

**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

DETECTIVE SERGEANT ANDREA ENRIGHT #8468

CHARGE: NEGLIGENCE OF DUTY

DECISION WITH REASONS

Before: Superintendent Lisa Taylor
Ontario Provincial Police

Counsel for the Prosecution: Mr. Adrien Iafrate, Ms. Aisha Amode
Ministry of the Solicitor General

Counsel for the Defence: Mr. Peter Brauti
Ontario Provincial Police Association

Public Complainant: E.C.*
**initialized to protect the privacy of the public complainant*

Hearing Date: December 16, 17, 18, 19, 2019

This decision is parsed into the following parts:

PART I: OVERVIEW;

PART II: THE HEARING;

PART III: SUBMISSIONS;

PART IV: ANALYSIS; and,

PART V: DECISION.

PART I: OVERVIEW

Parties to this Hearing

Parties to this Hearing include:

- Detective Sergeant (D/Sgt) Andrea Enright, represented by Mr. Peter Brauti;
- Mr. Adrien Iafrate, Ms. Aisha Amode represented the Ontario Provincial Police (OPP);
- The Public Complainant, E.C.
 - E.C. did not have legal representation however indicated she understood she had the right to do so. The hearing process and her role in it, was explained to her and she was provided with a copy of the tribunal rules. She actively participated throughout the hearing process.

Background

D/Sgt Enright faces *Police Services Act (PSA)* misconduct charges in relation to a June 2015 sexual assault investigation. She was the immediate supervisor of Provincial Constable (P/C) Quemby who was the lead investigator of the sexual assault investigation and who has since pled guilty to neglect of duty in relation to the investigation.

The misconduct allegations stem from D/Sgt Enright's supervisory actions in response to the call.

A hearing was held in Cobourg, Ontario commencing on December 16, 2019 and concluded on December 19, 2019.

Allegations of Misconduct

D/Sgt Enright stands charged with neglect of duty in that she did without lawful excuse, neglect or omit to promptly and diligently perform a duty as a member of the Ontario Provincial Police (OPP), contrary to section 2(1)(c)(i) of the Code of Conduct contained in the Schedule to Ontario Regulation 268/10, as amended.

Particulars of Allegations:

On or about June 13, 2015 it is alleged that E.C. reported a sexual assault to the Northumberland OPP Detachment. P/C Adam Quemby was the primary investigator on

this investigation. D/Sgt Enright was on approved leave at the time of the initial reporting of these allegations; however she returned to work on June 15, 2015 and as the Acting and then confirmed Area Crime Sergeant (ACS), had the responsibility to ensure these allegations were investigated in a thorough, professional manner. It is alleged that she was neglectful in her duties, which include:

- She failed in her duty to properly supervise and provide guidance to P/C Quemby upon her return to work to ensure these allegations were investigated thoroughly and professionally.
 - This failure was also a breach of OPP Policy.
- When interviewed by PSB investigators on November 22, 2017 D/Sgt Enright indicated she was briefed on this investigation by one of the investigators and she said she found the scenario concerning, but felt at the time it had been properly investigated based on what she was told, and when time allowed she would go back and review it.
- On or about July 22, 2015 D/Sgt Enright met with P/C Quemby and following the second briefing on this investigation she agreed with him there were no grounds to lay charges, despite a severe lack of investigation to support this conclusion.
- On or about July 17, 2015 D/Sgt Enright was contacted by D.C.¹ who had just spoken with Nurse Mary Waters and was advised by her that she was concerned the Sexual Assault Examination Kit (SAEK) had not been picked up yet, specifically identifying a concern with the blood samples deteriorating over time, which were vital to determining the level of intoxication of E.C. and provide evidence addressing her ability to consent.
- D.C. relayed these concerns to D/Sgt Enright and in this conversation agreements were made to meet with D.C. on July 23, 2015.
- Notwithstanding that D/Sgt Enright reviewed the P/C Quemby / E.C. interview along with other material prior to the July 23, 2015 meeting with D.C./ E.C., she failed to identify, raise or address any concerns with P/C Quemby's communication during the interview and the absence of any meaningful investigative steps, which would be present in a thorough, professional investigation. Instead, D/Sgt Enright told E.C. that she supported P/C Quemby's position that no grounds existed to support criminal charges.
- D/Sgt Enright failed to ensure proper evidence was gathered, examined and assessed during the investigative process.
- A review of the investigation being conducted, in the manner in which it was being conducted, should have raised concerns. Over and above her duty to supervise, she had several opportunities to intervene as a supervisor to ensure a proper and complete investigation was being conducted and she failed to engage.

¹ D.C. is the mother of E.C.

Plea

On December 16, 2019, at the outset of the hearing, D/Sgt Enright entered a plea of 'not guilty' to neglect of duty.

Decision

I find D/Sgt Enright not guilty of neglect of duty. The reasons for the decision follow.

Comments to E.C.

I concur with the words of D/Sgt Enright which you echoed, *"this should have been different"* for you. It saddens me to consider a young woman came to the police having made the difficult decision to bring forth allegations of sexual assault and she feels the police let her down.

This hearing involved an employer-employee issue to determine whether misconduct was committed by D/Sgt Enright as the supervisor of P/C Quemby. It was not about determining whether or not a sexual assault occurred but a sub-standard police investigation resulted in the loss of any opportunity for you to experience justice. Having investigated numerous sexual assaults, I know there are few uncomplicated sexual assault investigations. Many come with challenges and those challenges are counted on by sexual predators to help them elude accountability for their actions.

In the course of the hearing, I was impressed by the maturity, thoughtful questions and the strength of character shown by you. It is unfortunate this investigation unfolded as it did but the OPP is thankful to you for bringing this forward, identifying issues and helping to address those issues so this does not happen in the future. Sincerest wishes to you. I hope life is kinder and please know that you are a strong example to others.

PART II: THE HEARING

Exhibits

The exhibits tendered in this matter are listed in Appendix A.

Witnesses

The Prosecution witnesses included the following:

- D/Sgt (retired) Angie Leigh, Professional Standards Bureau (PSB) Investigating Officer
- E.C., Public Complainant

- P/C Adam Quemby, Officer in Charge of Incident related to Public Complaint
- D.C., Mother of Public Complainant

Defence counsel witness:

- D/Sgt Enright , Respondent Officer

Witness Testimony

This following is not meant to be an exhaustive overview of witness testimony. I will speak to what I consider to be the most relevant evidence addressing the issues at hand and relevant evidence will be discussed in further detail within the *Analysis* section.

In order to evaluate and give weight to the evidence I have heard, it is necessary to assess the credibility of witnesses where applicable. First, I will outline my understanding of a credibility assessment. For each witness, I need to consider whether their testimony is consistent with the preponderance of probabilities where an informed person would recognize my conclusions as reasonable. This is particularly important when the evidence provided contradicts other evidence.

As the trier of fact, I must carefully consider each witness and their respective opportunities for knowledge and observation, their judgement, recollection and the ability to communicate what they have observed. Even a credible witness can be honestly mistaken and render testimony that may be less reliable.

Prosecution

D/Sgt (retired) Angie Leigh

Examination in Chief

D/Sgt Leigh was the officer in charge (OIC) of a public complaint investigation lodged by E.C. against P/C Quemby and D/Sgt Enright as his supervisor, for failing to properly investigate a sexual assault. In the course of her testimony, the tribunal reviewed the original video statement² taken of E.C. by P/C Quemby. A transcript³ of the statement was also provided for the assistance of the tribunal. D/Sgt Leigh outlined various concerns that she had with this video statement including that P/C Quemby was judgemental and that at the end of the interview he had concluded there were no reasonable grounds that a criminal offence had occurred, without conducting any further investigation.

² Exhibit 32: USB containing interviews: E.C., P/C Quemby, D/Sgt. Enright

³ Exhibit 33: Transcript of E.C. interview

D/Sgt Leigh provided details regarding the evidence she collected and the witnesses she interviewed in the course of her PSB investigation. She outlined her concerns about the investigation and the lack of follow up on potential evidence including: witnesses to be interviewed; the seizure of E.C.'s tights; the flash associated to a cellphone camera; relevance of having one's nose plugged in the course of an assault, as well as the various aspects of the SAEK that could have undergone testing.

D/Sgt Leigh testified she had reviewed Niche records⁴ including reports and activity logs related to the sexual assault investigation involving E.C. An occurrence report dated June 18, 2015 authored by P/C Quemby made no reference to E.C.'s tights being ripped off, the nose plugging or other details and did not accurately reflect the statement of E.C.. Based on her review, "*no further action*" was not a proper comment as the SAEK had not been picked up and further investigative steps could have been taken. D/Sgt Leigh clarified that based on what was contained within the supplementary report, the 'unfounded' status was appropriate, but based on what she knew about the case now it was not.

D/Sgt Leigh testified that the SAEK was picked up July 30, 2015 by P/C Quemby and the kit and the associated records were destroyed prior to May 11, 2016. The hospital kept copies of the SAEK documents⁵ but samples were destroyed. D/Sgt Leigh testified she reviewed the SAEK documents. She testified the SAEK may have provided evidence related to suspects, injuries, drugs and/or alcohol involvement.

D/Sgt Leigh testified she collected and reviewed emails⁶ related to this investigation. As part of D/Sgt Leigh's investigation, although at the beginning of the investigation D/C Herrell was the acting ACS, she determined that D/Sgt Enright was P/C Quemby's direct supervisor. Policy documents such as *Police Orders, Part 2.13 Sexual Assault Investigation* and *Part 2.7 Criminal Investigation Management/ Procedures* were introduced through D/Sgt Leigh.

D/Sgt Leigh conducted a formal interview of D/Sgt Enright as a respondent officer on November 22, 2017. The audio and related transcripts were entered as exhibits⁷ and the interview was played before the tribunal. D/Sgt Leigh testified that D/Sgt Enright was the supervisor responsible for P/C Quemby in relation to the sexual assault investigation involving E.C.

Examination by public complainant, E.C.

No questions.

⁴ Exhibit 25: RMS occurrence SP15151699

⁵ Exhibit 27: Hospital Records – Suspected Drug Facilitated Sexual Assault Documentation

⁶ Exhibit 28: Email chain between D/Sgt Enright and P/C Quemby [July 30, 2015]

⁷ Exhibit 32: USB containing interviews: E.C., P/C Quemby, D/Sgt. Enright and Exhibit 33: Transcript of E.C. interview

Cross Examination

D/Sgt Leigh testified she had been a police officer with the OPP since 1993 and was promoted to the rank of sergeant in April 2012. She had never supervised anyone in a specific role and she agreed with counsel that her supervisory knowledge was gained from reading rules, procedures and policy as opposed to supervising people. She concurred that although she had investigated sexual assault allegations before, she had never supervised one.

She agreed that the standard of investigation is not perfection and that in hindsight one could always look back and think it could have been done better. She agreed that mistakes and misconduct were not the same thing. Defence counsel referred her to her own PSB investigation wherein she interviewed P/C Quemby and D/Sgt Enright but not others involved in the case. D/Sgt Leigh agreed that if P/C Quemby had investigated properly this tribunal would not be convened. She agreed that a number of concerns arose after having reviewed the video-statement P/C Quemby had taken from E.C.

She agreed that P/C Quemby presented as judgemental and when interviewed, D/Sgt Enright concurred with this and she counselled him before the meeting with the "C" family telling him his comments were not appropriate. She agreed that D/Sgt Enright instructed P/C Quemby to pick up the SAEK. She agreed that if the SAEK reports were read, any injuries would be noted. D/Sgt Leigh agreed that the complainant's friend was interviewed about previous disclosure and D/Sgt Enright had directed the boyfriend be interviewed and asked about previous disclosures.

D/Sgt Leigh agreed that after the interview with E.C., P/C Quemby, without conducting a further investigation, came to conclusion that there were no grounds to lay a charge. She agreed D/Sgt Enright tasked P/C Quemby to do a more thorough investigation. D/Sgt Leigh testified D/Sgt Enright ordered P/C Quemby to pick up the SAEK, to conduct formal interviews with the suspects and witnesses, to conduct a crown consult and to get back to her with the results.

