

**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

PROVINCIAL CONSTABLE W.J. (WAYNE) DESJARDINS # 9442

**CHARGES: NEGLIGENCE OF DUTY
AND DECEIT**

DECISION

Before: Superintendent Lisa Taylor
Ontario Provincial Police

Counsel for the Prosecution: Ms. Lynn Donnelly
Ministry of the Solicitor General (formally Ministry of
Community Safety and Correctional Services)

Counsel for the Defence: Mr. Mark Wallace
Ontario Provincial Police Association

Public Complainant: Mrs. Louise Rollins

Hearing Date: September 18-19, 2018

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

PART I: OVERVIEW

Parties to this Hearing

Parties to this Hearing include:

- Provincial Constable (P/C) Wayne Desjardins, represented by Mr. Mark Wallace;
- Ms. Lynn Donnelly represented the Ontario Provincial Police (OPP);
- The Public Complainant, Mrs. Louise Rollins.
 - Mrs. Rollins 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

P/C Desjardins faces *Police Services Act* misconduct charges in relation to a 2015 on-duty incident. He responded to a call for service from Mr. Gerald and Mrs. Louise Rollins on August 23, 2015 and the misconduct allegations stem from P/C Desjardins' actions in response to the call and the subsequent misconduct investigation.

A hearing commenced on September 18, 2018 and concluded on September 19, 2018 in Pembroke, Ontario.

Allegations of Misconduct

The amended particulars of the allegations state:

Count 1:

P/C Desjardins stands charged with neglect of duty in that he 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 August 23, 2015, P/C Desjardins, while on duty, was dispatched by the Provincial Communications Centre to respond to a call in which a complainant was

concerned about a threatening call he received from a neighbour who was the wife of P/C Desjardins' immediate supervisor, Sergeant (Sgt.) Pinkerton.

It is alleged that P/C Desjardins committed neglect of duty in the following manner:

- Upon arriving at the complainant's residence, P/C Desjardins heard from the complainant that a threatening statement had been made by Sgt. Pinkerton's wife towards the complainant's wife as a result of an incident that occurred earlier along the roadway. The complainant verbally reported the context and the specifics of the threat to P/C Desjardins and further offered for him to view a notepad on which he recorded the statement shortly after the threat was made towards his wife. P/C Desjardins made no effort to view the wording of the threat recorded by the complainant and was dismissive toward it.
- Despite the fact that the notepad was a key piece of evidence in the threat investigation P/C Desjardins failed to seize it as evidence.
- P/C Desjardins failed to record the actual threat in his notebook. He only recorded the first half of the statement which had no threat component and did not accurately represent the threat information being provided by the complainant.
- P/C Desjardins submitted a Benchmark Occurrence Report which contained incorrect information about the wording of the threat allegedly uttered by Sgt. Pinkerton's wife. The discrepancy between what was reported by the complainant and what was actually recorded by P/C Desjardins, diminished the severity of the alleged threat.

Count 2:

P/C Desjardins stands charged with deceit in that he knowingly made or signed a false statement in a record, contrary to Section 2(1)(d)(i) of the Code of Conduct contained in the Schedule to Ontario Regulation 268/10, as amended.

Particulars of Allegations:

After receiving the initial information from the complainant, P/C Desjardins explained that he would be further investigating the allegations against Sgt. Pinkerton's wife. He explained that he would follow up with the complainant with regards to the direction of the investigation. Despite P/C Desjardins' claim that he returned to the complainant's residence after speaking with Sgt. Pinkerton's wife, the complainant said this never happened.

It is alleged that P/C Desjardins committed deceit in the following manner:

- P/C Desjardins recorded in his notebook on August 23, 2015 at 1511 hours (3:11 p.m.) that he re-attended the complainant's residence and had conversation with the complainant about the investigation.
- The Office of the Independent Police Review Director (OIPRD) investigator told P/C Desjardins that the complainant denied that he returned to their residence at any time.

P/C Desjardins maintained he returned to the complainant's residence after attending the Pinkerton residence.

- Professional Standards Bureau investigators obtained Global Positioning System (GPS) information for P/C Desjardins' vehicle which revealed that on August 23, 2015 he was at the Pinkerton residence at 1:53 p.m. and then left at 3:14 p.m. to attend a call. The GPS information did not show him returning to the complainant's residence again that date.

Plea

At the outset of the hearing on September 18, 2018, P/C Desjardins entered a plea of not guilty to both counts of misconduct.

Decision

Count 1:

I find P/C Desjardins not guilty of neglect of duty.

