREDITABLE CONDUCT

DECISION WITH REASONS

Before: Greg Walton
Acting Superintendent
Ontario Provincial Police

Appearances:

Counsel for the Prosecution: Domenic Sinopoli
Inspector
Toronto Police Service

Counsel for the Defence: Ms. Mulcahy
Toronto Police Association

Hearing Date: September 21, 22, 2015

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

PART I: OVERVIEW

Allegation of Misconduct

Police Constable (Cst.) Mark Wang 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 Police Force, contrary to section 2(1)(a)(xi) of the Schedule Code of Conduct of Ontario Regulation 268/10 and therefore, contrary to Section 80(1)(a) of the Police Services Act, R.S.O. 1990, as amended. The (edited) particulars for Cst. Wang are as follows:

- Being a member of the Toronto Police Service (TPS) attached to 55 Division, Cst. Wang was assigned to uniform duties.
- On Sunday September 1, 2013 Cst. Wang was off duty and driving in the area of Birchmount Road when he became involved in an incident with Mr. George Nikoloulis. He exited his vehicle and exchanged words with Mr. Nikoloulis who had also exited his vehicle.
- Cst. Wang spat in the direction of Mr. Nikoloulis as he attempted to return to his vehicle.
- In doing so, Cst. Wang committed misconduct 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 TPS.

Plea

On September 21, 2015 Cst. Wang pleaded not guilty.

Decision

After considering the submissions and examining the exhibits, I find Cst. Wang not guilty of Discreditable Conduct. My reasons for this are as follows:

PART II: THE HEARING

Exhibits

The following exhibits were tendered during the hearing:

- Exhibit 3: Oath of Office, Cst. Wang
- Exhibit 4: Google map – Birchmount Road (zoom)
- Exhibit 5: ICAD Event Details Report
- Exhibit 6a: ICAD 911 Report
- Exhibit 6b: 911 Audio (CD)
- Exhibit 7a: Transcript of Cst. Wang interview April 9, 2014
- Exhibit 7b: Cst. Wang audio interview April 9, 2014 (CD)
- Exhibit 8: Driving Record of George Nikoloulias
- Exhibit 9: Criminal Record George Nikoloulias
- Exhibit 10: Google map – Bamburgh Circle
- Exhibit 11: Google map – Birchmount Road
- Exhibit 12: Statement of Claim: Nikoloulias and TPSB and Wang
- Exhibit 13: Criminal Record of Bryan Nelson
- Exhibit 14: *R. v Nelson*, Transcript dated October 28, 2011
- Exhibit 15: Transcript of PSB interview (in part), dated March 5, 2014 Nikoloulias
- Exhibit 16: *Munro and Niagara Regional Police Force Board of Inquiry Jul 27, 1994*
- Exhibit 17: *Golomb and College of Physicians and Surgeons of Ontario, Jan 9, 1976*
- Exhibit 18: *Smith and Murdoch, S.C.O. June 25, 1987*
- Exhibit 19: *Magda and Sheppard and Board of Inquiry, Oct 23, 1992*
- Exhibit 20: *Shockness and Peel Regional Police Force Board of Inquiry, 1994*
- Exhibit 21: *Jacobs v. Ottawa Police Service, 2015 ONSC 2240, May 27, 2015*
- Exhibit 22: *R. v. Crimeni, BCSC, October 13, 1992*
- Exhibit 23: *Talha v. Metropolitan Toronto Police Force, Board of Inquiry, 1993*
- Exhibit 24: *Monaghan v. Toronto Police Service, OCCPS, May 1, 2003*
- Exhibit 25: *Monaghan v. Toronto Police Service, [2005] O.J., March 31, 2005*
- Exhibit 26: *Mancini v. Niagara Regional Police Service, OCCPS, August 12, 2004*
- Exhibit 27: *Sterling v. Hamilton-Wentworth Regional Police, OCCPS, Aug. 10, 1999*
- Exhibit 28: *Lalande v. Ottawa Police Force, OCCPS, February 23, 1988*

In this matter, Ms. Mulcahy represented PC Wang while Inspector (Insp.) Sinopoli represented the TPS.

Evidence called by the Prosecutor

George Nikoloulias (summary of testimony)

Mr. Nikoloulias is 45 years of age and worked in his family business for 28 years but following a dispute, quit on September 1, 2013. When Mr. Nikoloulias left work that day in his car, he was "real mad" and stated he was driving very fast on Birchmount Rd. in Toronto when the car in front of him wanted to race him. That car was cut off by traffic and that driver gave him the finger when Mr. Nikoloulias passed. Mr. Nikoloulias later came to know the driver of that vehicle as being Cst. Wang. While stopped at a red light, Mr. Nikoloulias grabbed a can of coke and whipped it at Cst. Wang's car. In response, Cst. Wang threw a water bottle at Mr. Nikoloulias and they had an exchange of foul and abusive language. Once the light turned green, each driver was swerving at one another nearly colliding their cars.

Mr. Nikoloulias stopped his car to allow his passenger, Bryan Nelson to exit the vehicle. He testified that once his car was stopped, Cst. Wang pulled in behind him. As they exited their cars and walked toward one another, Cst. Wang produced his badge and stated "this is the worst day of your life". Mr. Nikoloulias testified his plan was to fight Cst. Wang when he exited his car. He was disappointed when he saw the badge because in his mind, he couldn't fight a police officer without repercussions which prompted Mr. Nikoloulias to call Cst. Wang a "fucking pussy". Mr. Nikoloulias testified that he turned away and could feel on the back of his neck that he was spit on.

Mr. Nikoloulias testified he "was adamant we were going to fight that day". Cst. Wang said they were going to the park nearby to fight but Mr. Nikoloulias refused knowing now that he was a police officer, stating "who can win against a cop if he wants to fight?" Cst. Wang told him he wasn't going to let him leave until they fought. Mr. Nikoloulias turned to go to his car and was spit upon for a second time. Mr. Nikoloulias jumped in his car and admitted his driving was "crazy", running stop signs and red lights. He said he did not want to stay around to see what Cst. Wang was going to do next.

When questioned, he said at no time was he instructed to pull over. He said he was trying to get away from Cst. Wang, why would he pull over? He stopped just to let off his passenger at his stop and exited the car once he saw that Cst. Wang pulled in behind him. Bryan Nelson was to visit a friend at this location. He did exit the car when they stopped and he remained on the sidewalk while this interaction unfolded between Cst. Wang and Mr. Nikoloulias. They were standing on the street, between their stopped cars.