Exhibit 30, the *Sexual Assault Investigation* section of Police Orders was put before D/Sgt Leigh. She agreed that P/C Quemby was the primary investigator for this occurrence and the direction is that the primary investigator shall "*ensure that the [ACS] is kept apprised of the on-going status of the investigation, the conclusion and date of completion.*" D/Sgt Leigh agreed that P/C Quemby did not follow the direction given by D/Sgt Enright and further that he did not tell her the truth at times. She agreed this created supervisory challenges as a supervisor because "*you are not getting the full picture.*"

D/Sgt Leigh agreed she obtained the notes of P/C Thompson who first dealt with E.C. when E.C. attended the detachment but D/Sgt Leigh did not formally interview him. Further, she agreed she obtained the notes of P/C Clark who seized E.C.'s clothing but did not interview him. She did not recall that P/C Clark's notes indicated that he had seized the tights. D/Sgt

Leigh agreed D/C Herrell was the supervisor at the time of the interview and was in fact monitoring the interview. She was not aware of discussions between those two members at the time of the interview although she acquiesced she could have interviewed D/C Herrell. D/Sgt Leigh agreed that in hindsight her own PSB investigation could have been better but like in this matter that does not equate to misconduct.

D/Sgt Leigh agreed all of those investigative steps had taken place before D/Sgt Enright was aware of the file. D/Sgt Leigh agreed D/Sgt Enright was still on leave on June 14, 2015, when she engaged with D/C Herrell to inquire if the D/S/Sgt (Fredericks) had been notified and determined the notification had not been made. D/Sgt Enright took care of this responsibility despite being off.

D/Sgt Leigh concurred P/C Quemby had interviewed the three suspects who reported the sex was consensual and that at one point the complainant was on the phone with her boyfriend and that is one piece that may impact 'reasonable grounds.' D/Sgt Leigh agreed that when D/Sgt Enright returned to duty she was aware D/C Herrell and P/C Quemby were involved in the interview of E.C. and that a conclusion had been reached that there were no reasonable grounds and she (D/Sgt Enright) was told the complainant did not want charges laid.

D/Sgt Leigh agreed that a supervisor would expect to be given accurate information by an OIC and when providing direction as a supervisor one would assume it is being followed. She further agreed that after July 17, 2015 when the complainant's mother called the detachment to complain, D/Sgt Enright addressed the issue about inappropriate language used during the interview; learning the SAEK kit was not picked up, D/Sgt Enright tasked P/C Quemby to pick up the kit. She also agreed that D/Sgt Enright explained to E.C. who wanted a copy of her statement that she needed to go through FIPPA. D/Sgt Leigh was not aware that following the meeting with the family, D/Sgt Enright met with P/C Quemby with D/S/Sgt Ray Collins also in attendance.

D/Sgt Leigh testified D/Sgt Enright tasked P/C Quemby on July 23, 2015 to pick up the kit and to conduct further interviews. She agreed that after D.C. called on July 30, 2015 to report the SAEK had not been picked up then D/Sgt Enright sent an email⁸ to P/C Quemby about picking up the SAEK and the email indicated P/C Quemby was 'pushing back' on the direction of getting the kit. She agreed when P/C Quemby got the SAEK he advised D/Sgt Enright about the injuries and she asked and she then tasked him to complete the formal interviews.

D/Sgt Leigh agreed that D/Sgt Enright took the position on that day (July 30, 2015) that it was owed to the complainant and her family to gather a package and do a crown consult. D/Sgt Leigh agreed that opinions could differ on a case on whether or not there were reasonable

⁸ Exhibit 28: Email chain between D/Sgt Enright and P/C Quemby [July 30, 2015]

grounds and it does not make either party wrong or right. Regardless, of any assessment of 'reasonable and probable grounds', D/Sgt Leigh agreed that a case would go no further should the crown determine there was no reasonable prospect of conviction. D/Sgt Leigh testified that when she interviewed D/Sgt Enright, she (D/Sgt Enright) had indicated she was not aware that a crown consultation had *not* taken place.

D/Sgt Leigh was not aware of the Agreed Statement of Facts⁹ in relation to P/C Quemby's plea to neglect of duty. In reviewing points contained within the disposition¹⁰, D/Sgt Leigh agreed it would be no surprise that P/C Quemby had lied to D/Sgt Enright about the crown consultation meeting given he had already lied about such a meeting with D.C..

Re-examination

In relation to an August 27, 2015 conversation between D/Sgt Enright and P/C Quemby, D/Sgt Leigh had no recollection of the conversation being mentioned in D/Sgt Enright's notes nor was it mentioned in her duty report or PSB interview. In reference to a package of emails from D/Sgt Enright's previous counsel sent to D/Sgt Leigh on July 12, 2018, she indicated she had no recollection of an August 27, 2015 meeting between D/Sgt Enright and P/C Quemby.

P/C Adam Quemby

Examination in Chief

P/C Quemby testified he has been a police officer for 23 years and in June 2015 he was assigned to the Northumberland OPP Crime Unit. On June 13, 2015, he was assigned the lead investigator of the sexual assault investigation involving E.C. His direct supervisor that day was D/C Herrell as D/Sgt Enright was off at the time, but she had been his supervisor for about six months at that point and he explained they would speak several times a week, discussing ongoing investigations. She would assign him tasks in various manners including Niche tasks, emails or personally.

P/C Quemby confirmed that as a result of the investigation involving E.C. he was charged with misconduct and pled guilty to neglect of duty in October 2018. The related Agreed Statement of Facts¹¹ was entered as an exhibit. He agreed the facts as stated were substantially correct.

P/C Quemby testified about the specifics of his investigation of the sexual assault allegations by E.C. He recalled speaking to D/C Herrell after the interview and about whether there were any grounds for sexual assault charges; he did not recall discussing any outstanding investigative steps at that point.

⁹ Exhibit 35: ASoF pertaining to P/C Quemby PSA matter

¹⁰ Exhibit 34: Excerpt from P/C Quemby PSA Decision

¹¹ Exhibit 35: ASoF pertaining to P/C Quemby PSA matter

P/C Quemby testified that when D/Sgt Enright came back to work they may have spoken about the investigation but he had no notes; he did have a July 22, 2015 conversation noted. He had no conversations documented in June 2015 but it was possible they spoke about it when she returned from annual leave. The outstanding steps were to speak to the three males and to get the SAEK. He testified that on June 14, 2015, he spoke with one suspect, in person, and to the other two suspects via telephone, although they were not formally interviewed.

Exhibit 25, a Niche Supplementary Report was provided to P/C Quemby. He confirmed he wrote the report on June 18, 2015 and he determined there was no further action, no reasonable grounds and the allegation was unfounded.

P/C Quemby agreed the SAEK was relevant to the investigation and an email chain¹² between [Nurse] Mary Waters to Shawn Herrell dated June 30, 2015 was introduced as evidence wherein she indicated the SAEK was there and there were unusual and suspicious injuries. The email had been forwarded to him. He had not yet picked up the SAEK.

Task # T150872770¹³ was a task assigned to him by D/Sgt Enright on July 17, 2015, to pick up the SAEK. She had sent him a re-work of the task on July 31, 2015 requesting information on when the kit was picked up and an update on the investigation; he marked it complete on December 26, 2015; he did not recall if there was a direct conversation with D/Sgt Enright about this task but it was possible.

P/C Quemby testified that on July 22, 2015, D/Sgt Enright requested to meet with him and he provided a copy of the video-statement by E.C. He believed they may have discussed 'reasonable grounds' and D/Sgt Enright was preparing for a meeting with the "C" family.

On July 23, 2015 he and D/Sgt Enright spoke again and she had asked him to be close by at the time of the meeting. He believed she had reviewed the interview and she expressed some concerns to him about the nose plugging. P/C Quemby could not recall if D/Sgt Enright gave him directions that day but she had assigned him further tasks. P/C Quemby did not recall discussing E.C.'s injuries with D/Sgt Enright. There may have been other conversations between July 23 and 30, 2015 but on the latter day he was directed to pick up the SAEK on that day.

An email chain dated July 30, 2015 between he and D/Sgt Enright involved direction for him to pick up the SAEK. He did not recall a specific conversation about the SAEK not having any evidentiary value with D/Sgt Enright. When he picked up the SAEK, Nurse Waters indicated injuries included to the frenulum and to the labia. P/C Quemby testified he would have discussed the SAEK with D/Sgt Enright; he did not recall the specific conversation nor the date

¹² Exhibit 36: Email chain between Nurse Waters and D/C Herrell

¹³ Exhibit 37: Task Report – T150872770

but that he provided information on the injuries. He did not recall any further direction by D/Sgt Enright at the time.

P/C Quemby testified he had reviewed the SAEK; he had already learned of some injuries and that there were also undetermined bruise marks on her legs; he decided not to have the swabs/samples tested. He did not recall whether D/Sgt Enright asked if he had the kit tested.

In relation to Task T150945491¹⁴ from July 31, 2015, P/C Quemby added a task at the behest of D/Sgt Enright to conduct more detailed interviews of the suspects. He was not able to interview the males who cancelled on him and he was unsure whether he had discussions with D/Sgt Enright; he stated it was likely there were discussions. He marked this task completed on October 1, 2015 and it was approved by D/Sgt Enright on October 5, 2015.

P/C Quemby testified that D/Sgt Enright had conversation with him about a crown consultation and it would have been in July 2015. He testified that he was not directed by D/Sgt Enright to have a crown consult, nor to gather a package for crown review. He testified that he cleared his report off as “no reasonable grounds for charges.” P/C Quemby was shown Exhibit 25, his supplementary report dated October 1, 2015; he agreed this report was his conclusion of the investigation and it was his determination there were no reasonable grounds. He would have marked the task as complete and it would go to his supervisor to be checked. P/C Quemby agreed that if he had a crown consultation he would have indicated in the report and referred to ‘no reasonable prospect of conviction.’ Further, he agreed that if a supervisor had concerns about a report they would follow up. He could not specifically recall any conversations with D/Sgt Enright about closing the report.

P/C Quemby did not recall further conversations with D/Sgt Enright about the case but it does not mean it did not happen. He did not recall an August 27, 2015 conversation with D/Sgt Enright regarding a crown consult. P/C Quemby testified he did not tell D/Sgt Enright he consulted a crown. He worked on that date and was assigned a robbery by D/Sgt Enright via telephone.

Examination by public complainant, E.C

No questions.

Cross Examination

P/C Quemby testified he had a positive working relationship overall with D/Sgt Enright and he agreed she supervised well and was consistent with follow-up. Further, P/C Quemby agreed he gave D/Sgt Enright no reason to believe he would not follow her directions nor the rules and regulations of the police service. P/C Quemby agreed it was the responsibility of the

¹⁴ Exhibit 38: Task Report – T150945491

primary investigator to ensure proper investigative steps were taken and the supervisor must be notified of the steps.

P/C Quemby agreed that on June 13, 2015, D/Sgt Enright had no idea the investigation had commenced as she was off and that major things occurred prior to D/Sgt Enright knowing including (1) initial complaint taken from complainant, (2) clothing was seized (3) complainant was sent to Peterborough Hospital for purposes of a SAEK (4) Witness interviewed (5) formal statement taken from complainant (6) he went by residence where the incident took place but suspects were not there. Further, P/C Quemby conducted the interview with D/C Herrell monitoring and they conversed about a lack of grounds and D/C Herrell concurred. P/C Quemby agreed he entered 'unfounded' in Niche and the complainant had advised she did not want charges.

Defence counsel introduced email correspondence¹⁵ and a Niche RMS entry log¹⁶ noting the consensual nature of the reporting of the sexual assault at this point and P/C Quemby agreed that D/Sgt Enright had not even returned to work before he had changed the status to 'unfounded'.

Exhibit 36, the email chain involving Mary Waters and Shawn Herrell about the SAEK and E.C.'s physical injuries, was provided to the witness and P/C Quemby agreed he had been forwarded this email but it was not sent to D/Sgt Enright, nor was she told about it.

P/C Quemby agreed D/Sgt Enright discussed the file with him and agreed with his assessment about reasonable grounds and that she stated something to the effect, *"it was close to the line but short."* Further he agreed that D/Sgt Enright discussed his interview and she did not agree with the language he used and he should have been more sensitive. P/C Quemby also agreed he was willing to apologize to E.C. but he was not involved in the meeting. After the meeting D/Sgt Enright advised him the family said an apology was not needed, however they were unhappy and they wanted to move the file forward. He agreed D/Sgt Enright tasked him to pick up the SAEK and to interview witnesses.