Count 2:

I find P/C Desjardins not guilty of deceit.

My reasons for the decision are as follows:

PART II: THE HEARING

Exhibits

The exhibits for this matter are listed in Appendix A.

Witnesses

The Prosecution witnesses included the following:

- Ms. Hema Nagar, OIPRD Investigator
- Mrs. Louise Rollins, Public Complainant
- Mr. Gerald Rollins, Husband of Public Complainant

Defence counsel witnesses included:

- P/C Wayne Desjardins, Respondent Officer

Overview of Call for Service on August 23, 2015

The following provides an overview of the original call for service attended by P/C Desjardins. This overview is compiled and sourced through the audio interviews of Gerald and Louise Rollins that were tendered as evidence in the hearing and were uncontested.

Audio Interview of Louise Rollins

Mrs. Rollins stated that on August 23, 2015, before her husband was to leave on business, she went to cut some 'lamb quarters' or 'greens' to feed their turkeys. She stated she usually has a set of clippers to perform this task but on this day her husband dropped her off at the corner with his jackknife so she could go cut the 'greens'. She saw Shannon Pinkerton and her mother, Gail Steeves and a little girl along the road and someone was pushing a carriage.

Mrs. Rollins was in the 'cow yard' when a white car, driven by a young male, went by slowly. She wanted to see where the car went, as she is "hypervigilant", given she and her husband have had some problems in relation to their property. She saw that the two ladies had stopped by the driveway. She stated that she does not really care for them and did not want to talk to them. She detailed that she had the knife in her hand and she could not close it. She called her dog over to sit next to her as the two women walked past. Mrs. Steeves nodded to her and Mrs. Rollins nodded back.

The car came back and Mrs. Rollins stated that she was going to see what the driver was up to, as he was not gone long. She thought maybe he had dropped off some garbage or something else was going on. She went up over the gate; Mrs. Pinkerton and her family were on the other side of the driveway. Mrs. Rollins described that they were stopped there and Mrs. Pinkerton was on her cellphone. Mrs. Rollins went to check where the car had been but could not find anything.

When Mrs. Rollins returned home, her husband asked her if she had a fight with anybody. She indicated she saw them [the Pinkerton family] but she did not even talk to them. Her husband told her that they [the Pinkerton family] had been talking to her but Mrs. Rollins stated that she did not hear anything. Her husband then told her about the threatening call from Shannon Pinkerton whose husband is an OPP officer. Mrs. Rollins stated that she really wants *"to push for this, 'cause [sic] this isn't right, this woman [Mrs. Pinkerton] going around threatening people and that kind of thing."*

Mrs. Rollins' husband wrote down the threat. Mrs. Rollins stated that she did not do anything; she did not speak to the women and she did not hear Mrs. Pinkerton speak to her. Mrs. Rollins stated that she did not deserve to be threatened. Mrs. Rollins stated that she did not even know Mrs. Pinkerton who was walking up and down the road with her mother. She described them as wearing straw hats and that they were *"lollygagging"*.

Mrs. Rollins stated that she was not standing on the road near them [Mrs. Pinkerton and her family] but she walked onto the road to see where the car had come from. She stated she did not threaten anyone and that the child did not look frightened in any way. Through clarifying questions by the interviewing officer, Mrs. Rollins indicated that she had the knife in her right hand, close to her right leg, open with her thumb on the blade. The knife was in plain view, she was not hiding it.

Audio Interview of Gerald Rollins

Mr. Rollins indicated that shortly after noon [on August 23, 2015] he received a phone call from Shannon Pinkerton. Mr. Rollins stated that in the call, Mrs. Pinkerton told him his wife was *“down here wandering around with a knife in her hands”*. He stated he advised Mrs. Pinkerton that his wife was out getting ‘greens’ for the turkeys. Mrs. Pinkerton told him that his wife was scaring her children and she did not like it.

He and Mrs. Pinkerton talked about the knife and she told him *“If I see her with that fucking knife again, I am going to stick it someplace it’s going to hurt.”* Mr. Rollins stated that he said, *“hang on there, that’s a threat, you can’t go making threats.”* He advised Mrs. Pinkerton then stated, *“it’s not a threat it’s what I intend to do if I see it again.”* He told Mrs. Pinkerton, *“well, I will talk to her then, good bye.”* Mrs. Pinkerton told Mr. Rollins, that they had spoken to his wife twice, but she did not answer. He advised Mrs. Pinkerton that his wife was hearing impaired.