Following the incident, Mr. Nikoloulias went home and telephoned a friend who happens to be a police officer to seek advice. Mr. Nikoloulias refused to identify this individual during the investigation and again during his testimony. He said he was advised to remove his shirt and did so to protect it. He produced this shirt to the officers (Cst. Warman) who attended his residence within a short time of the incident but neither he nor the officers could visibly see saliva on the shirt. He denied ever telling officers that he and Cst. Wang were spitting at each other.

During his testimony, Mr. Nikoloulias indicated he still has the shirt in the same bag and if it was tested it would solve this whole thing. Mr. Nikoloulias stated he waited several months before lodging his complaint because he was uncertain whether he wanted to go against police.

In cross examination, Mr. Nikoloulias agreed that he has a \$150 000 civil suit filed against Cst. Wang and the Toronto Police Services Board (TPSB) regarding this allegation. The incident occurred in September 2013 but he didn't lodge his complaint with the Office of the Independent Police Review Director (OIPRD) until January 2014 and the civil suit is dated August 22, 2014. Mr. Nikoloulias admitted to having experienced significant financial problems over the years having declared bankruptcy more than once. Mr. Nikoloulias reiterated his delay in filing a complaint was because he was not certain he wanted to go against the police. Mr. Nikoloulias admitted that in his interview with the Professional Standards Bureau (PSB), Mr. Nikoloulias stated the delay was to obtain financial backing for the civil suit from his father. He indicated the civil suit was not tied to his OIPRD complaint; the delays were for different reasons.

Mr. Nikoloulias stated Cst. Wang deserved to be called a pussy, he waved a badge and wanted to fight but Mr. Nikoloulias was of the opinion he couldn't have a fair fight with a police officer which frustrated him.

Mr. Nikoloulias reiterated that at no time did he tell investigating officers that he and Cst. Wang spit at one another. Mr. Nikoloulias indicated; if the investigating officer, Cst. Warman said this, he must be covering up for Cst. Wang. Mr. Nikoloulias further stated that Cst. Warman never asked for the name of his passenger. Ms. Mulcahy read from exhibit #15, a transcript of Mr. Nikoloulias' interview with investigators from PSB where Mr. Nikoloulias stated he refused to provide the passenger's name to the uniformed officers at his residence.

Ms. Mulcahy put it to Mr. Nikoloulis that the phrase 'worst day of my life' is a phrase that Mr. Nikoloulis uses and that Cst. Wang never uttered those words. Mr. Nikoloulis was emphatic that Cst. Wang used that specific terminology. Ms. Mulcahy referenced exhibit #15 once again and read from the transcript where Mr. Nikoloulis is quoted as saying "it was the worst day of my life" when he described leaving the family business on September 1, 2015. Later during the same interview Mr. Nikoloulis once again utilized the term during his interview; "...As a pu' - (sic) person a the public like to be the worst day a your life and this is how you get treated".

During his cross examination, Mr. Nikoloulis stated he was very upset with his issues at work, he admitted he was in a rage and angry. With regards to his mindset when he decided to throw the pop can, he agreed that he did not consider the repercussions; he "was of another mind". After some consideration, Mr. Nikoloulis testified he was driving aggressively and speeding. Mr. Nikoloulis accepted the statement he made during his interview with PSB that Cst. Wang would have seen him approaching from behind, driving aggressively and changing lanes rapidly. He also acknowledged that he may have not mentioned in previous statements that he thought Cst. Wang wanted to race and may have not said in previous statements that they were swerving as if to hit each other's vehicles.

It was put to Mr. Nikoloulis that in fact it was Cst. Wang who was now ahead of him and he in fact made a wide turn to get ahead of Cst. Wang which forced him to stop. Mr. Nikoloulis denied this and stated he stopped to let Bryan Nelson out of the car. He was dropping him off at this address but agreed that he did not pull into the driveway nor did he stop right in front of the building. Mr. Nikoloulis testified that he was furious when he confronted Cst. Wang. He indicated he would have fought if he had to. He testified that although he "wanted to hit him with everything in my life, he was being a total dick" but said he wasn't sure if he actually would have hit him. In his interview he stated to investigators "...my intention was to hit him..." but in his testimony he said because he wanted to hit him doesn't mean he was going to hit him.

Mr. Nikoloulis stated that once Cst. Wang identified himself as a police officer, he threw his badge back in his car then said they were going to the hill by the park to fight. Cst. Wang spit at Mr. Nikoloulis then told Mr. Nikoloulis he was going nowhere, they were going to fight. During his testimony he stated he was spit on twice but could not be certain the exact order that certain events unfolded. He denied that they spit toward one another on the ground.

Ms. Mulcahy asked Mr. Nikoloulis if he had his shirt tested in support of his civil suit. He replied by stating he had suggested it but it has not been done.

Ms. Mulcahy reviewed exhibit #12, the statement of claim with Mr. Nikoloulis. In his testimony Mr. Nikoloulis acknowledged he was not placed under arrest as suggested in paragraph 14 in the document. He acknowledged that the document does not include any reference to his aggressive driving. The document states that Mr. Nikoloulis was ordered to pull over but in his testimony Mr. Nikoloulis denied this. Mr. Nikoloulis advised that this document was prepared by his lawyer and he did not review it.

Mr. Nikoloulis indicated his aggressive driving following the incident was due to the fact he was "scared out my life" and he was trying to get away.

In re-examination Mr. Nikoloulis advised he did not provide an affidavit to his civil lawyer, his information was provided verbally in support of the statement of claim.

Cst. Richard WARMAN (summary of testimony)

Cst. Warman advised he was working uniform patrol in 42 Division on September 1, 2013 when he was dispatched to a driving complaint at approximately 1:00 p.m. and he provided the specific details of the information gleaned. Cst. Warman and his partner attended the address of Mr. Nikoloulis. Mr. Nikoloulis stated the person he had a driving dispute with identified himself as a police officer and he was spit on by that officer. Mr. Nikoloulis said there was no assault. Cst. Warman said it was difficult to talk to Mr. Nikoloulis; it was hard for the officers to get a word in edge ways.