In relation to picking up the SAEK, P/C Quemby agreed D/Sgt Enright would have expected him to pick it up and that a second complaint from D.C. was received on July 30, 2015 indicating the kit had not been picked up. He agreed that in the email direction by D/Sgt Enright, he was frustrated with a heavy caseload. Further, P/C Quemby agreed when D/Sgt Enright sent the email, she was not aware of the email from the nurse regarding unusual and suspicious injuries. D/Sgt Enright was not happy the SAEK had not been picked up.

¹⁵ Exhibit 39: Email chain between D/C Herrell and D/Sgt Enright [June 14, 2015]

Exhibit 40: Email chain between D/Sgt Enright and D/S/Sgt Fredericks [June 14, 2015]

Exhibit 42: Email chain between D/Sgt Enright to P/C Quemby [July 17, 2015]

¹⁶ Exhibit 41: Excerpt from Activity Log

P/C Quemby agreed that on July 30, 2015 D/Sgt Enright told him that it would be a good idea to put together a package for the crown consultation; he could not recall specifics of a conversation wherein D/Sgt Enright said a crown consultation should occur with or without a package. Defence counsel took P/C Quemby through the Agreed Statement of Facts and various emails in relation to details of the crown consultation. I will address specific evidence in this respect in my 'analysis' section. After pleading guilty to neglect of duty, P/C Quemby agreed his position was that all the failings in this investigation were attributable to him. Further, he testified D/Sgt Enright was prudent in her supervision in all aspects of this case.

In response to questions about July 31, 2015 and D/Sgt Enright emailing direction to him as she was going off on annual leave, P/C Quemby agreed she was being diligent as a supervisor. In the email¹⁷ D/Sgt Enright indicates she left a message for D.C. advising the case was actively being investigated, and he needed to call D.C. with updates while D/Sgt Enright was on leave.

P/C Quemby concurred that August 12, 2015 was significant as he interviewed the complainant's boyfriend and his statement hurt the case more than helping it. He also agreed that when D/Sgt Enright returned from annual leave, he was off the following two weeks, returning August 26, 2015. When questioned about a conversation with D/Sgt Enright following an exchange about a robbery case, and if she then inquired whether everything had been completed on the E.C. case, and if he responded that everything was completed and the family was updated, P/C Quemby testified it was possible but he did not remember.

Defence counsel drew the attention of P/C Quemby to one of the findings of the hearing officer in his own misconduct matter wherein he (P/C Quemby) may have confused or conflated the terms 'reasonable grounds' with 'reasonable prospect of conviction'. P/C Quemby agreed that was a finding but he stated although he could not recall the conversation with D/Sgt Enright, he would not have said the words "*reasonable prospect of conviction*".

Although P/C Quemby restated he could not recall the conversation, he agreed with defence counsel that it was possible he said to D/Sgt Enright that everything was complete, the family was updated and that he misspoke and said *no reasonable prospect of conviction*. P/C Quemby agreed that if he misspoke in that regard he could see how D/Sgt Enright would have come to the conclusion a crown consultation had been done. P/C Quemby agreed that assuming those things were said it is understandable D/Sgt Enright believed the E.C. file was complete.

P/C Quemby testified that on September 24, 2015 he was on duty and he recalled a conversation with D/Sgt Enright about being assigned to write a warrant on a fraud case and

¹⁷ Exhibit 43: Email chain between D/Sgt Enright to P/C Quemby [July 31, 2015]

he indicated he was too busy. D/Sgt Enright disagreed with his position and voices were raised; D/Sgt Enright walked away upset that he had challenged her. P/C Quemby recalled a subsequent meeting with D/Sgt Enright wherein he apologized to her for the earlier meeting. P/C Quemby testified he was not aware of further concerns D/Sgt Enright had with his files, in October 2015. In relation to an email¹⁸ dated October 1, 2015 from D/Sgt Enright to P/C Quemby requesting to meet with him about some fraud files, P/C Quemby recalled the meeting but stated he was not aware the meeting had been suggested by D/Sgt Enright's supervisors.

P/C Quemby agreed this email may have prompted him to look at other files, as on that same day he created a supplementary report in relation to the E.C. matter. He agreed that at this point, D/Sgt Enright was of the understanding the E.C. matter was completed/closed although he had not yet marked the related task complete. The details of the supplementary report¹⁹ dated October 1, 2015 were read onto the record. P/C Quemby testified he likely added the report at this time as D/Sgt Enright had advised him to clean up his files; he was in the process of leaving the crime unit at the time.

Having departed the crime unit on December 25, 2015, P/C Quemby testified he added a supplementary report on the E.C. file, in respect to the SAEK, on December 26, 2015. P/C Quemby stated this report would have gone to his platoon supervisor, Sgt Benn for approval, not to D/Sgt Enright.

P/C Quemby agreed when he left the crime unit, he had left some open files. He was aware on July 18, 2017 a complaint was lodged by the "C" family. He was aware the PSB investigator D/Sgt Leigh was trying to obtain information on the details of the crown consultation but he was not aware she was having difficulty getting the information from him and so she reached out to D/Sgt Enright.

P/C Quemby testified he could not recall but it was possible D/Sgt Enright came to see him at the detachment to get the details of the crown consultation. He did not recall he responded that he "*would have to check*" and whether D/Sgt Enright asked "*you did meet with the crown, right?*" and he said "*think so, not sure, got to check*" or words to that effect. He did not recall either way if that conversation happened.

P/C Quemby was shown an email²⁰ dated October 20, 2017 from D/Sgt Leigh to P/C Quemby and D/Sgt Enright asking about details of the crown consultation. D/Sgt Enright replied on October 23, 2017 indicating she was not certain whether P/C Quemby had responded but that she had a conversation with him and there had been no crown consultation. He agreed that he would have got back to D/Sgt Enright that there had been no crown consultation. P/C

¹⁸ Exhibit 44: Email between D/Sgt Enright to P/C Quemby [October 1, 2015]

¹⁹ Exhibit 45: Supplementary Report [October 1, 2015]

²⁰ Exhibit 47: Email chain between D/Sgt Leigh and P/C Quemby and D/Sgt Enright [October 20, 2017]

Quemby acknowledged his email²¹ to D/Sgt Leigh dated October 25, 2015 indicating no crown consult occurred, as he, D/C Herrell and D/Sgt Enright were all of the opinion there were no grounds and P/C Quemby saw no reason for a crown consult.

Re-examination

P/C Quemby confirmed he stored the SAEK in the vault on July 30, 2015 and he added the report on December 26, 2015. Further, he stated he did not know when he advised the victim and her family that there were no reasonable grounds for the charge, but he entered the related supplementary report on October 1, 2015.

D.C.

Examination in Chief

D.C. testified she is the mother of E.C. and on June 13, 2015 she and her husband were picking their son up from school in Guelph when her daughter called and asked to speak to her brother. D.C.'s son told her E.C. had been sexually assaulted. D.C. spoke to her daughter and advised her to go to the police.

D.C. explained she accompanied her daughter to the hospital for the purposes of a SAEK; a victim services representative was there at the hospital with them. D.C. described the examination as taking two and a half hours and her daughter was exhausted. D.C. testified that after the examination, Nurse Waters brought her in and told her that her daughter had received bruising and some other injuries; Nurse Waters told D.C. she believed this was "rape and forced" and the attack was planned. D.C. was very complimentary about the victim services involvement throughout this investigation.

Following the police interview, D.C. described that her daughter emerged from the interview with P/C Quemby upset as to how she was treated. E.C. informed her mother about her concerns about P/C Quemby including: he kept leaving the room; told her it did not sound like rape to him; asked why she did not push them off; he indicated that he had drunk too much before and woke up with someone he would not have, had he been sober. She described that her daughter indicated that she felt she was being scolded by a father, not speaking to a police officer.

D.C. testified that her daughter had follow-up appointments, medical and counselling, and at one of those appointments they learned on July 17, 2015 that the SAEK had not been picked up yet. She contacted victim services who told them that even if what P/C Quemby said implied what her daughter understood was said, it was unprofessional; victim services told her to contact P/C Quemby's boss.

²¹ Exhibit 48: Email chain between D/Sgt Leigh and P/C Quemby and response [October 26, 2017]

She testified that on July 17, 2015 she contacted D/Sgt Enright and told her the concerns regarding P/C Quemby and some of his comments. D.C. shared her concerns about P/C Quemby including his comments about being drunk before and woken up with somebody that he would not have if he was sober; why did E.C. not push them off; twisted things E.C. had said. D.C. stated that D/Sgt Enright allayed their fears about P/C Quemby leaving the room advising it is normal practice when an interview is monitored. D/Sgt Enright said she would review the statement and a meeting was set for July 23, 2015. D/Sgt Enright shared with them, it was sometimes difficult when alcohol was involved and a crown attorney can determine if there is a reasonable prospect of conviction.

D.C. and E.C.'s concerns were discussed again when they met with D/Sgt Enright on July 23, 2017. D/Sgt Enright had advised she had watched the video interview and expressed that P/C Quemby was sympathetic and some questions in relation to pushing off [the suspects] were in respect to possible future court implications. D.C. advised her daughter had inquired about her tights being ripped off. D.C. testified that D/Sgt Enright advised they were irrelevant and it was difficult to get warrants.

In discussing E.C.'s mention of a flash of a phone, D/Sgt Enright advised the suspects were asked but that *"you cannot just take people's phones."* D.C. testified that she asked whether the men were being investigated as in, *"is this something they were known for"*; she stated that D/Sgt Enright told her that for privacy reasons you cannot investigate people's backgrounds. The SAEK still was not picked up and the "C" family was very angry about that; D/Sgt Enright advised that one of her officers would pick it up.

D/Sgt Enright explained the process to them about the need for reasonable grounds to lay a charge and the statements would be reviewed with respect to a reasonable prospect of conviction and that was up to the crown attorney. D/Sgt Enright explained that physical evidence could change things. D/Sgt Enright spoke to E.C. in private to discuss potential discrepancies in the video statement. When Mr. and Mrs. C. returned to the room a few minutes later, D.C. advised her daughter was perturbed. E.C. wished for a copy of her statement and was told the police *"do not do that"*. D/Sgt Enright assured them that P/C Quemby would update them on the investigation. The "C" family met with victim services after and E.C. shared her anger saying D/Sgt Enright manipulated what she said.

D.C. had several discussions with D/Sgt Enright and on one occasion she shared the injuries to her daughter's mouth with D/Sgt Enright. D.C. testified that on July 31, 2015, she contacted D/Sgt Enright indicating the SAEK still had not been picked up and that was negligent; further, P/C Quemby had not contacted them with any updates. D.C. testified that the next steps mentioned by D/Sgt Enright included a package for the crown attorney; the official statements to go on, but the tights were not relevant.

D.C. testified that on August 5, 2015, P/C Quemby left a message advising he was doing more interviews and he would update them on the package for the crown. Her daughter who had moved to Calgary at this point called and was mad that P/C Quemby had interviewed her boyfriend, two months after the incident. P/C Quemby told D.C. he would call with any feedback.

D.C. testified P/C Quemby advised he would contact them in two weeks but four weeks went by without a call. On September 11, 2015 D.C. called P/C Quemby and asked him the status of the package for the crown. He told her they had a 'round table' with the detectives and the crown [attorney] with all of the evidence and they had decided there were no reasonable grounds to proceed with criminal charges.

D.C. outlined that P/C Quemby explained the investigation was not going any further but it made E.C. no less a victim. He admitted the SAEK was not processed at the lab but he talked to Nurse Waters and he thought that there was "*not rougher than normal sex.*" D.C. reminded him of the bad injuries to E.C.'s mouth and he explained one had to look at things in totality. P/C Quemby told her the SAEK was stored in the forensic OPP storage. She cried on the phone and told him "*...it is so sad that the OPP does not take rape of 19 year old seriously*". P/C Quemby said they did. Her understanding after this call was that the investigation was not going any further. She was not aware if D/Sgt Enright was at the 'round table.'

Examination by Public Complainant E.C.

No questions for the witness.

Cross Examination

D.C. agreed that she had never seen the video interview of her daughter and her information is from others. When asked whether she was aware her daughter did not want the men charged, D.C. advised that her daughter said P/C Quemby "*had her so twisted*". She agreed this tribunal was not about P/C Quemby but about D/Sgt Enright and whether she supervised P/C Quemby appropriately. D.C. concurred that at the July 23, 2015 interview with D/Sgt Enright she was not aware her daughter had consented to some acts. She heard for the first time on this day of the PSA hearing that her daughter consented to some sexual acts including oral sex.