He advised that when his wife returned home he told her about the call and she told him her side of the story. In his audio interview, Mr. Rollins stated that he did not feel threatened but the threat was against his wife. He knows who Shannon Pinkerton is, but has never had any previous contact with her. He stated he believed she should be taken to task for what she said; Mr. Rollins stated that it was a definite threat. He wanted to press charges. He stated he did not know why she [Mrs. Pinkerton] had *“that attitude”*, surmising, *“maybe she thinks she can’t be touched because she is married to a police officer, I don’t know.”* When asked about considering some other resolution, Mr. Rollins stated that he did not know, *“until I hear the rest of the story.”* Mrs. Pinkerton had called him, trying to *“suggest she [his wife] was crazy, on the road, with a knife in her hand.”*

In a second audio interview with both Mr. and Mrs. Rollins, P/C Desjardins asked their thoughts in respect to any alternate resolution to rectify the situation. Mr. Rollins stated he could not think of anything, as according to him *“it was totally unprovoked.”* He further stated, he believed this may be related to an issue he and his wife had with a friend of Mrs. Pinkerton, in relation to dogs. The Rollins’ had reported issues with a dog that resulted in a fine to Mrs. Pinkerton’s friend. Mr. Rollins believed that Mrs. Pinkerton’s friend had been going around saying *“Louise [Mrs. Rollins] is crazy”* and likely told Mrs. Pinkerton this as well and this was the only reason he could find for Mrs. Pinkerton acting this way.

In her second interview, Mrs. Rollins stated that she is very familiar with Shannon Pinkerton who is married to an OPP officer. Mrs. Rollins expressed that Mrs. Pinkerton thinks she can start threatening people – *“saying about the fucking knife and she is going to stick it somewhere where it will hurt, is that something she is going to do, is that something that she is going to send Pinkerton out to do... I don’t know now.”* She stated her husband would be gone for the weekend, she would be on her own and did not appreciate this. Mrs. Rollins stated that if her husband had not taken the call, she *“wouldn’t even know that she is planning on threatening to stick me.”*

Mrs. Rollins described Mrs. Pinkerton and her mother as acting suspiciously, *“stepping off the road, trying to hide in the bushes, kind of in the shadows.”* Mrs. Rollins stated that she [Mrs. Pinkerton] should be charged with something and should not receive special consideration because she is married to an OPP officer. She stated *“they should be held to a higher standard; they should know better.”* Mrs. Rollins stated she would like to know what prompted Mrs. Pinkerton to act this way.

Viva Voce Evidence

The following is not meant to be an exhaustive summary of witness testimony. I will speak to what I consider to be the most relevant evidence, addressing the issues at hand. Relevant evidence will be discussed in further detail within the analysis section.

Summary of Testimony - Ms. Hema Nagar

Evidence in Chief

Ms. Hema Nagar was the OIPRD investigator in this matter. She started working with the OIPRD in 2009 and is currently with the Information and Privacy Commissioner. Ms. Nagar first saw this file on September 2, 2016; she obtained information from all relevant parties including the complainant and her husband, Mrs. Shannon Pinkerton and Mrs. Pinkerton’s mother, Mrs. Steeves, as well as the respondent officers [there were other respondent officers].

Ms. Nagar testified that she reviewed the related police reports¹ and after assessing the evidence, she completed a draft report for approval. She agreed that she saw a copy of the note² that Mr. Rollins wrote, through the police disclosure [to OIPRD]. She advised that it was her information that P/C Desjardins did not seize the note. Ms. Nagar stated the report by P/C Desjardins included ‘words to the effect’ when describing the threat.

Ms. Nagar was provided a copy of P/C Desjardins’ notes³ in relation to the incident from

¹ Exhibit 8: Occurrence Report and Supplementary Report SP15232053 and Exhibit 9: Occurrence Details SP15232053

² Exhibit 10: Handwritten note by Mr. Rollins (threat)

³ Exhibit 11: Notes of P/C Desjardins

August 23, 2015. This exhibit also included the officer's notes for August 24, 2015. The notes outline P/C Desjardins' attendance at the Rollins residence and subsequently his interview of witness, Mrs. Steeves and the cautioned interview of Mrs. Pinkerton. Following attendance at the Pinkerton residence, P/C Desjardins' notes indicate:

re-attended Rollins res [sic] [and] spoke [with] them again - explained alternative resolution and also that I will be continuing my investigation. Louise asked what the chances of charges sticking were. I adv [sic] her that if [charges] were laid it would be up to a judge to decide that [and] given the circumstances that it is unlikely that a conviction would be registered. Further I strongly advised them I support an alternative resolution. Audio stick interviews complete.