Mr. Nikoloulis was wearing a shirt that did not fit the description provided by the dispatcher. Mr. Nikoloulis produced a blue golf shirt on a hanger that he was supposedly wearing when he was spit on. Cst. Warman examined the shirt but could not see any signs of anything. Cst. Warman testified that Mr. Nikoloulis stated to them at the time they were spitting on each other but he took offence that he was spit at by an off duty officer. Mr. Nikoloulis left the scene as he was afraid of what would happen next and wasn't sure if Cst. Wang was a police officer or not.

Cst. Warman testified he met with Cst. Wang who explained his driving complaint. Cst. Warman advised him he could lay his own charges if he wanted to do so. When explaining the incident to Cst. Warman, Cst. Wang advised during the incident Mr. Nikoloulis spit on him first.

In cross examination, Cst. Warman provided a timeline suggesting it took him 22 minutes to arrive at Mr. Nikoloulis' residence arriving at 1:22 p.m. Cst. Warman described Mr. Nikoloulis as being agitated and questioned his truthfulness based on him trying to talk over the officers. He described Cst. Wang as being professional and straight forward and indicated he had never met Cst. Wang prior to that date. He confirmed Mr. Nikoloulis stated he and Cst. Wang were spitting on each other and Cst. Wang said Mr. Nikoloulis spit at him first.

Mr. Bryan Nelson (summary of testimony)

Mr. Nelson's testimony in Chief revealed he is a former employee of Mr. Nikoloulis having worked at the family business for several months. Mr. Nelson stated he was charged in 2007 for using an imitation firearm while committing several robberies. When he was shown his criminal record he accepted it as being accurate which reflects 5 counts of armed robbery and 3 counts of disguise with intent. Mr. Nelson advised of another incident not captured on his record where he pleaded guilty to obstruct police in 2011.

Mr. Nelson recounted the events from September 1, 2013 advising he was a passenger in a car with Mr. Nikoloulis. Mr. Nikoloulis was driving him to his friend's house on Silver Springs Blvd. in Toronto. Mr. Nelson said Mr. Nikoloulis' demeanor was normal, he was not angry and he was driving the speed limit. Then Mr. Nikoloulis was arguing with another driver and a coke can and a water bottle was thrown but he was unsure who threw what first. The other driver was driving his car left and right as if he was going to hit Mr. Nikoloulis' car. Mr. Nikoloulis was saying what the fuck are you doing and the other driver was saying something to the effect of "pull over or whatever". Mr. Nikoloulis stopped the car, told him to get out and he did so. The drivers got out and were face to face but Mr. Nelson stated he wasn't within ear shot so was not sure what they were saying. He was able to see Cst. Wang in a spitting motion but was not able to say if he actually spit at Mr. Nikoloulis when he was walking back to his car or if it was just a motion.

Mr. Nelson approximated he was standing about 15-20 feet away from them during their confrontation. He started at the sidewalk then very slowly walked away but kept looking behind him at the exchange. He stated that he assumed they were yelling at one another, he could hear faint voices but could not hear exactly what was being said. He described Cst. Wang leaning forward in a spitting motion toward Mr. Nikoloulis while his back was turned to Cst. Wang. He did not see Mr. Nikoloulis spit at any time.

Mr. Nelson testified he next saw Mr. Nikoloulis at work a few days later and that is when he learned the other driver was a police officer. Mr. Nelson was incarcerated a short time later and provided a statement

to investigators on April 4, 2014. Mr. Nikoloulias drove him to this interview but they did not discuss the incident; Mr. Nikoloulias told him to tell the officers what he saw.

In cross examination, Mr. Nelson reiterated he was 15-20 feet away from Mr. Nikoloulias and Cst. Wang but was unable to hear the words that were uttered. His estimation of the length of the hearing room was reasonably accurate when asked to provide a measurement. When questioned about seeing Cst. Wang spit at Mr. Nikoloulias he replied, "I figured that was what happened."

Mr. Nelson reviewed his criminal record in greater detail including the facts surrounding a conviction for obstruct police when he provided a false name while on parole during a drug investigation. He also described his relationship with Mr. Nikoloulias and stated he didn't feel he owed Mr. Nikoloulias for providing him a job but wanted to help him out, hence his involvement in this matter.

Exhibit # 6b – TPS 911 tape of Cst. Wang's driving complaint

The 9-1-1 audio tape was played for the record. According to exhibit 6a, the 911 ICAD report, the call was received at 12:59:56 and lasted until 13:06:20.

Cst. Wang's voice was calm. He described the driving complaint, indicating the other driver cut him off, purposely tried to run him off the road and then ran a stop sign and a red light when fleeing the area. The driver of the car threw things at Cst. Wang's car while they were driving, a bottle and something else not known to him. He stated there was a passenger who got out and went somewhere else once they stopped. The passenger was not involved. Cst. Wang provided a list of the streets they utilized along the route. On a number of occasions, Cst. Wang stated that he pulled the car over. He stated he identified himself as a police officer when they stopped. He told the driver to wait and he was going to call it in but the driver took off and was long gone. He tried to follow him but when the driver went through a stop sign he decided not to follow any further. He provided a description of the driver and the car including the licence plate.

Evidence called by Defence

Cst. Mark Wang (summary of testimony)

Cst. Wang testified he is very familiar with this area and has taken this route regularly for years to visit family members which was the purpose of his trip on September 1, 2013. While driving northbound on Birchmount Rd. he noticed a vehicle in his rear view mirror zig zagging from lane to lane approaching him at a high rate of speed. He said the driver was passing other cars and described the action as leap

frogging. The driver of this car is now known to be Mr. Nikoloulias. As the car passed Cst. Wang, it swerved into his lane to avoid other traffic. This caused Cst. Wang to pull his car into the lane for oncoming traffic. Cst. Wang didn't recall any oncoming traffic. He honked at the car which was ahead of him by this time. At the next intersection, there were about four cars stopped at the red light ahead of Cst. Wang's car. Mr. Nikoloulias was in the curb lane and although there was room for him to pull his car closer to the intersection, he held back so their cars were door to door. They exchanged words consisting of foul language. Cst. Wang described Mr. Nikoloulias driving as 'doing driving games' swerving into his lane 6-7 times, driving in front, beside and behind him and forcing him into the oncoming traffic lane.