D.C. agreed that she had not seen the video but her daughter was upset and that is what triggered the call to complain on July 17, 2015. The first issue raised was the inappropriate comments of P/C Quemby in the interview but she was not aware D/Sgt Enright had admonished and counselled P/C Quemby about his conduct prior to the July 23, 2015 meeting. She disagreed that D/Sgt Enright told her she thought P/C Quemby made some inappropriate comments, testifying that D/Sgt Enright kept saying P/C Quemby was sympathetic. She denied that D/Sgt Enright apologized if her daughter felt mistreated and she indicated P/C Quemby was prepared to offer an apology. She did not recall this nor that

someone in the family indicated that it was not necessary for P/C Quemby to come in.

The second issue in relation to P/C Quemby leaving the room during the course of the interview. D.C. explained that D/Sgt Enright told her that this is normal for an officer to leave the interview room to speak to a counterpart. She testified she does not know whether this is normal as she does not know the inner working of the OPP.

D.C. agreed she was not aware after she notified D/Sgt Enright on July 17, 2015 that the SAEK was not picked up, that D/Sgt Enright tasked P/C Quemby to pick up the kit the following day. She further stated she would have expected the supervisor to task it before that. She testified that she had been a supervisor before and she knew what her people did.

D.C. testified about the conversations she had with P/C Quemby in August and then on September 11, 2015 about the case, ultimately he advised after a 'round table' with detectives and the crown attorney there were no reasonable grounds to lay criminal charges. She was clear about this conversation as she wrote it down. At that point she believed the case to be closed.

D.C. testified when she questioned D/Sgt Enright about the tights not being seized, she was told they were irrelevant. When it was presented D/Sgt Enright may have indicated something like, the tights may be of limited value and may not be relevant, D.C. stated she made note of the word "*irrelevant.*" D.C. agreed she has never seen E.C.'s video statement and was not aware the tights were ripped prior to a sex act consented to by E.C. Further, in respect to seizure of the tights and the cellphones, D.C. admitted she was not aware of what was required to obtain a search warrant including a sworn affidavit.

D.C. agreed that she had been fundamentally misled by P/C Quemby about the crown consultation that is now known to not have happened. She agreed that if the investigation had been done followed by a crown consultation as directed by D/Sgt Enright then she may not have been happy with the result but she would have been satisfied. She agreed P/C Quemby left her with the impression the crown attorney agreed with him.

Re-examination

No further questions.

E.C. (Complainant)

Examination in Chief

E.C. testified about her activities in relation to reporting the sexual assault including attending the OPP, the hospital for purposes of a SAEK and returning to the OPP detachment to provide a video statement to P/C Quemby. E.C. testified the SAEK procedure was lengthy and painful and Nurse Waters told her about the injuries to her lip and the abrasion to her labia.

E.C. testified prior to and during the interview her state was numb, like she was sleepwalking, like a robot. E.C. stated that after the interview she moved into a state of confusion, disbelief and anger. In her testimony E.C. reviewed her concerns about the conduct about P/C Quemby in the course of that video.

When questioned about her indication that she did not want the suspects charged or knowing she had gone to the police, E.C. testified she felt helpless and she just wanted him to hear her and believe her. She testified she was not asked about injuries or drugs; she believed the investigation was ongoing. E.C. testified she discussed her injuries when she met with D/Sgt Enright on July 23, 2015. She testified D/Sgt Enright discussed some things from her video but they were taken out of context. She testified she was so traumatized when she gave the statement she did not remember. E.C. testified that after July 23, 2015 she had no further interaction with anyone from the OPP as her mother was the contact.

E.C. testified she started doubting herself until she received disclosure in P/C Quemby's misconduct case. She testified that for two years of her life she lived with not knowing exactly what she said in the interview and so she was doubting herself. She had decided to go to the police after speaking to her boyfriend but she clarified it was a decision she had made herself; she was not pressured.

Evidence by E.C.

E.C. wanted to clarify the stance about not wanting to lay charges and that considering what she had been through and how she was treated in the interview, the comment was taken out of context. Given the trauma she had undergone, she was not thinking straight.

Cross Examination

E.C. was questioned about the meeting with D/Sgt Enright on July 23, 2015 and her recollection of the details was limited. However, she testified she felt that what she had reported about P/C Quemby saying something about him drinking too much and waking up to regret was similar to what she said, he had said. She testified D/Sgt Enright provided her quotes of what she had said in her interview, but not quotes of what P/C Quemby had said.

Re-examination

No re-examination.

Public Complainant

E.C. did not call any witnesses.

Defence

D/Sgt Andrea Enright

Examination in Chief

D/Sgt Enright outlined her family, education and career background. She was a frontline officer beginning in 1994, then in the street crime unit in 2004 until moving to the crime unit in 2005. She was a detective in the unit for approximately ten years and was promoted to D/Sgt of the crime unit on July 15, 2015. D/Sgt Enright testified it was challenging to supervise those you had previously worked alongside. She outlined numerous commendations and career achievements. D/Sgt Enright remained the ACS until January 16, 2018 when she was off work for work related stress related to numerous death investigations, returning to duty in March 2019.

Early in her testimony D/Sgt Enright expressed the desire to refer to a shield chart to assist her. The shield chart, essentially an excel sheet was created by D/Sgt Enright to guide her and help her locate notes related to her testimony. The tribunal allowed the document as a tool to facilitate her testimony and enhance the efficiency of the proceedings but it was not be relied upon as evidence.

Exhibit 40 was provided to the witness and she agreed based on the synopsis she read it and it appeared to be a consensual event. She contacted D/C Herrell and discussed the occurrence and during the call he indicated the victim did not want charges and it was consensual. D/C Herrell cleaned up the synopsis and sent it back to her before it was sent to D/S/Sgt Fredericks. P/C Quemby changed the clearing status to unfounded on June 14, 2015 prior to her returning from vacation so she would not have been aware of the change. When she returned there was no discussions about the file and both D/C Herrell and P/C Quemby were on leave.

D/Sgt Enright testified that as a primary investigator, P/C Quemby had the knowledge, skills and ability to handle this case; he had the course and extensive experience as did the other member supervising him at the time.

D/Sgt Enright testified that heading into June 17, 2015 she was unaware there were any issues with the file. On that day D.C. contacted her and indicated concerns about how her daughter had been spoken to by P/C Quemby and that the SAEK had not been picked up. She indicated she was surprised the SAEK had not been picked up. Further, she was confused because D.C. indicated they wanted an investigation when she had been told it was over. Because it had turned into a complaint it was her role to address it and determine the next course of action. She asked P/C Quemby for a copy of the statement and prior to getting it she tasked him with the meeting and to pick up the SAEK. She expected he would pick up the SAEK.

D/Sgt Enright testified P/C Quemby provided the video statement and reinforced that the victim did not want charges. Having reviewed the statement she had concerns about the opinionated statements that he made, the conclusions that he jumped to, things that he said during the interview and how he conducted himself. She went through the interview in detail and evaluated the strength of the case and it fell short of reasonable grounds.

Prior to the meeting with the 'C' family on July 23, 2015 she met with P/C Quemby and told him he had been opinionated in the interview, his conduct and opinions in the interview were not appropriate. She advised him she was going to apologize for what he had said and for him to wait in the detachment; P/C Quemby felt badly for the way he made the complainant feel.

July 23, 2015 Meeting with the Family

D/Sgt Enright testified the family had a list of things to address with her regarding the investigation. She was taken aback because she thought the complainant did not want charges laid. She apologized for what P/C Quemby said in the interview and offered for him to come into the meeting to apologize. She wanted to clarify the remarks that they claimed he had made. The family did not want him to come in and apologize.

D/Sgt Enright testified that in the meeting she was not prepared to talk about why certain things were not done because she was under the impression that the complainant did not want charges laid. When discussing the issue of the tights, because E.C. was an adult, she needed to ensure it was okay to discuss this in front of her parents. E.C. did not want them in the room and the parents excused themselves. The fact the tights were ripped and then the complainant consented to oral sex and liked it, the tights may or may not have been relevant.

D/Sgt Enright testified she went back to where P/C Quemby should have explained things to E.C. She outlined reasonable grounds, reasonable prospect of conviction and discussed areas of where her statement could be called into question. She explained it would be difficult to move forward, it would be challenging but *"it was not that I did not believe her"*.

D/Sgt Enright explained to E.C. she could not legally provide her a copy of her statement. In terms of the cellphone and any pictures taken she tried to explain about the requirements for a warrant for the phones. An affidavit would have been required and without specific information on whose phone she did not believe a warrant could have been obtained.

In the meeting E.C agreed D/Sgt Enright could communicate with her parents and advised them that this matter would remain open, P/C Quemby was to continue with the investigation because she was now wanting to go forward.

D/Sgt Enright explained the crown consultation to the family as she felt it was fair to this family, in light of what was said in the interview and the investigation needed to be finished. After the meeting she had another discussion with P/C Quemby after meeting. D/S/Sgt Collins was also

present at this meeting. When questioned about whether she reprimanded P/C Quemby for failing to follow her direction, D/Sgt Enright testified she followed the steps of progressive discipline and counselled him. Not specific to this case, she documented concerns in an email. She noted that had P/C Quemby stayed in the crime unit it is likely she would have moved to the next step of formal documentation.

D/Sgt Enright testified it was difficult to supervise subordinates if they are lying to you and when you believe they are doing things they are not. It goes against everything a police officer should be doing; it was disrespectful to lie to the victim of a sexual assault and it goes against everything she believed in. She has always treated victims of crime with the utmost respect. She considered the file to be closed.

In her role as ACS she oversees operations at three sites, with crime offices in each site. Her office was in Cobourg and there may not always be face to face meetings with detectives but she makes efforts to do so. In respect to the volume of work, detectives have large caseloads and are on-call and expected to answer calls after hours. At the time of this incident she had her own caseload as well as all the responsibilities of the ACS role.

On July 30, 2015 she had addressed everything she could in relation to the E.C. investigation. She had left a message for D.C. and spoken to P/C Quemby prior to and after the call. P/C Quemby advised her that he had picked up the SAEK, had spoken with nurse. He related that the nurse had apologized that she did not tell him about an injury to E.C. and that she [the nurse] had not seen this before. She testified that at this point she said to P/C Quemby that there is physical evidence corroborating the allegations and it needed to all go to the crown. D/Sgt Enright testified that at the time she made it clear to him she wanted a crown consult done. She testified she was forceful in her words and was "ticked off". Knowing what she knows now she does not believe the information he gave her at the time.

Cross Examination

D/Sgt Enright testified she advised P/C Quemby when meeting with him in the presence of D/Sgt Collins to obtain formal statements with the suspects and prepare the package for the crown consultation. When counsel suggested there was no follow up by her after July 31, 2015 regarding this task and noting she did not ensure the task was complete, D/Sgt Enright testified she had a conversation with P/C Quemby on August 27, 2015 and it was concluded as she believed he did the crown consultation. She agreed he marked the related task *complete* on October 1, 2015 and she approved it on October 5, 2015 after their meeting about his caseload. When questioned if she verified the three males were interviewed, D/Sgt Enright stated that information was in P/C Quemby's supplementary report. She agreed he did not use the word crown consultation in his report but that he was using the terms 'reasonable grounds' and 'reasonable prospect of conviction' interchangeably.

In relation to the August 27, 2015 conversation with P/C Quemby about the crown consultation and the conclusion of the case, D/Sgt Enright was asked why she did not mention this in her duty report or her PSB interview. She stated that at the time of her interview she believed she may have dropped the ball, but when she reviewed all her emails which she did not have at the time of the interview, she realized she did not 'drop the ball' and that she is a diligent officer.

When asked about discussions with P/C Quemby about this file after August 5, 2015, D/Sgt Enright testified he had asked for D.C.'s phone number and she believed he was following the directions she had given him.

D/Sgt Enright agreed that on September 24, 2015 she had a discussion about P/C Quemby's tasks. She testified that she is uncertain what she reviewed on Niche but one can print an officer's caseload. After she reviewed whatever she did on Niche, she was of the opinion his caseload was not too extensive. She clarified he verbally went over everything on his caseload and those are the related notations she made that day.