During her OIPRD interview, Mrs. Rollins indicated that she had reviewed P/C Desjardins' notes and advised Ms. Nagar that the officer had not re-attended their residence on the day in question, as the officer had noted. When asked by the prosecution whether P/C Desjardins was asked during his OIPRD interview whether he in fact re-attended the Rollins residence, Ms. Nagar stated she did not believe she asked that question and that was likely an oversight.

Later, in an email dated May 16, 2017⁴ to Detective Sergeant (D/Sgt) Trevor Nicholas, Ms. Nagar inquired how many times P/C Desjardins had attended the Rollins residence on August 23, 2015. D/Sgt Nicholas responded to Ms. Nagar via email⁵ and advised that based on the police vehicle GPS information, the officer did not re-attend the Rollins residence on that same day. D/Sgt Nicholas outlined several other locations P/C Desjardins attended including assisting another officer at a traffic stop and arresting a male on warrant prior to returning to Pembroke detachment. Ms. Nagar requested D/Sgt Nicholas forward [via email] several questions to be answered by P/C Desjardins.

Ms. Nagar testified that P/C Desjardins responded to her questions, referring to an email chain⁶ containing P/C Desjardins' response noting: "*Re-attended at Rollins residence 1511 hrs. They are wrong about me not re-attending. Was at the Rollins residence at 1322 hrs not 1353 hrs.*" P/C Desjardins indicated to her that "*GPS were less reliable two years ago as they are to this date although they are better now. Numerous occasions where they fail e.g. the GPS shows me a Pembroke Det.[sic] until the end of my shift but I log off at the Petawawa det...*" [for the end of his shift]. Ms. Nagar testified that the times mentioned in P/C Desjardins' email match up to the times recorded in his notes.

Ms. Nagar stated that upon completing her investigation she drafted a report that was sent to her manager and then to the OIPRD Director who made a decision about misconduct. She confirmed that she had nothing to do with the actual decision in respect to misconduct. She stated that letters are then sent to all of the involved parties.

⁴ Exhibit 12: Email exchange between D/Sgt Nicholas and Ms. Nagar, OIPRD – May 16-17, 2017

⁵ Exhibit 13: Email exchange between D/Sgt Nicholas and Ms. Nagar, OIPRD – May 26, 2017

⁶ Exhibit 14: Email exchange between D/Sgt Nicholas and Ms. Nagar, OIPRD – May 26 - June 19, 2017

Cross Examination by Public Complainant, Mrs. Rollins

Mrs. Rollins declined to question Ms. Nagar.

Cross Examination by Defence Counsel, Mr. Wallace

Ms. Nagar testified that she remains employed by the OIPRD although she is currently on a temporary assignment. She has never been a police officer. Ms. Nagar agreed that she interviewed P/C Desjardins on December 5, 2016 in relation to events that occurred 15 months earlier, on August 23, 2015. She conceded that if the officer indicated on several occasions within the interview that he did not remember a detail, that it is not surprising, given the passage of time.

In referring to the officer's report⁷, Ms. Nagar agreed it does not purport that the threat is captured verbatim; the report does disclose that the words of the threat are in a note. She agreed that in fact, the report indicated that Mrs. Rollins had a "small sticky notepad" upon which her husband wrote the words of the threat. Ms. Nagar consented that the statements of all involved parties were audio taped by P/C Desjardins, as the officer's report noted. Ms. Nagar corrected Mr. Wallace advising it was an inference that anyone could listen to the audio statements if they wanted; the report only indicated the statements were audio taped and on an audio-stick.

Mr. Wallace questioned Ms. Nagar about the interviews at the Rollins' residence wherein four different conversations involving Mr. and Mrs. Rollins were recorded. Ms. Nagar stated there were the two main interviews and agreed that it was possible that the officer noted on the audio, specific start and finish times for the interviews but she could not recall.

Ms. Nagar testified that she did have a vague recollection of P/C Desjardins conducting a second interview of Mrs. Rollins but she did not recall a second interview of Mr. Rollins. Defence counsel questioned Ms. Nagar about whether she checked the specific times on the audio when the officer refuted the GPS information. She did not recall doing so.

Mr. Wallace brought the attention of Ms. Nagar to P/C Desjardins' email response wherein he stated that he arrived at the Rollins' residence at 1322 hours, not 1353 hours. The officer was disputing the GPS information. P/C Desjardins finished the second interview of Mr. Rollins at 1355 hours so he could not have arrived at 1353 hours as noted by the GPS. Ms. Nagar testified that she listened to the audio stick interviews and if the times were noted on them then she would have heard the times. She testified however that she could not say she listened to the times specifically to address the difference in times noted by the officer in relation to the GPS information.