When prompted, Cst. Wang then stated that Mr. Nikoloulias also threw two things at his car during the driving dispute, a water bottle and a metallic item that he thought was tape measure at the time and later learned was a coke can. Cst. Wang denied throwing a water bottle or anything at Mr. Nikoloulias' car saying he was too busy trying to maintain control of his car to be able to throw anything.

Cst. Wang testified he did not pull Mr. Nikoloulias over. In fact it was Mr. Nikoloulias who made a wide right turn around Cst. Wang's vehicle and blocked it so that Cst. Wang was forced to stop. He stated Mr. Nikoloulias exited the car and charged toward him aggressively looking as if he wanted to fight. It was at that moment that Cst. Wang reflected on an article he read on the TPS internal web site where an off duty officer was involved in a road rage incident. That officer was charged criminally for allegedly causing a broken orbital bone when he tried to affect an arrest. Cst. Wang described this as being a losing situation for him. His goal was to ensure he didn't get charged and that no one got hurt.

He exited his car to meet Mr. Nikoloulias and immediately showed him his TPS badge and identified himself as a police officer. Mr. Nikoloulias looked at the badge, called him a pussy and spit on the ground next to him. Cst. Wang took this as a sign of disrespect. Cst. Wang believes he put the badge back in his pocket but couldn't be certain. Cst. Wang stated that Mr. Nikoloulias was swearing, calling him names and believed he wanted to fight. Therefore, Cst. Wang stood in a defensive position with hands held high and he mocked Mr. Nikoloulias by spitting at his feet. Cst. Wang explained his behaviour saying he wanted to affect Mr. Nikoloulias' psychology and he wanted him to know he was prepared to fight to defend himself if necessary. Cst. Wang indicated this was having little effect and finally said to Mr. Nikoloulias, "If you want to hit me, go ahead, let's go". Mr. Nikoloulias paused and Cst. Wang then asked him for his driver's licence causing Mr. Nikoloulias to tell him to fuck off and he

walked back toward his car. Cst. Wang considered arresting him, followed him toward the car and yelled at him to get back here but ultimately decided not to use force to affect an arrest.

Mr. Nikoloulias drove off and Cst. Wang decided to follow him to obtain his licence plate particulars. Cst. Wang stated he decided not to pursue any further after Mr. Nikoloulias went through a stop sign and a red light so he stopped and dialed 9-1-1. Cst. Wang testified that he did not know the officers who attended to receive his complaint. When questioned he reiterated the following points: he was not racing; at no time did he purposely cut off Mr. Nikoloulias; at no time did he swerve to try to strike Mr. Nikoloulias' car with his car; at no time did he throw a water bottle or any object from his car; at no time did he spit at Mr. Nikoloulias' back; he did not invite Mr. Nikoloulias to fight; Cst. Wang did not recall seeing Mr. Nelson there as a passenger or pedestrian; and Cst. Wang does not feel that his behaviour during this incident brings discredit to the TPS.

In cross examination, Cst. Wang went one step further; when asked if he would do the same thing again in the future, he replied by stating he didn't think he could do much better considering the circumstances. He said not getting charged criminally and no one getting hurt was an acceptable result for him.

Cst. Wang reviewed the driving behaviour of Mr. Nikoloulias stating he could see in his rear view mirror he was changing lanes back and forth driving well over the speed limit. When he was cut off by Mr. Nikoloulias Cst. Wang said he was annoyed but not frustrated and was not sure if Mr. Nikoloulias heard all the honks but he definitely was aware of it. Cst. Wang admitted to telling Mr. Nikoloulias to fuck off while they were exchanging words in their cars.

Cst. Wang stated that Mr. Nikoloulias' car had dropped back at some point and when Cst. Wang made a right turn on Silver Springs Blvd., Mr. Nikoloulias made a wide right turn to get in front of his car and stopped forcing Cst. Wang to stop to avoid a collision. Cst. Wang was reminded that on the 9-1-1 recording played earlier; on three occasions he advised the dispatcher he had pulled over Mr. Nikoloulias. Cst. Wang denied pulling the car over and reasserted his position that Mr. Nikoloulias pulled in front of him. Cst. Wang also mentioned the passenger's presence on the 9-1-1 tape but even after hearing the recording, he could no longer recall Mr. Nelson being there. Cst. Wang testified to getting out of his car because he didn't feel safe sitting in his car; Mr. Nikoloulias could have punched him through the window for example. He stated Mr. Nikoloulias displayed a violent demeanor and Cst. Wang defended his decision to exit the car as being the safer bet.

Cst. Wang stated when he has been disrespected in the past in the form of people spitting at his feet while in uniform he simply walked away but in this case he mocked Mr. Nikoloulias by spitting at his feet in reply. When asked about this decision Cst. Wang said “the mocking gesture was better than a shove, better to hurt his ego rather than his body”.

When asked about possibly de-escalating the situation, Cst. Wang indicated he tried that by driving away from Mr. Nikoloulias and by showing his badge immediately. Cst. Wang was asked if taking a fighting stance and uttering words to the effect, “if you want to fight, let’s go”, are de-escalating measures and he replied by stating, although unorthodox, he felt they were successful de-escalating techniques.

When questioned, Cst. Wang denied spitting at Mr. Nikoloulias while he was walking away but agreed he spit on the ground near the feet of Mr. Nikoloulias. The direction of his spitting was at the ground. That occurred when they were face to face in their stand-off. He reiterated the trajectory was directly toward the ground while they were facing each other, the exact same manner as Mr. Nikoloulias did towards him.

Cst. Wang testified Mr. Nikoloulias initiated all aspects of this interaction, from his erratic driving, to pulling in front of Cst. Wang causing him to stop his car and the verbal interaction that followed.

In re-examination Cst. Wang advised he had not heard the 9-1-1 call prior to providing a statement to investigators. He told the interviewers the truth but had not done anything to refresh his memory in advance of the interview. TPS have an intranet site for members with a section called ‘newspaper clippings’ that includes police related news items. Cst. Wang read the article in passing where a member was charged during an off duty incident which stood in his mind during this incident.

Defence Submissions

Ms. Mulcahy submitted a number of exhibits to support her position. I will make reference to those which were most helpful in Part III of this decision. Ms. Mulcahy stated there had not been proof on clear and convincing evidence as particularized in the Notice of Hearing (NOH) to substantiate a finding of guilty. She further stated the NOH is very specific; Cst. Wang spit at Mr. Nikoloulias while he returned to his car. The NOH does not capture Cst. Wang’s driving behaviour, his language or him spitting on the ground next to the feet of Mr. Nikoloulias. Ms. Mulcahy reiterated it has not been proven Cst. Wang spit at Mr. Nikoloulias while he returned to his vehicle.