D/Sgt Enright testified she sent P/C Quemby an email on October 1, 2015 in relation to reviewing his caseload and she had a meeting with him the following day. When asked about the tasks associated to this occurrence and why they were not reviewed by her before October 5, 2015 when she approved one, D/Sgt Enright testified he would have had to mark the tasks complete. As a new supervisor, she was not aware of how one can check for unallocated tasks, such as those outstanding that were not marked completed. She had not had Niche supervisory training at the time. She explained Niche was a tool to assist in getting cases organized but it is only as accurate as the information put into it.

When questioned about the weekly emails to region regarding caseloads wherein the cases would remain until concluded, D/Sgt Enright testified she would report on what officers were doing weekly but would never put that an investigation was concluded.

D/Sgt Enright agreed that when a supervisor orders a subordinate to do something they should get it done, and it is the responsibility of the supervisor to ensure it has been done adding *"unless they were insubordinate directly...and lying."* She testified she did oversee him in this case. She testified she had never had to manage an officer like this before. She directed him to do the crown consultation. She did not inquire the name of the crown attorney from P/C Quemby. At this point she trusted he was doing as directed. She had never had previous issues with him; he was an experienced officer. As problems came up she dealt with them.

D/Sgt Enright testified she had no concerns until she saw the interview. Although his attitude was originally this was consensual, she testified his attitude changed when she had a discussion about what was in the kit. P/C Quemby indicated to her he had to do further follow-up.

The prosecution questioned D/Sgt Enright as to why she did not put P/C Quemby on notice that disciplinary actions may follow. D/Sgt Enright testified she was a brand new supervisor, she sought assistance from her peers and bosses but she agreed that it was something that could have been done. She agreed it was the role of supervisors to ensure poor performance was adequately reprimanded.

Examination by E.C.

D/Sgt Enright agreed that P/C Quemby never directly asked E.C. in the interview as to whether she wanted charges laid and further she appreciated that the victim shaming comments he had made had caused her to panic and plead to the police to just believe her.

D/Sgt Enright agreed she was a new supervisor in July 2015 and was supervising officers who had previously been her peers and she had her own caseload as well as supervisory duties. She further agreed she had a large workload, had not been trained in traumatic memory nor had she had Niche supervisory training.

D/Sgt Enright agreed this was her first complaint as a supervisor as well as having an officer (P/C Quemby) not obeying her orders and lying to her as well. She agreed she was dealing with a victim who had been offended and re-victimized by her officer.

E.C. questioned D/Sgt Enright about her awareness that P/C Quemby was not doing his tasks but that she did not have him physically show her the tasks were completed. D/Sgt Enright stated generally, [as a supervisor] she would not directly view the contents of the SAEK, as the officer would always inform her what was in the kit.

Knowing P/C Quemby had done things neither one of them knew about, E.C. asked, where she could have turned. D/Sgt Enright apologized to E.C. for how she had been treated by P/C Quemby. D/Sgt Enright testified this goes against everything she believes in and that E.C. did the right things.

Re-examination

In relation to the prosecution's criticism about the tights and getting a warrant, D/Sgt Enright testified she became aware of the tights, a month after the incident. In her view, the prospect of someone retaining ripped tights after that time period was not plausible. She agreed to seek a warrant to obtain would be a judgement call for an investigator.

In relation to a warrant for any photos, D/Sgt Enright agreed that an affidavit must be full, frank and fair and would include information that the evidence may not exist, the suspects denied, and E.C's statement was less than definitive. In D/Sgt Enright's opinion a warrant could not be obtained and a consent was a judgement call.

In respect of the issue of the crown consultation, contrary to the questions from the prosecution, D/Sgt Enright indicated it would be unlikely one would lay charges after such a consultation given there would be related liability issues.

PART III: SUBMISSIONS

I will outline a summary of the submissions made by each party to this hearing. It is meant as a summary only and may not capture every detail within the respective submission. Regardless, I have carefully reviewed and considered each party's position.

Before the commencement of the hearing, defence counsel highlighted that this tribunal was not convened to determine whether or not a sexual assault occurred. This is an administrative tribunal dealing with an employee-employer issue and it is not the role of this tribunal to determine whether or not a sexual assault took place. The role of this tribunal is to determine whether D/Sgt Enright, as supervisor of P/C Quemby, is guilty of misconduct.

Summary of Defence Submissions

Defence counsel submitted the prosecution has failed to prove their case and D/Sgt Enright is not guilty of neglect of duty. The acts, thoughts and concerns of D/Sgt Enright are far from neglect and she demonstrated beyond reasonable diligence and provided direction to P/C Quemby. The standard for misconduct was not met. Mr. Brauti reminded the tribunal that this is not about meeting the standard or perfection and one cannot go back and apply a micro analysis about what might possibly have been done better. One cannot look at this with the benefit of hindsight; this involved a mistake or an inadvertent misstep but it is not professional neglect. Misconduct in this matter would require some wilfulness or intention.

Defence counsel submitted that D/Sgt Enright was misled throughout this investigation which started on June 13, 2015 when she was not on duty. As early as June 14 2015, having reviewed the summary of the occurrence, D/Sgt Enright was being misled. The information was coming from D/C Herrell who had monitored the interview and would have known it was inaccurate. He submitted that D/Sgt Enright was not just misled by P/C Quemby but by D/C Herrell as well. D/S/Sgt Fredericks also came to the conclusion as well that it was consensual, based on the summary

Notwithstanding that P/C Quemby marked this as unfounded, he did do some of the things he was directed to do. He interviewed the three men involved. D/Sgt Enright had no reason to deem supervisory steps were necessary based on the information she received – there were no grounds, the complainant did not want charges and the suspects' denials saying it was consensual and the complainant was on the phone with her boyfriend at some point. D/Sgt

Enright was not made aware of the issues in this case until July 17, 2015 when she learned about the concerns of the interview by P/C Quemby and of the SAEK not being picked up.

The evidence was undisputed that on July 23, 2015 when D/Sgt Enright met with D.C. and E.C, although there was no evidence before that date, the status as of that date was changed at that meeting. The family wanted the investigation pursued, she listened to them and talked about what could and could not be done, setting expectations.

Defence counsel submitted D/Sgt Enright addressed the concerns brought to her and dealt with them one by one including:

- 1) The attitude and comments of P/C Quemby - he had already been admonished and reprimanded regarding his conduct before the meeting and there was a follow up after the 'C' family meeting. Defence counsel submitted the evidence of D/Sgt Enright was uncontested and supported by P/C Quemby's testimony that she felt the family was owed an apology. Despite the testimony that D.C. did not recall an apology being delivered, it defies logic that D/Sgt Enright had P/C Quemby standby to apologize and then no apology was made.
- 2) The issue of P/C Quemby leaving the room 1-2 times – D/Sgt Enright explained that is completely normal and it is a matter of diligence.
- 3) The SAEK was not picked up - D/Sgt Enright immediately directed P/C Quemby to pick up the kit. Learning on July 30, 2015, the kit had not been picked up, D/Sgt Enright ordered P/C Quemby to pick the kit up. There was no evidence of prior issues with P/C Quemby's work and D/Sgt Enright had no reason to believe he would not follow direction. In a meeting with D/S/Sgt Collins and D/Sgt Enright, P/C Quemby agreed he would pick up the SAEK, interview the suspects and conduct further investigation.
- 4) The issue of the tights not being seized – D/Sgt Enright did not believe a warrant could be obtained, the tights were ripped prior to a consensual sex act, they did not make a difference in the context of the case, would not lead to reasonable grounds and was a discretionary action in the investigation.
- 5) Possible photos on the suspect's phone – given the information, it was a simple judgement call that a warrant would not be possible in the circumstances.

Defence counsel submitted that even as she was about to go on leave, D/Sgt Enright included the investigation on a weekly update and further sent an email to P/C Quemby to emphasize the importance of updating D.C. and she also contacted D.C. herself to advise P/C Quemby was actively investigating the matter and would be in touch with updates. He submitted this is not the email of a neglectful supervisor. Defence counsel asked the tribunal to question the probability of P/C Quemby lying to D/Sgt Enright about the same issue of the crown consultation as he admitted to doing to D.C.

She and P/C Quemby had overlapping leave and the day following his return to duty, D/Sgt Enright has a discussion with him regarding a robbery case, and the E.C. investigation was

discussed. If the tribunal is satisfied this discussion took place, whether or not additional steps could be taken, if the crown independently reviewed the investigation and shared the same view, the investigation was over. Contrary to the crown's statement that further investigation could be done, defence counsel submitted if the crown's office indicated there was no reasonable prospect of conviction, this is not normally followed by further investigation.

Finally, defence counsel reminded the tribunal that D/Sgt Enright was a brand new supervisor and had never before dealt with a complaint as a supervisor nor had a Niche supervisory course. One cannot simply judge an officer's conduct by the rank but experience is important. Defence counsel submitted that even the harshest critic would have suggested training may have helped and things could possibly been done differently. Training and performance issues do not equal neglect.

Summary of Prosecution Submissions

The prosecution provided cases to support the test for neglect of duty and the duty of supervisors to supervise. I have outlined the test for neglect of duty in my analysis. In *Fright and Hamilton Police Service*²² the Commission highlighted:

Supervisors must supervise. The buck stops there. We find that there is a clear and unequivocal policy in place in respect to this issue. Supervisors have a duty to ensure that complete signed reports are filed. This did not occur.

The prosecution submitted exhibits 30 and 31 outline the OPP policy in respect to supervision and the role of the ACS. D/Sgt Leigh testified both policies applied directly to D/Sgt Enright. The issue is whether D/Sgt Enright did that duty or if she was neglectful.

The prosecution outlined the key facts that were established including that P/C Quemby's investigation was deficient as outlined in the Agreed Statement of Facts in his own misconduct matter. The video speaks for itself and P/C Quemby had already made up his mind. The SAEK could have revealed drugs and or alcohol and it was a missed opportunity.

In respect to P/C Quemby's interview of E.C., in her PSB interview²³, D/Sgt Enright stated she was not impressed and his comments were not appropriate and were "victim blaming". The prosecution submitted that D/Sgt Enright was aware of the investigative deficiencies and described this as the first red flag.

²² *Fright v Hamilton (Police Service)*, 2002 ONCPC 9 (CanLii)

²³ Exhibit 33: Transcript of E.C. interview, Pg 7

The prosecution outlined the second red flag was P/C Quemby's supplementary occurrence report²⁴ dated June 18, 2015 and his conclusion of "unfounded". The report did not include all of the details and it was marked as no further action despite the kit not being picked up.

The prosecution outlined that on July 17, 2015, D.C. had called D/Sgt Enright and told her the SAEK was not picked up and she disclosed injuries to E.C. When D/Sgt Enright reviewed the video statement of E.C. by P/C Quemby on July 22, 2015 she would have seen the video was not like the summary. The prosecution submitted this tribunal can draw inference that D/Sgt Enright should have been aware that the video did not match the report, having reviewed it 5 days later.

In respect to the SAEK, the prosecution submitted there were concerns brought forward by D.C. about the SAEK not being picked up several times and P/C Quemby failed to pick it up despite direction to do so. It was submitted D/Sgt Enright was aware P/C Quemby was dragging his feet. His cavalier attitude towards the investigation was a red flag that D/Sgt Enright should have been aware of and she was aware of the serious concerns brought forward by D.C. and E.C.

The prosecution outlined that between July 17 and August 5, 2015, the evidence shows some supervisory steps. P/C Quemby was tasked to conduct interviews and pick up the SAEK and both testified to some conversations during this time period. Prior to this time D/Sgt Enright was not fully aware of the case and an early email by D/C Herrell was not accurate but from July 17, 2015 onward, D/Sgt Enright became aware that the SAEK had not been picked up and there were injuries. D.C. testified that D/Sgt Enright told her she would be reviewing the SAEK but she never reviewed the SAEK results personally.

The prosecution submitted D/Sgt Enright did not assign a task to P/C Quemby to pick up the tights and there were no efforts in this regard. Further, although there was the prospect of a crown consult was discussed, there was no direction or order for that to occur.

It was submitted that August 5, 2015 was an important date as after that date no further supervisory duties were undertaken. After that date P/C Quemby continued to fail to conduct a thorough investigation; he never consulted the crown attorney and the occurrence report does not reference such a consultation. P/C Quemby never had the SAEK tested despite being informed by Nurse Waters in respect to the contents indicating forced oral sex and trauma.

Exhibit 27 contains information that E.C. may have been drugged and samples of blood may have been relevant however they were not tested and were destroyed.

²⁴ Exhibit 25: RMS occurrence SP15151699

It was submitted that after August 5, 2015, D/Sgt Enright never followed up and never took any more supervisory duties to ensure a thorough investigation.

The prosecution outlined the email from D/Sgt Enright to P/C Quemby on July 31, 2015²⁵ wherein she provided D.C.'s phone number to him (on August 5, 2015) was the last document of her involvement. D/Sgt Enright was on vacation and then P/C Quemby was on vacation. He did not recall any conversation regarding the investigation with D/Sgt Enright beyond this date and he explicitly stated he did not tell her he consulted the crown attorney.

The prosecution submitted that D/Sgt Enright justified a lack of action based on an alleged conversation with P/C Quemby on August 27, 2015 wherein he indicated he spoke to the crown and she thought the case had been concluded. It was submitted this alleged conversation was not credible and no weight should be given. The prosecution submitted the conversation was not in her notes, nor her duty report nor was it mentioned in her PSB interview.

The prosecution outlined that P/C Quemby took ownership for his neglect and testified that D/Sgt Enright was not a neglectful supervisor. It was submitted that his answer that he never advised D/Sgt Enright about a crown consult was credible. Based on common law and Police Orders as a supervisor D/Sgt Enright was required to provide investigative support; these duties exist as a crucial role to prevent issues from arising or steps missed. All the red flags have been outlined and this investigation warranted supervision. Supervisors are to prevent cases such as this and D/Sgt Enright was aware of the major issues of this case from July 17, 2015 onwards.

Summary of Public Complainant Submissions

E.C submitted that she understood the limited experience D/Sgt Enright had as a supervisor but she does not believe it excuses her from ensuring a thorough investigation was completed to the high standards of the OPP. She came to the police thinking they could help when it is known P/C Quemby did quite the opposite.

E.C. expected going to a superior would resolve those issues but that did not occur. She felt she had nowhere else to go and it was not right that it took her coming forward to recognize something was off in this case. Someone should have become aware of that without the need for her to come forward. E.C submitted D/Sgt Enright in her PSB interview said *"it should have been different for her [E.C.]"* and that comment stood out to her as it should have.

²⁵ Exhibit 43: Email chain between D/Sgt Enright to P/C Quemby [July 31, 2015]

Defence Counsel Response

Defence counsel agreed with E.C.'s submission that it should have been different for her. He however noted the question was *why* it should have been different for her. He puts the issue squarely at the feet of P/C Quemby. Defence counsel submitted that the prosecution wants me to accept that P/C Quemby was forthright and honest when he testified that he did not mention a "*crown consult*" to D/Sgt Enright. This is despite the fact that he admitted in his own misconduct hearing that he lied to the family in relation to the same point.

In addressing other issues including the tights, defence counsel submitted there was no clear and convincing evidence to indicate the tights were not seized. The notes of P/C Clark indicated the underwear and tights were seized and there was no cross examination on that particular issue. It was submitted the prosecution failed in relation to that issue.

In terms of the SAEK, there was no contradictory evidence. He reminded the tribunal D/Sgt Enright testified that she wanted to review the kit but that was through P/C Quemby. Practically the SAEK was at a different location than where D/Sgt Enright worked and there was no evidence at this point that P/C Quemby had lied to her.

Defence counsel reviewed the notes of D/Sgt Enright from July 30, 2015 wherein she noted the conversation with P/C Quemby in relation to the "*crown consult*." The suggestion that the conversation on August 27, 2015 between P/C Quemby and D/Sgt Enright did not happen, ignores the evidence. In cross examination, P/C Quemby agreed such a conversation may very well have taken place and he also agreed he may have been asked if the family had been updated and he said "yes". This partially corroborates the evidence of D/Sgt Enright and without evidence to the contrary, defence counsel questions how the tribunal can come to any other conclusion. Additionally, D/Sgt Enright testified that P/C Quemby said a crown consult was conducted and he admitted he said the phrase to D.C. The tribunal in P/C Quemby's misconduct hearing made a finding that he may have conflated the two terms reasonable grounds [to lay charges] with reasonable prospect of conviction [to proceed with charges].

Defence counsel submitted given the actions taken by D/Sgt Enright and her email on July 31, 2015, it makes no sense that she would not have followed up on the investigation. Logically, it defies logic that the conversation would not have taken place.

In addressing the prosecution submissions that D/Sgt Enright abandoned the file on August 5, 2015, she went on leave and then P/C Quemby was on leave. When they were both back on August 27, 2015, D/Sgt Enright was told the matter was completed and there was no notation as there was nothing to note. She explained that in her PSB interview she did not have everything and it was only when she obtained her emails and the documentation that she realized she had not dropped the ball.

PART IV: ANALYSIS

Analysis

Given the totality of evidence and guided by the submissions of counsel, in order to make a finding of guilt in this matter, I must be satisfied that there is clear and convincing evidence. My understanding of clear and convincing evidence is that it is greater than a balance of probabilities but less than the threshold of beyond a reasonable doubt as defined in the Criminal Code. The evidence must be so clear and reliable as to convince me the allegations are true and the facts in issue are satisfied.

Throughout my analysis I have considered the credibility and reliability of the witnesses in this hearing. For each witness I have considered whether the evidence given was in “*harmony with the preponderance of probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.*”²⁶ Although, testimony was not always definitive and at times was speculative, overall I found the witnesses provided credible and forthright evidence. I will consider any conflicting evidence throughout my analysis and make a determination in respect to the evidence I rely upon to make findings.

The Commission’s comments in *Gottschalk v. Toronto Police Service*²⁷, provide me guidance as to what constitutes neglect of duty:

The charge of neglect of duty is a serious charge under the Code of Conduct. To be convicted of this charge, it must be shown that:

The member was required to perform a duty, and the member failed to perform this duty because of neglect, or did not perform the duty in a prompt and diligent manner. Once proven, the member, to avoid discipline, must show that:

[The member] had a lawful excuse for not performing the duty in the prescribed manner. ...It is not an absolute offence...there must be either “wilfulness” or “a degree of neglect which would make the matter cross the line from a mere performance consideration to a matter of misconduct.”

The prosecution highlighted neglect of duty does not always require “*wilfulness*”. In respect to the matter at hand, even without considering wilfulness, I must consider if the misconduct crossed the line from a performance issue to neglect. *Gottschalk* informs me, neglect of duty is not absolute, it must be justified; a mere mistake or a performance issue would not be considered misconduct.

²⁶ *Faryna v. Chorny* (1951) B.C.J. No 151 (BCCA)

²⁷ *Gottschalk v. Toronto Police Service* 2003 CanLII 85796 (ONCPC)

Before the commencement of the hearing, defence counsel highlighted that this tribunal was not convened to determine whether or not a sexual assault occurred. For clarity, as was outlined in the hearing, this is an administrative tribunal dealing with an employee-employer issue and it is not the role of this tribunal to determine whether or not a sexual assault took place.

The testimony of D/Sgt Leigh provided background on this investigation and the roles of both P/C Quemby and D/Sgt Enright. P/C Quemby provided testimony about his investigation and his guilty plea to neglect of duty; the Agreed Statement of Facts in relation to his plea was entered as an exhibit²⁸. Portions of that Agreed Statement of Facts will be addressed in the context of D/Sgt Enright's misconduct allegations, through my respective analysis. As a foundation for the current matter, P/C Quemby in respect to E.C.'s sexual assault investigation, pled guilty and was found guilty of neglect of duty.

I find the evidence is clear that D/Sgt Enright was P/C Quemby's supervisor at the time of this investigation. Exhibit 29 is a Daily Activity Report (DAR) screen capture indicating D/Sgt Enright was on annual leave on the day E.C. reported the sexual assault (June 13, 2015). D/Sgt Enright returned to duty on June 15, 2015. The Niche reporting system identified D/Sgt Enright as P/C Quemby's supervisor and this is supported by P/C Quemby and D/Sgt Enright's testimony. Although, this matter involved another acting supervisor (D/C Herrell) over the course of the first few days of this investigation, I find D/Sgt Enright had the duty and responsibility to provide ongoing supervision in this investigation. Although this matter does not involve allegations against D/C Herrell and I make no findings of misconduct in relation to him, I find the comments as outlined in his email²⁹ at the outset of this investigation, less than professional and disappointing.

The Commission's comments in several cases as outlined below, clarify the expectation that supervisors have a duty to supervise. The Commission in *Fright v Hamilton (Police Service)* highlighted this expectation citing:

The Appellant urges us to find that the only individuals responsible to ensure that the reports are filed were the officers who attended the scene. We cannot accept that proposition. Supervisors must supervise. The buck stops there. We find that there is a clear and unequivocal policy in place with respect to this issue. Supervisors have a duty to ensure that complete signed reports are filed. This did not occur.

The Commission in *Hewlett v OPP* highlighted that the responsibilities of a supervisor cannot be discarded or ignored and that a supervisor is:

²⁸ Exhibit 35: ASoF pertaining to P/C Quemby PSA matter

²⁹ Exhibit 39: Email chain between D/C Herrell and D/Sgt Enright [June 14, 2015]

'Responsible to ensure that the officers under [his/her] supervision satisfactorily perform their duties as assigned.' This is self-evident and does not require a specific policy or procedure.

...to provide advice and guidance while the occurrence was being investigated; afterwards, his role was to ensure that the investigation was properly completed by [his/her] officers.

While the OIC is ultimately responsible for the investigation, it is the ongoing duty of a supervisor to ensure the OIC takes the appropriate steps. The matter at hand does not involve a simple filing of a report as in *Fright* and so the analysis is more complex. *Neild v OPP* supports the proposition of the duty of a supervisor to supervise but the circumstances in that case were in respect to a death scene and temporally very limited compared to the matter at hand. Regardless, these cases support the requisite duty of a supervisor to properly supervise.

The Commission's comments in *Hewlett* assist my analysis as I consider the need for a supervisor to provide advice and guidance and to ensure the investigation was properly completed. In analyzing the steps taken by D/Sgt Enright in the course of this investigation, I will be able to assess whether her conduct meets the threshold of misconduct. I must consider whether D/Sgt Enright neglected to perform her duty or whether did she not perform her duty in a prompt and diligent manner.

To determine the reasonableness of D/Sgt Enright's conduct, I must examine her actions in light of what she knew at the time and without the benefit of hindsight. Police officers are held to a higher standard but the standard is not perfection. It is through this lens, I have conducted my analysis.

When assessing whether or not misconduct occurred, it is always important to consider the full circumstances involved. The Commission in *Neild* cited *Mousseau and the Metropolitan Toronto Police Force*³⁰:

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

At the time this investigation was reported in June 2015, D/Sgt Enright was an acting D/Sgt. She had commenced acting in that role in January 2015. On June 13, 2015, the day E.C.

³⁰ Exhibit 58, Tab 7: *Neild v Ontario Provincial Police*, OPPHD, [August 15, 2016]

attended to report the incident, D/Sgt Enright was on vacation, studying for a job competition for ACS, a role she was acting in at the time. She was ultimately successful and assumed the role of Northumberland OPP ACS permanently on July 15, 2015.

June 18, 2015

The prosecution outlined that the supplementary report filed by P/C Quemby on this date was marked 'unfounded'. The report did not include all of the details and noted "*no further action*" despite the SAEK not being picked up. At this point, given the summary provided to D/Sgt Enright by D/C Herrell and upon review of the information contained in the supplementary report this would not have raised a red flag at this time. D/Sgt Leigh confirmed in her testimony that given the information contained in the report this conclusion was appropriate.

June 30, 2015

An email from Nurse Waters to D/C Herrell on this date noted the SAEK has not been released and that there were:

...some physical injuries present, injuries present, injuries that were unusual and suspicious to us.

D/C Herrell advised Nurse Waters that P/C Quemby was in charge of that case and sent on the email to P/C Quemby, although there is no date in relation to the latter action. Although it is clear there was discussion between P/C Quemby and D/Sgt Enright after he retrieved the SAEK, there is no evidence she was in receipt of this email. The contents therein would appear to have been communicated to D/Sgt Enright by P/C Quemby in a phone call on July 30, 2015. D/Sgt Enright provided credible testimony that when learning of this information at the end of July 2015, she was "*ticked off*" and a crown consult was directed. Her July 31, 2015 notes support this knowledge and direction.