Ms. Mulcahy submitted this is not about a standard of perfection or an exercise in hindsight and suggested I consider Cst. Wang's actions in the totality of the circumstances. Ms. Mulcahy suggested Mr. Nikoloulias' demeanor is aggressive which was evident during his testimony. Ms. Mulcahy asked that I take note of the fact Mr. Nikoloulias made it clear he wanted to hit Cst. Wang and his response to seeing a police badge was to call the officer a pussy. This is indicative of his lack of respect for police.

Ms. Mulcahy stated that Mr. Nikoloulias' offer to "test his shirt" is bravado. Making this offer during his testimony is the first time he had ever suggested it and the suggestion holds no value.

Ms. Mulcahy stated Mr. Nikoloulias has a significant financial motive magnified by the fact he has filed for bankruptcy twice in the past and waited to file the complaint until he was certain he had the financial backing of his father. Ms. Mulcahy suggested I should find the statement of claim troubling as it contains errors that he made no effort to correct. The statement of claim clearly does not match his testimony at this Hearing. Ms. Mulcahy asked me to review and compare Mr. Nikoloulias statements during the police interview and that of his testimony as there are inconsistencies. Additionally, Cst. Warman made note of Mr. Nikoloulias' admission they were spitting at each other. That was captured approximately 20 minutes following the incident and yet Mr. Nikoloulias denied this when testifying.

Ms. Mulcahy highlighted the relationship between Mr. Nikoloulias and Mr. Nelson and concluded this does not make Mr. Nelson an independent witness. It was only a few days later that Mr. Nikoloulias returned to the place he no longer worked to see Mr. Nelson about this incident. When asked by Police, he refused to provide Mr. Nelson's name until such time he was able to speak with him first. Ms. Mulcahy also echoed Mr. Nikoloulias' testimony that he did not see Cst. Wang spit at him, he just felt it. Ms. Mulcahy submitted Mr. Nelson has a record of dishonesty and Ms. Mulcahy suggested his testimony is not reliable. He minimized Mr. Nikoloulias' conduct even stating his driving was normal which clearly was not the case. Mr. Nelson was not able to say what was said between Mr. Nikoloulias and Cst. Wang even though he was right there. Like Mr. Nikoloulias, he did not see Cst. Wang spit either, he saw a motion similar to a spitting motion, which is not proof on clear and convincing evidence.

Ms. Mulcahy stated the only inconsistency between Cst. Wang's testimony and his PSB interview is now having no recollection of the passenger which is not an indictment of his credibility. His comments during the 9-1-1 recording indicating he pulled the car over are perhaps indicative of his mindset at the time but his testimony was honest and forthright.

Prosecutor Submissions

Insp. Sinopoli indicated the public would be shocked at the manner in which Cst. Wang presented himself during this incident. The fact there is a public document in the form of the statement of claim brings discredit to the TPS.

Insp. Sinopoli said I should be concerned Cst. Wang did not mention until prompted during his testimony that Mr. Nikoloulias gave him the finger while driving and that Mr. Nikoloulias threw items at him from his car. Also concerning is the 9-1-1 tape. The fact it was recorded immediately following the dispute adds to the truthfulness of Cst. Wang's assertion on the tape that he pulled Mr. Nikoloulias over. This was stated three times by Cst. Wang and then denied during his testimony.

Insp. Sinopoli indicated the statement of claim should not be relied upon as Mr. Nikoloulias testified he had not proof read the document, it was completed and filed by his lawyer, not him. He suggested I must detach myself from that and deal with the issues.

Insp. Sinopoli submitted cases and exhibits in support of his submissions such as the standard of proof in *PSA proceedings and the fact Cst. Wang put himself on duty when he identified himself as a police officer*. He also spoke to the test of whether an officer's misconduct constituted conduct likely to bring discredit upon the reputation of the police force and the application of this understanding. Insp. Sinopoli stated the wording in the NOH captures the misconduct of Cst. Wang's spitting on the ground, at Mr. Nikoloulias back and his abusive language. Cst. Wang initiated all aspects, first by honking his horn at Mr. Nikoloulias, then using profane language, driving aggressively and then by spitting. Even more alarming is the testimony of Cst. Wang that he still feels he has done nothing wrong. The Discreditable Conduct has been proven by Cst. Wang's testimony alone, he had opportunities to disengage but chose not to.

Insp. Sinopoli stated that the prosecution witnesses are not professional witnesses and just because Mr. Nikoloulias is not polished does not mean he is lying. Mr. Nikoloulias' testimony is supported by Mr. Nelson and supported by the 9-1-1 tape when Cst. Wang states he pulled over the car. It wouldn't be reasonable he submitted, to accept Cst. Wang's testimony of Mr. Nikoloulias overtaking his car and stopping abruptly when all witnesses estimated there were one-two car lengths between the cars. Cst. Wang stated there was no opportunity to leave but there was ample space to do so. Insp. Sinopoli asked that I listen to Cst. Wang's interview with PSB, the 9-1-1 tape and pay attention to the inconsistencies between the statements and his testimony.

Defence Re-Submissions

Defence counsel made submissions in response to the cases submitted by the Prosecutor which I will take into consideration when reviewing that material

PART III: ANALYSIS AND FINDINGS FOR DISPOSITION

Summary of Misconduct

On Sunday September 1, 2013, Cst. Wang was off duty driving in the area of Birchmount Rd. in Toronto. He observed a vehicle driven by Mr. Nikoloulias in his rear view mirror that was driving aggressively by changing lanes in excess of the speed limit. Cst. Wang believed he was cut off when Mr. Nikoloulias changed lanes in front of him and he reacted by honking his horn. The two drivers became engaged in what is often termed as a road rage incident and they exchanged abusive and foul language while driving erratically. The vehicles came to a stop on Silver Springs Blvd. where the drivers exited their cars and continued their heated exchange of abusive and foul language. The exchange allegedly culminated with Cst. Wang spitting on Mr. Nikoloulias on two occasions as Mr. Nikoloulias walked away from Cst. Wang.