July 17, 2015

D/Sgt Enright learned of concerns from D.C. in relation to the interview conducted by P/C Quemby. She reviewed Niche that day and learned the SAEK had not been picked up and the suspects had not been interviewed. She tasked P/C Quemby on Niche with conducting follow-up specific to those items. In D/Sgt Enright's PSB interview she outlined that after her discussion with P/C Quemby about the interview, he apologized and felt sorry for making E.C. feel bad. D/Sgt Enright's evidence was that the tights and phone evidence concerned her but she was aware, "*how do we go back?*"

July 23, 2015

D/Sgt Enright met with the 'C' family and at one point privately with E.C. E.C.'s parents left the room when D/Sgt Enright gave her the option to have them present or not while she discussed some discrepancies in the video statement. In her PSB interview, D/Sgt Enright described she was doing this out of consideration for E.C. but she believed it was taken the wrong way and the family was not happy. D/Sgt Enright described that she would make the same decision

again and would not discuss details of a victim's statement in front of someone else, as E.C. was an adult. The meeting took place over approximately 45 minutes. She apologized on behalf of P/C Quemby. E.C. wanted a copy of her statement. She had explained to E.C. that it was not possible for [legal] reasons.

D.C. and E.C. through their testimony were not happy at the time of the meeting with D/Sgt Enright on July 23, 2015. Their feelings were understandable but the rationale by D/Sgt Enright about the actions she took during the meeting are reasonable and supported.

On the day of the above noted meeting, D/Sgt Enright found out from E.C. that the SAEK still had not been picked up; D/Sgt Enright provided clear and cogent testimony that she realized at the time of this meeting, if E.C. had not originally wanted charges laid then she had changed her mind. That day (July 23, 2015), D/Sgt Enright tasked P/C Quemby with picking up the SAEK and to get further statements. D/Sgt Enright stated to PSB investigators that she was surprised that P/C Quemby had not picked the SAEK up so she called him immediately and asked him to pick it up.

On that same day (July 23, 2015) in a meeting with D/Sgt Enright, in the presence of her supervisor D/S/Sgt Collins, P/C Quemby asserted he would pick up the SAEK, interview the suspects and conduct further investigation. The evidence supports that D/Sgt Enright was a new supervisor and she had no prior issues with P/C Quemby that would cause her to have concerns that he would not follow her direction. I find this evidence uncontested and credible. This assertion by P/C Quemby in the July 23, 2015 meeting, would serve to assuage D/Sgt Enright that P/C Quemby would complete a full investigation. I concur with defence counsel that a supervisor cannot be expected to follow an investigator around and double check every aspect of an investigation.

July 30, 2015

An email chain dated July 30, 2015 between P/C Quemby and D/Sgt Enright, after she learned the SAEK had not been picked up she directed, "*Adam please get this kit.*"

P/C Quemby responded that he would get it that day and then in a secondary response noted:

You realize I have had only 3 shifts since that mtg [sic] and one was taken up by the Warkworth assault and I have other investigations to complete. This kit we both know has zero evidentiary value and I am concerned about my name being dragged through the mud...

D/Sgt Enright responded:

We can talk. I just want to get the kit here and move forward.

Defence counsel portrayed P/C Quemby's response to D/Sgt Enright's email direction to pick up the kit as challenging D/Sgt Enright's authority as well as his expression of frustration due

to his caseload. I find the latter characterization as more likely. P/C Quemby described D/Sgt Enright as a diligent supervisor and one with whom he had a good relationship. Heavy caseloads are commonplace and related stressors can negatively impact communication. P/C Quemby's testimony supports D/Sgt Enright's testimony in respect to the good working relationship they shared and that she had no previous issues of concern.

I have considered whether D/Sgt Enright should have reviewed the SAEK as part of her supervisory duty. There is no evidence to support D/Sgt Enright was copied on emails or received information from Nurse Waters about concerns in relation to E.C.'s injuries. I appreciate D/Sgt Enright may have indicated to the 'C' family she was going to review the kit, but the fact she did not do so personally, does not amount to misconduct. There is more than one way to review the kit. Discussions took place between D/Sgt Enright and P/C Quemby about the SAEK and her notes at the time indicate P/C Quemby had "*further investigation he plans to do.*" She requested he keep her up to date with the results of the investigation and at that time a crown consultation was discussed.

July 31, 2015

While preparing to go on annual leave for two weeks, D/Sgt Enright called D.C. and left a message advising the SAEK had been picked up, the investigation was ongoing and P/C Quemby would keep her updated. An email from D/Sgt Enright to P/C Quemby³¹ advising him she had left a message for D.C. noted:

I advised her you were still actively investigating...you would be in touch...to provide updates because I am going on vacation for two weeks. I think it is really important to call her and let her know what's happening. Thanks for doing that.

I find this email important as it confirms this was an ongoing investigation and D/Sgt Enright set out expectations for P/C Quemby to follow in relation to keeping D.C. updated about the ongoing investigation. Although the language is not directive, the message about the expectations are clear.

August 5, 2015

D/Sgt Enright, while on annual leave responded to an email from P/C Quemby sending him D.C.'s contact information as requested. The Agreed Statement of Facts from P/C Quemby's misconduct matter outlined that he left a message with D.C. on this date indicating he had a few more interviews to conduct and then was preparing a package to take to the crown attorney. D.C.'s testimony supports the content of the message and I accept this as a finding of fact.

August 14, 2015

D.C. testified she spoke with P/C Quemby who advised her he was still preparing the package

³¹ Exhibit 43: Email chain between D/Sgt Enright to P/C Quemby [July 31, 2015]

for the crown attorney and he would speak to her in a couple weeks. D.C. was crystal clear in her recollection of this conversation. This is also supported by the same Agreed Statement of Facts. I accept D.C. evidence and find this conversation including the content as noted, occurred.

August 17, 2015

D/Sgt Enright returned from annual leave and P/C Quemby was off on annual leave. Sometime during her vacation, D/Sgt Enright received a call from P/C Quemby indicating he wished to leave the crime unit and return to frontline duties.

August 27, 2015

P/C Quemby returned from annual leave on August 26, 2015. D/Sgt Enright testified she had a telephone conversation with P/C Quemby regarding an unrelated case and E.C.'s case was discussed. My analysis in respect to this conversation, specifically related to a 'crown consult' will follow.

September 11, 2015

D.C. testified that on this date, having not heard back from P/C Quemby, she contacted him. She advised that PC Quemby told her there had been a 'round table' with the detectives and the crown attorney and it was determined there were no reasonable grounds to proceed with any criminal charges. I accept her testimony about this conversation and concur this would have led her to believe the crown attorney shared P/C Quemby's opinion that there were no reasonable grounds to proceed with charges. D. C. testified she could not recall P/C Quemby noting that D/Sgt Enright was a participant in the 'round table'.

September 24, 2015

Supported by the testimony of P/C Quemby and D/Sgt Enright, there was a heated discussion between them about an unrelated case. He was expressing issues about his workload and she indicated she did not agree. He later apologized to D/Sgt Enright.

October 1, 2015

D/Sgt Enright sent an email to P/C Quemby to set a meeting to discuss his files. P/C Quemby added a supplementary report in relation to the E.C. file. I accept P/C Quemby's evidence that he completed the report this date with the knowledge there was a pending meeting with his supervisor the following day. I find that with this report being completed, it would have been less likely that D/Sgt Enright would have engaged in direct conversations about the case than if it remained as an outstanding task.

October 2, 2015

D/Sgt Enright met with P/C Quemby about his outstanding files. Notably the investigation involving E.C. was not part of this discussion. I find this indicative that D/Sgt Enright was already satisfied the investigation was complete. This was a meeting to discuss P/C Quemby's

outstanding cases to accommodate his transition out of the crime unit and there is no reason she would not have addressed E.C.'s case had she been aware it was not completed.

December 25, 2015

P/C Quemby's last day in the crime unit.

December 26, 2015

P/C Quemby added a supplementary occurrence report³² to the E.C. investigation file noting he picked up the SAEK and it was stored in Cobourg detachment vault.

I concur with the testimony assertion of P/C Quemby and the evidence supports that D/Sgt Enright was a diligent supervisor. She provided direction verbally, via emails and Niche tasks. Exhibit 25 is the Niche report package including tasks related to Incident SP15151699 (Sexual Assault involving E.C. Through a Niche task³³ dated July 17, 2015, D/Sgt Enright assigned P/C Quemby to pick up the SAEK. When P/C Quemby marked the task as complete without adding a supplementary report, D/Sgt Enright sent the task back for 'rework' with the comments, *"Please append report regarding when SAEK was picked up and an update on what has happened with the investigation. Thanks"*.

Task #T150945491³⁴ refers to a task assigned to P/C Quemby on July 30, 2015 to *"conduct more detailed video interview of 3 males."* P/C Quemby spoke to one male directly and two by phone but each cancelled formal interviews. Although I am not convinced there was a diligent effort to obtain those formal interviews, without grounds to arrest there is nothing to compel a person to speak to the police. D/Sgt Enright would have been aware of those limitations as well.

I do not find I have clear and convincing evidence in respect to the seizure of the tights and definitively whether or not they had been seized by P/C Clark as indicated in his notes. Regardless, I am not convinced of the clear evidentiary value of the tights given the lapse of time before it came to the attention of D/Sgt Enright. Efforts could have been made by P/C Quemby to determine if the tights were at the location of the incident but after over a month lapse, the evidentiary value and likelihood of the tights being found were limited. This was a judgement call made by D/Sgt Enright and although I will consider it in the totality of the circumstances, there is limited bearing on a misconduct finding.

I have considered the potential evidence on the suspect's phone in relation to any recording. Although, it was an investigative avenue that may or may not have been taken based on the total circumstances of the allegations, I find that aspect is more applicable in relation to

³² Exhibit 46: Supplementary Report – kit [December 26, 2015]

³³ Exhibit 37: Task Report – T150872770

³⁴ Exhibit 38: Task Report – T150945491

investigative actions taken by P/C Quemby. At the time D/Sgt Enright became fully engaged and aware of these issues, I agree with her assessment that there was little evidentiary value related to the tights and there would have been challenges with swearing an affidavit for a judicial authorization in relation to the tights and the phone evidence.

The SAEK was an important piece of evidence in respect to the E.C. investigation. The tribunal evidence and D/Sgt Enright's notes support there were conversations with P/C Quemby about the SAEK and the comments about the injury to E.C.'s lip³⁵. There is no evidence that D/Sgt Enright received the email from Nurse Waters and it is clear she received her information related to this item from P/C Quemby. She relied upon the information he provided. The personal viewing of the content and results of a SAEK by a supervisor is not a normal course of action.

With the benefit of hindsight, balancing competing priorities in a busy role, I do not find the fact that the SAEK was not personally reviewed by D/Sgt Enright as an aggravating factor in potential misconduct. Although the prosecution outlined various 'red flags' present in this case that were disregarded by D/Sgt Enright, it is only fair to consider these 'red flags' in the full circumstances of this matter. Red flags are more obvious upon consideration and with the benefit of hindsight. The full circumstances of this matter must be considered including a supervisor who was not fully aware of the facts in a timely manner and who I find was misled at various points by a subordinate.

I have no doubt, if given the opportunity to re-do some things in this investigation, D/Sgt Enright may choose some different options. However, perfection is not the standard. One can always, looking back, have done better in various assignments. Despite finding D/Sgt Enright diligent and engaged, it is not lost on me that she was a brand new ACS dealing with her own caseload and ever-changing priorities associated to criminal investigations.

I have considered the submissions of the prosecution that D/Sgt Enright stopped being diligent when the "C" family stopped calling and that after August 5, 2015 she "*abandoned*" this investigation. Without reiterating the evidence, I find D/Sgt Enright took diligent steps to oversee the investigation when she became aware of the issues after July 17, 2015 and these efforts continued up until August 5, 2015 when she was away on leave and responded to P/C Quemby. Her diligence in assigning P/C Quemby tasks and engaging with E.C., D.C. and the family demonstrate a fair, engaged and compassionate supervisor.

In listening to the evidence, it became clear this misconduct hinged on the issue of whether or not D/Sgt Enright understood a crown consultation had taken place. The evidence is clear there was no crown consultation but I must consider D/Sgt Enright's understanding at the time. I must consider the evidence in respect to an August 27, 2015 conversation between D/Sgt

³⁵ Exhibit 55: Copy of notebook entry from D/Sgt Enright

Enright and P/C Quemby about this case and a crown consultation.