It is agreed that Cst. Wang and Mr. Nikoloulias were involved in an altercation. There are several facets of that altercation that are in dispute the most significant being whether or not Cst. Wang spit at Mr. Nikoloulias while Mr. Nikoloulias was walking away from him. Cst. Wang is charged with Discreditable Conduct. I must assess the credibility of the witnesses and consider the exhibits tendered to determine if the prosecution has proven their case on clear and convincing evidence.

I have identified key issues to assist me in this process:

- 1. The NOH; is it specific to spitting at Mr. Nikoloulias as he attempted to return to his vehicle or does it include his overall behaviour and the verbal exchange of foul and abusive language?**
- 2. Has the Prosecution satisfied the threshold of clear and convincing evidence to warrant a finding of guilty?**

I will speak to these matters separately knowing however that some of my comments are applicable to each of the issues.

1. **The NOH; is it specific to spitting at Mr. Nikoloulias as he attempted to return to his vehicle or does it include his overall behaviour and the verbal exchange of foul and abusive language?**

The NOH in this case includes the following two noteworthy particulars of concern:

- On Sunday September 1, 2013 Cst. Wang was off duty and driving in the area of Birchmount Road when he became involved in an incident with Mr. George Nikoloulias. He exited his vehicle and exchanged words with Mr. Nikoloulias who had also exited his vehicle.
- Cst. Wang spat in the direction of Mr. Nikoloulias as he attempted to return to his vehicle.

Munro v. Niagara Regional Police Board of Inquiry states:

The applicable burden of proof in this case is that of “clear and convincing” evidence. There must be weighty, cogent and reliable evidence upon which a trier of fact, acting with care and caution, can come to the fair and reasonable conclusion that the officer is guilty of misconduct.

Before I apply the principle as outlined in *Munro*, it must first be determined whether or not the terminology ‘became involved in an incident’ and ‘exchanging of words’ is particularized to form part of the definition of Discreditable Conduct.

Golomb and College of Physicians and Surgeons of Ontario states:

In cases of this type, no one would suggest that an allegation of professional misconduct need have that degree of precision that is required in a criminal prosecution. But the charge must allege conduct which if proved could amount to professional misconduct and it must give the person charged reasonable notice of the allegations that are made against him so that he may fully and adequately defend himself. This proposition has been stated by many authorities. I need refer only to the language of Culliton, C.J.S. in *R. v. Discipline Committee of College of Physicians & Surgeons of Province of Saskatchewan*, Ex p. Sen (1969), 6 D.L.R. (3d) 520 at p. 524, 69 W.W.R. 201:

Not only must the charge be correct in form and sufficient to inform the person charged, in general terms, of the charge against him, but must contain sufficient particulars to enable him to properly prepare his defence.

Cst. Wang testified that he spit at the ground while facing Mr. Nikoloulis. The second point in the NOH reads; Cst. Wang spat in the direction of Mr. Nikoloulis as he attempted to return to his vehicle. This point does not capture Cst. Wang's admission. In his interview with PSB, well in advance of the drafting of the NOH, Cst. Wang admitted to spitting on the ground, near the feet of Mr. Nikoloulis. There was an opportunity to draft the wording of the NOH accordingly. If the NOH was worded less precise about the misconduct or if it included the overall spitting behavior of Cst. Wang, the spitting misconduct admitted by Cst. Wang would have fit.

In the PSB interview, Cst. Wang admitted to taking a 'fighting stance' and saying something similar to "fine, listen, if you're gonna (sic) hit me, then hit me. Let's do it alright?" Aware of this information, the wording of the NOH should have spoken to be the overall actions of Cst. Wang if PSB were taking the position it was the overall conduct which was to be considered Discreditable.

It is not disputed that words were exchanged but the first point in the NOH hinges on my understanding of 'involved in an incident' and 'exchanged words' and whether or not they can form Discreditable Conduct. Cst. Wang admitted in his testimony that he used profane and foul language which I find *constitutes unprofessional behaviour and would also meet the standard of Discreditable Conduct if the NOH was worded accordingly.* But in this case, TPS had an opportunity to draft the NOH to read something to the effect, 'used foul and profane language which brought discredit to the reputation of TPS.' In his interview with PSB well in advance of drafting the NOH, Cst. Wang admitted to using foul language. My understanding of 'involved in an incident' and 'exchanged words' do not equate to Discreditable Conduct. The exchange of foul and abusive language would constitute Discreditable Conduct had the NOH of hearing been worded in that fashion. Relying on 'involved in an incident' and 'exchanged words' in the NOH does not give Cst. Wang reasonable notice of the allegations made against him so that he may fully and adequately defend himself as cited in *Golomb*.

Therefore, the prosecution in this case must prove on clear and convincing evidence that Cst. Wang spit at Mr. Nikoloulis as he returned to his vehicle.

2. Has the Prosecution satisfied the threshold of clear and convincing evidence to warrant a finding of guilty?

I examined all exhibits. I will review the ones I relied upon and I will review the testimony of the three prosecution witnesses and the testimony given by Cst. Wang.

Cst. Warman responded to the 9-1-1 complaint of Cst. Wang which led to his interaction with Mr. Nikoloulias and Cst. Wang. Cst. Warman testified in an honest and forthright manner, providing reasonable answers to the questions posed to him. He had an independent recollection of the events and relied on his contemporaneous notes to refresh his memory although the notes were vague and his recollection consistent with an incident of insignificant magnitude. He did however make several observations that I take note of:

- Mr. Nikoloulias stated he and Cst. Wang were spitting on each other and Mr. Nikoloulias took offence to an officer behaving in such a manner.
- Cst. Wang advised; Mr. Nikoloulias spit at him first. (in his evidence, Cst. Warman used the phrases spit at and spit on at various times when describing the conversations he had with Mr. Nikoloulias and Cst. Wang)
- Cst. Warman described Mr. Nikoloulias as being agitated and questioned his truthfulness based on him trying to talk over both attending officers.
- Cst. Warman had never met either Mr. Nikoloulias or Cst. Wang prior to this incident.
- It took approximately 22 minutes to arrive at the Nikoloulias residence. Mr. Nikoloulias produced a blue golf shirt on a hanger that he was allegedly wearing while spit upon by Cst. Wang. Cst. Warman did not observe any stains on the shirt consistent with spit.

Mr. Bryan Nelson was employed by Mr. Nikoloulias and was a passenger in his car at the time of this incident. Mr. Nelson has a very serious criminal record of violence and obstructing police however it was not the criminal record that troubled me concerning the testimony of Mr. Nelson. I found Mr. Nelson had a selective memory and selective powers of observation that are nonsensical. Mr. Nelson described the demeanor and driving behaviour of Mr. Nikoloulias as being "normal" prior to the interaction with Cst. Wang. This opposes the very testimony of Mr. Nikoloulias. It is concerning that simple issues such as driving and demeanor prior to the incident is an inconsistency between witnesses. Mr. Nikoloulias left his family business that day after 27 years and in his own words while testifying, Mr. Nikoloulias admitted he was in a rage and angry. That is consistent with what he said in his interview with PSB, that this was the worst day of his life. He admitted to driving very fast and aggressively. I find it disconcerting that this would not stand out in the mind of Mr. Nelson.

Following the initial interaction between the drivers, Mr. Nelson's recollection of the aggressive driving was reasonably consistent with the testimony of Cst. Wang and Mr. Nikoloulias. He also stated, Cst. Wang "was saying pull over or whatever" to Mr. Nikoloulias while they were driving. Mr. Nelson testified Mr. Nikoloulias stopped the car and told him to get out which he gladly accepted. That was one

of the few comments he made which had a ring of truth to it. He was questioned at length about the distance he remained from Mr. Nikoloulias and Cst. Wang when they exchanged words standing face to face. Mr. Nelson stated he was initially watching from the sidewalk and was slowly walking away from the combatants, ending up 15-20 feet away. His estimation of distance was confirmed as reasonably accurate when he estimated the length of the hearing room. Mr. Nelson testified Mr. Nikoloulias and Cst. Wang were arguing and yelling but he was unable to hear any of the words exchanged. Mr. Nelson stood by this position when asked repeatedly. It defies logic that a person could not hear words which were being yelled by two people 15-20 feet away. Mr. Nelson made no mention of background or static noises which interfered with his ability to hear conversation just that he was too far away. It causes me to question what he heard or saw that he is hesitant to share.

Mr. Nelson testified he was close enough however to recognize a spitting motion by Cst. Wang toward Mr. Nikoloulias while Mr. Nikoloulias was walking away. He could not see if there was actual spit or if it was just a motion consistent with spitting. Mr. Nelson said he watched the exchange the entire time while walking away and saw only one spitting motion by Cst. Wang, not two as described by Mr. Nikoloulias. Nor did he see Mr. Nikoloulias spit on the ground as described by Cst. Wang and as reported by Cst. Warman.

I am further troubled by the fact Mr. Nikoloulias refused to provide the name of Mr. Nelson to responding officers stating "it's none of your business" and yet Mr. Nikoloulias attended his former place of employment several days later and spoke with Mr. Nelson about this matter. Then, several months later, it is Mr. Nikoloulias who transported Mr. Nelson to his interview with investigators. Mr. Nelson testified they didn't speak about the incident prior to the interview but I question the genuineness of his position on this issue.

Mr. Nikoloulias worked in his family business for 28 years but following a family dispute surrounding personal and sensitive issues, he quit his job on September 1, 2013. In his own words this was the worst day of his life, he was upset, angry and in a fit of rage when he left work that day and drove his car fast and aggressively. The driver of another car, being Cst. Wang, gave Mr. Nikoloulias the finger when he drove past him. While stopped at a red light, Mr. Nikoloulias said he was of another mind when he grabbed a pop can and whipped it at Cst. Wang's car. In response, Mr. Nikoloulias alleges Cst. Wang threw a water bottle at Mr. Nikoloulias' car and they exchanged words. Once the light turned green, each driver was swerving at one another nearly colliding their cars according to this witness.

There is contradictory testimony about how the vehicles came to a stop. Mr. Nikoloulias and Bryan Nelson state that Mr. Nikoloulias stopped his car to allow his passenger to exit the vehicle. They testified that once the car was stopped, Cst. Wang pulled in behind them. Cst. Wang testified to the contrary; that it was Mr. Nikoloulias who stopped him. Mr. Nikoloulias made it quite evident he was of another mind and his intent was to fight the driver of the other vehicle. That would be consistent with Cst. Wang's version of being stopped by Mr. Nikoloulias to facilitate the physical confrontation he was seeking. However, Cst. Wang states on three occasions during his 9-1-1 conversation he pulled Mr. Nikoloulias' car over. This would be consistent with the testimony of Mr. Nikoloulias and Mr. Nelson's version of the vehicle stop. When questioned, Mr. Nikoloulias testified at no time was he instructed to pull over. Mr. Nelson's testimony that Cst. Wang was yelling at them to pull over while they were driving was not very compelling. It came across to me as though he was uncomfortable committing to this particular account. Due to the lack of trust I have in the testimony of the key witnesses, I am unable to definitively conclude what caused the vehicles to come to a stop where they did.

As the drivers exited their cars and walked toward one another, Cst. Wang produced his badge and identified himself as a police officer. Mr. Nikoloulias testified that his intent was to fight Cst. Wang when he exited his car. He was disappointed when he saw the police badge because in his mind, now he couldn't fight a police officer. This prompted Mr. Nikoloulias to call Cst. Wang a "fucking pussy".

In looking at the state of mind of Mr. Nikoloulias, he was in a fit of rage which transferred into his aggressive driving, him throwing a pop can at another car, exchanging abusive language while driving and culminating in him exiting his car for the sole purpose of fighting Cst. Wang. He then refers to Cst. Wang as a fucking pussy upon seeing his police badge. A person calling a police officer a fucking pussy is indicative of a lack of respect for police. During his testimony, Mr. Nikoloulias justified this comment and reiterated his position saying Cst. Wang deserved to be called a pussy. In this case, Mr. Nikoloulias testified he delayed making a complaint against police because he did not want to go against police. I interpreted that as Mr. Nikoloulias having too much respect for police to lodge a complaint against them. I cannot be certain exactly why Mr. Nikoloulias waited to make a complaint but I do not find it was due to being conflicted about his regard for police. I did not find Mr. Nikoloulias demonstrated respect toward the police at any time during this incident or during his testimony. I am not holding the lack of exhibited respect against Mr. Nikoloulias in this decision other than to note it conflicts with the position he takes when justifying the delayed complaint. I also take no issue with the delay in lodging a complaint; nonetheless I question the validity of his rationale.