Crown Consultation

I find the following, as outlined in the Agreed Statement of Facts from the P/C Quemby misconduct matter, relevant to my analysis. In his testimony he agreed he pled guilty and accepted the facts as outlined were substantially correct. I will outline any areas where the evidence was less clear and make findings based on my analysis. In part, the Agreed Statement of Facts (as amended) for P/C Quemby's misconduct read:

On or about July 30, 2015, during a meeting with D/Sgt. Andrea Enright they discussed the prospect of PC Quemby preparing a package for consultation with the Crown Attorney in relation to this investigation.

- On or about August 5, 2015 PC Quemby left a message with D.C. that indicated you were conducting a few more interviews and then preparing a package to take to the Crown Attorney. PC Quemby's notes confirmed he left a message for D.C. on this date.*
- On or about August 14, 2015, PC Quemby communicated with D.C. and advised her he was still preparing the package for the Crown Attorney and told her he would talk to them in a couple of weeks.*
- On or about September 11, 2015, D.C. contacted PC Quemby because she hadn't heard from him. PC Quemby told her words to the effect – there had been a discussion between the Crown Attorney and the detectives and it was determined there was not enough reasonable grounds to proceed with any criminal charges.*
- PC Quemby was less than forthcoming to D.C. knowing you did not conduct a consultation with the Crown Attorney as discussed by D/Sgt. Enright*
- PC Quemby left D.C. with the impression that the Crown Attorney supported or shared this view.*

In cross examination, in reviewing the points detailed in the Agreed Statement of Facts, P/C Quemby clarified it was possible he misstated to D.C. that he was in the process of preparing a package for the crown as there was no package; he testified that it was a possibility he indicated he would prepare a package. D.C.'s evidence was unequivocal that P/C Quemby indicated he was working on preparing a package for the crown. Further, I accept the evidence of D.C. that in a conversation with P/C Quemby on September 11, 2015 he relayed a 'round table' meeting had taken place with detectives and the crown attorney and it was agreed there were no reasonable grounds to proceed with charges.

Exhibit 47 and 48 refer to emails sent on October 20, 2017 from PSB investigator D/Sgt Leigh to P/C Quemby and D/Sgt Enright requesting they confirm where a crown consultation took place, who the crown was and other details. D/Sgt Enright replied to D/Sgt Leigh advising she was not certain if P/C Quemby had responded but she asked him recently and he indicated

he had not spoken to a crown. P/C Quemby responded on October 25, 2017 and indicated a crown consult did not occur as:

It was determined by myself along with consultation with D/C Herrell and D/Sgt Enright that there were no reasonable grounds to believe an offence occurred and therefore I did not feel the need for a Crown consult.

I accept the evidence of D/Sgt Enright that she provided P/C Quemby direction in respect to a crown consultation. P/C Quemby's evidence confirmed discussions with D/Sgt Enright about the possibility of a crown consultation. I accept the testimony of P/C Quemby who confirmed the conversation involved discussion of a package for a crown consultation despite that he did not recall direction from D/Sgt Enright that a crown consultation would take place with or without a package. I do not find this testimony contradicts the evidence of D/Sgt Enright who recalled a conversation about the crown consultation in July 2015. D/Sgt Enright's notes support the crown consultation was discussed and her testimony in relation to her notes in this respect reflect the importance of the crown consultation. She noted the term twice in relation to the discussion with P/C Quemby.

I accept her evidence that on August 27, 2015 she had a subsequent conversation with P/C Quemby in relation to the crown consultation. The role of an ACS is an extremely taxing, busy one and the fact specifics to that conversation were not in her notes does not mean it did not occur. P/C Quemby testified he did not recall a conversation with D/Sgt Enright wherein he confirmed the crown consultation had been done.

The Agreed Statement of Facts for P/C Quemby's plea to neglect of duty indicate he was less than forthcoming to D.C. in indicating he had a crown consultation meeting as discussed with D/Sgt Enright when in fact none had occurred. He agreed through this plea that he led D.C. to believe the crown attorney shared his view that there were no reasonable grounds to lay charges. D.C.'s testimony clearly supports this conversation took place.

It makes sense to me that if P/C Quemby misled D.C. indicating the crown consultation took place then he may have done so with D/Sgt Enright as well in order to ensure her questions and direction surrounding the investigation cease. I find there was a conversation on or about August 27, 2015 between P/C Quemby and D/Sgt Enright about this investigation. I accept D/Sgt Enright's testimony that this conversation occurred. P/C Quemby's evidence does not contradict her testimony. Although P/C Quemby was clear in his evidence he did not state a crown consultation took place, I find it is likely he led D/Sgt Enright to believe that was the case although I am not certain of the details of the conversation. I am satisfied the conversation took place and that D/Sgt Enright was left with the understanding all avenues she directed P/C Quemby to do had been addressed and that he had communicated this to the family, which he had done.

I reject the prosecution's submission that this discussion between P/C Quemby and D/Sgt Enright did not take place simply because she did not have a notation of it and that she did not mention it in the initial phases of the PSB investigation. At the time of commencement of the public complaint, several years had passed. An independent recollection of events may be elicited through memories of other events. Given the opportunity to review the full background, such as the emails regarding a planned discussion about an ongoing fraud investigation, memories can be revived.

The initial approach to this investigation by P/C Quemby and by P/C Herrell who monitored the interview of E.C. was less than professional and regrettable. The approach to the interview and the lack of diligent investigative steps undertaken at the outset created issues and challenges in this case that should not have been there. Most of these activities took place when D/Sgt Enright was off on leave and when she became aware it was over a month after the incident.

D/Sgt Enright does not automatically inherit the circumstances of P/C Quemby's misconduct. Clearly the latter misconduct is egregious; E.C. deserved better from the OPP and we failed her in this regard.

I find D/Sgt Enright appropriately addressed the issues brought forth by E.C. and D.C. With opportunity of hindsight, D/Sgt Enright could have done better as in most cases there is always an opportunity to do better. Capacity and time are challenges in the role of ACS. The standard is not perfection. I have considered the particulars of allegations as outlined in the notice of hearing but find the evidence does not support a finding of guilt for any of those particulars.

As the trier of facts, I must consider whether the totality of the evidence presented at the hearing meets the threshold of clear and convincing. The *Police Services Act* section 84(1) outlines that misconduct must be proven 'on clear and convincing evidence.' The Ontario Court of Appeal in *Jacobs*³⁶ reminds me:

...we are bound by the Supreme Court's statement in Penner that the standard of proof in PSA hearings is a higher standard of clear and convincing evidence and not a balance of probabilities.

I find the totality of the evidence presented at the hearing does not meet the threshold of clear and convincing. I find the evidence does not support that D/Sgt Enright committed misconduct.

³⁶ Exhibit 58, Tab 4: Prosecution Book of Authorities – *Jacobs v Ottawa (City) Police Service*, [2016] O.J. No. 2431

PART V: DECISION

I find D/Sgt Enright not guilty of neglect of duty.

2020-12-18

X 

Signed by: Lisa Taylor LS (M)

Lisa Taylor
Superintendent, OPP Adjudicator

Date electronically delivered: December 18, 2020

Appendix A

The following exhibits were tendered during the hearing:

- Exhibit 1: Delegation – Adjudicator, Superintendent Taylor
- Exhibit 2: Designation - Prosecutor, Inspector Young
- Exhibit 3: Designation - Prosecutor, All Officers
- Exhibit 4: Delegation – Adjudicator, Superintendent Walton
- Exhibit 5: Designation - Prosecutor, Inspector Doonan
- Exhibit 6: Designation - Prosecutor, Inspector Tovell
- Exhibit 7: Medical [March 16, 2018]
- Exhibit 8: Delegation – Adjudicator Superintendent Bickerton
- Exhibit 9: Delegation - Adjudicator, Superintendent Taylor
- Exhibit 10: Designation – Prosecutor, Inspector Young
- Exhibit 11: Designation - Prosecutor, All Officers
- Exhibit 12: Designation - Prosecutor, Inspector Doonan
- Exhibit 13: Designation - Prosecutor, Inspector Tovell
- Exhibit 14: Delegation - Adjudicator Superintendent Bickerton
- Exhibit 15: Delegation - Adjudicator, Superintendent Taylor
- Exhibit 16: Delegation - Adjudicator Superintendent Bickerton
- Exhibit 17: Designation - Prosecutor, Inspector Doonan
- Exhibit 18: Designation - Prosecutor, Inspector Young
- Exhibit 19: Designation – Prosecutor, A/Inspector LePage
- Exhibit 20: Delegation – All Officers
- Exhibit 21: Delegation – Adjudicator Superintendent Taylor
- Exhibit 22: Designation – Prosecutor, Mr. Iafrate
- Exhibit 23: Designation – Prosecutor, Ms. Amode
- Exhibit 24: Transcript of E.C. Interview
- Exhibit 25: RMS occurrence SP15151699
- Exhibit 26: Hospital Records – SA / DV Practice Guidelines
- Exhibit 27: Hospital Records – Suspected Drug Facilitated Sexual Assault Documentation
- Exhibit 28: Email chain between D/Sgt Enright and P/C Quemby [July 30, 2015]
- Exhibit 29: DAR – D/Sgt Enright
- Exhibit 30: S/A Police Orders
- Exhibit 31: OPP Police Orders 2.7.1
- Exhibit 32: USB containing interviews: E.C., P/C Quemby, D/Sgt. Enright
- Exhibit 33: Transcript of E.C. interview
- Exhibit 34: Excerpt from P/C Quemby *PSA* Decision
- Exhibit 35: ASoF pertaining to P/C Quemby *PSA* matter
- Exhibit 36: Email chain between Nurse Waters and D/C Herrell

- Exhibit 37: Task Report – T150872770
- Exhibit 38: Task Report – T150945491
- Exhibit 39: Email chain between D/C Herrell and D/Sgt Enright [June 14, 2015]
- Exhibit 40: Email chain between D/Sgt Enright and D/S/Sgt Fredericks [June 14, 2015]
- Exhibit 41: Excerpt from Activity Log
- Exhibit 42: Email chain between D/Sgt Enright to P/C Quemby [July 17, 2015]
- Exhibit 43: Email chain between D/Sgt Enright to P/C Quemby [July 31, 2015]
- Exhibit A: Email chain between Insp Darling to D/Sgt Enright [September 24, 2015]
- Exhibit 44: Email between D/Sgt Enright to P/C Quemby [October 1, 2015]
- Exhibit 45: Supplementary Report [October 1, 2015]
- Exhibit 46: Supplementary Report – kit [December 26, 2015]
- Exhibit 47: Email chain between D/Sgt Leigh and P/C Quemby and D/Sgt Enright [October 20, 2017]
- Exhibit 48: Email chain between D/Sgt Leigh and P/C Quemby and response [October 26, 2017]
- Exhibit B: Shield reference document
- Exhibit 49: Email chain between D/S/Sgt Collins and D/Sgt Enright [July 22, 2015]
- Exhibit 50: Email update between D/Sgt Enright, officers Martin, Pike, Darling and Collins [July 24, 2015]
- Exhibit 51: Email update between D/Sgt Enright, officers Martin, Pike, Darling and Collins [July 31, 2015]
- Exhibit 52: Email between Insp Darling and D/Sgt Enright [September 24, 2015]
- Exhibit 53: Email between D/Sgt Enright and D/S/Sgt Fredericks [October 1, 2015]
- Exhibit 54: Email between D/Sgt Enright and officer Horne
- Exhibit 55: Copy of notebook entry from D/Sgt Enright
- Exhibit 56: PSB Order for Interview document from D/Sgt Leigh to D/Sgt Enright [November 7, 2017]
- Exhibit 57: Confidential Duty Report of D/Sgt Enright
- Exhibit 58: Prosecution Book of Authorities
 - Tab 1 – *Fright v Hamilton (Police Service)*, [2002] ONCPC 9 (CanLii)
 - Tab 2 – *Gottschalk v Toronto Police Service*, [2003] CanLii 85796 (ONCPC)
 - Tab 3 – *Hewlett v Ontario Provincial Police*, [2007] ONCPC 7 (CanLii)
 - Tab 4 – *Jacobs v Ottawa Police Service*, [2016] ONCA 345
 - Tab 5 – *Mancini v Courage and Niagara Regional Police*, [2004] ONCPC 9 (CanLii)
 - Tab 6 – *Neild v Ontario Provincial Police*, OPPHD, [August 15, 2016]
 - Tab 7 – *Neild v Ontario Provincial Police*, [2018] ONCPC 1 (CanLii)