Mr. Nikoloulias testified Cst. Wang said they were going to the park nearby to fight but Mr. Nikoloulias refused knowing then that he was a police officer. He also testified Cst. Wang told him he wasn't going to let him leave until they fought. I find it completely nonsensical that an off duty officer would identify himself as a police officer using his badge, and then immediately state to that person, they couldn't leave until they engaged in a fight. If Cst. Wang's intent was to fight, the last thing he would do is identify himself as a police officer and then call 9-1-1 to report the incident. I find Mr. Nikoloulias' testimony in this respect, fabricated.

Mr. Nikoloulias testified he turned away from Cst. Wang and then felt he was spit on, on the back of his neck. Mr. Nikoloulias confronted Cst. Wang, turned to go to his car and was spit upon for a second time. Given the rage and mindset of Mr. Nikoloulias, had he been spit on twice, I find it odd he did not react in a more aggressive or even violent manner. However he produced a shirt to the attending officers within a short time of the incident. I can think of no other reason for Mr. Nikoloulias to produce a shirt to the officers as evidence that he was spit on had he not actually believed it to be true. Neither he nor the officers could visibly see saliva on the shirt but I draw no conclusions from this. Mr. Nikoloulias during his testimony suggested his shirt be "tested". I assume that suggestion is to have it tested for Cst. Wang's DNA which if established, would substantiate this allegation. I am not able to lend any weight to this proposal. I do not have an understanding of Mr. Nikoloulias' knowledge of DNA testing. I do not know if he believes testing of this nature is even possible. Unfortunately, I find no credible evidence to support Mr. Nikoloulias' assertion and the production of the shirt is not enough to meet the threshold of clear and convincing evidence.

Mr. Nikoloulias testified when he fled the scene, he drove erratically through stop signs and red lights to get away from Cst. Wang because he was "scared out of his life". I find that comment to be inconsistent with his actions and his demeanor.

According to the testimony of Cst. Warman, Mr. Nikoloulias stated shortly after the incident, he and Cst. Wang were spitting at each other. Mr. Nikoloulias denied making this statement and denied spitting at Cst. Wang at any time. I can think of no reason why Cst. Warman would fabricate this utterance then make a notebook entry to this effect. Cst. Wang testified and also advised investigators during his initial interview, he and Mr. Nikoloulias spit at each other's feet.

Compounding Mr. Nikoloulias' credibility is a series of inconsistencies captured in the civil suit filed against Cst. Wang and the TPSB regarding this allegation. Mr. Nikoloulias admitted to experiencing

significant financial problems in the past having declared bankruptcy more than once. Mr. Nikoloulis waited to meet with his father before filing the civil suit, hence the delay in doing so. When confronted with untrue statements in the claim, Mr. Nikoloulis stated he did not provide a written affidavit; he provided an oral dissertation to his Counsel. One would think this civil process is of great importance to Mr. Nikoloulis. He has a vested interest obviously and initiated the process. He met with a lawyer to provide the basis for the suit and a statement of claim has been filed on behalf of Mr. Nikoloulis. I cannot imagine filing a civil suit and not taking ownership of the statement of claim. The statement of claim contains the following inconsistencies:

- Paragraph 8 alleges Cst. Wang came abreast of the vehicle and ordered him to pull over. This was denied by Mr. Nikoloulis' testimony.
- Paragraph 14 alleges Cst. Wang placed Mr. Nikoloulis under arrest by advising him he could not leave unless he fought with Cst. Wang. Mr. Nikoloulis testified he was never arrested and there is no evidence he was confined.
- Paragraph 24 alleges Cst. Wang uttered threats, unlawfully confined and assaulted Mr. Nikoloulis. There is no evidence to suggest an assault (beyond the spitting allegation) nor is there evidence to suggest any semblance of confinement.
- Paragraph 27 alleges the conduct of Cst. Wang constituted a condition of false imprisonment. As stated above, there is no evidence suggesting confinement or imprisonment.

These are not subtle inconsequential discrepancies. On its own, I would not use the document to assess the credibility of Mr. Nikoloulis as it is not a sworn document. However, I find this to be most concerning when considered in totality with the exhibits and testimony of witnesses.

I found the testimony of Cst. Wang concerning. He failed to show an appreciation for the gravity of the situation. Cst. Wang stated he could not have handled the situation any better and felt the interaction was a success because no one was injured and he was not charged with a criminal offence; hardly the standard to be used as a measure of successfully handling a volatile situation.

I find the 9-1-1 tape concerning as it reflects three comments made by Cst. Wang immediately following the incident suggesting he pulled Mr. Nikoloulis' car over. He denied this in his testimony and in his interview with PSB investigators. He testified he exited his car because he felt safer there rather than staying in his car. I find that explanation illogical. I believe Cst. Wang sought a verbal confrontation with Mr. Nikoloulis. I also question his assertion that he used the following actions as de-escalation mechanisms: sought a self-defence pose; mocked Mr. Nikoloulis and spit on the ground near the feet of

Mr. Nikoloulias; and stated to the effect, "if you want to hit me, okay let's go". He testified that a mocking gesture was better than a shove as if these were the only two options available to him.

I find I am left with the testimony of the complainant, the testimony of the officer charged and the testimony of the only witness to the exchange. It is most unfortunate that I find all three of these witnesses to be unreliable. Although it is not necessary that I believe all the testimony of a witness to rely on some crucial elements therein but I am hesitant to do so in this case. I am unable to find corroborating evidence to support the position of Mr. Nikoloulias that he was spit on by Cst. Wang as he walked away to return to his car. I am troubled by the actions and testimony of Cst. Wang which is compounded by his assertion that this is the best manner in which he could have managed this situation. That attitude does not bode well for his career in the future.

In *Munro and Niagara Regional Police Force* the Board stated:

The applicable burden of proof in this case is that of "clear and convincing" evidence. There must be weighty, cogent and reliable evidence upon which a trier of fact, acting with care and caution, can come to the fair and reasonable conclusion that the officer is guilty of misconduct.

I find the Prosecution has not satisfied the threshold of clear and convincing evidence to warrant a finding of guilty.

PART IV: DISPOSITION

The evidence pertaining to the allegation of Discreditable Conduct has not met the standard of proof. I find Cst. Wang not guilty.



Greg Walton
Acting Superintendent
OPP Adjudicator

Date decision delivered: October 22, 2015