Ms. Nagar testified that D/Sgt Nicholas had advised her there could be some discrepancies

⁷ Exhibit 9: Occurrence Details SP15232053

with times related to the GPS but she agreed with Mr. Wallace who noted that almost a half hour discrepancy is significant. When questioned as to whether she should have further investigated the discrepancy in times, Ms. Nagar clarified it was not an issue of the difference in times but more an issue of whether the officer re-attended at the Rollins' residence or not. Although she was made aware the times could be off, she had no information that the GPS could be off in respect to location. Ms. Nagar testified that P/C Desjardins' location [according to the GPS] was corroborated by two witnesses.

Ms. Nagar agreed that P/C Desjardins' report⁸ is indicative that the investigation was ongoing and no final determination had been made at that point. Ms. Nagar testified that she believed that she actually saw the original note. She advised she was told the writing on the note was Mr. Rollins' writing. She testified that she later learned that Mrs. Rollins had also written on the note. She learned this information, not from the Rollins' themselves, but from D/Sgt Watkins who, in the course of his investigation, learned there was the alteration or addition of one word.

Summary of Testimony - Mrs. Louise Rollins

Examination in Chief

Mrs. Rollins testified that on August 23, 2015, her husband was about to leave, to attend meetings in Guelph. Before he left, the two of them checked cattle on their beef farm. The couple drove to one of their other farm properties that was situated about six kilometres away and while enroute she saw Mrs. Pinkerton and her mother and at the time she saw only one child. Mrs. Rollins stated they were pushing a stroller and were huddled over, standing off at the side of the road.

When coming back from the property she saw the women at an intersection and they were *"both wearing bizarre straw hats, really huge... and sunglasses."* Mrs. Rollins stated she would not have known who it was except her husband advised her it was the Pinkertons who were on the road. Her husband dropped her off at the side of the road giving her his knife in order that she could go and cut some weeds to feed their turkeys and her husband returned home to get ready to leave.

Mrs. Rollins testified that her husband opened the jackknife for her and she went to the 'hay-yard' to cut some weeds and as she arrived she saw Mrs. Pinkerton pushing a stroller, with her children and her mother, walk past her farm-gate. She then saw a white car go by, driven by a young man proceeding extremely slowly. Out of curiosity she went to see what the driver of the car was doing and as she climbed the gate to do so, she had the knife in her hand. Mrs. Pinkerton and her family were in the vicinity and Mrs. Rollins indicated that she recognized at that time, this was the reason the driver was going slowly, due to the presence of Mrs. Pinkerton and her family, who had now turned back on the road.

⁸ Exhibit 9 : Occurrence Details SP15232053, (Page 4)

Mrs. Rollins testified she was holding the knife by her side and was attempting to see if the driver was *“up to no good.”* Mrs. Rollins testified Mrs. Pinkerton, her mother and family came up to her, wearing a big *“menacing hat”* and she did not look pleased to see Mrs. Rollins. Mrs. Rollins did not have her hearing aid in and she stepped back onto her property; she described Mrs. Pinkerton’s behaviour as unusual. Mrs. Rollins obtained the vehicle licence plate which she reported to P/C Desjardins. She stated that Mrs. Pinkerton was on her cellphone. When Mrs. Rollins returned home, she stated her husband asked her if something happened on the road as Mrs. Pinkerton had called and threatened to stab her, indicating she [Mrs. Rollins] had scared the children and was wandering around on the road.

Mrs. Rollins testified that she contacted the OPP and P/C Desjardins attended at around 1:30 pm that day. Before the police arrived, she and her husband were reviewing the words that he had written on the note and the words, *“stick somewhere where it will hurt”* and she asked him if Mrs. Pinkerton said the word *“it”* or *“her”* and he could not remember. During her testimony, Mrs. Rollins was shown a photocopy of the note that her husband wrote after the call from Mrs. Pinkerton. She testified that the only change that was made to the note was her husband’s addition of the word *“it”* and her addition of the word *“her”*. These changes were made prior to the police seeing the note. Mrs. Rollins testified that she also told D/Sgt Watkins, Inspector Wolfe and Ms. Nagar about the note and the additions made to it.

Mrs. Rollins stated that P/C Desjardins wanted to know about the knife and how she was holding it. Mrs. Rollins testified in examination in chief that P/C Desjardins never touched the note but he saw that she was holding the note and was reading from it. She stated that she read it twice to P/C Desjardins. She testified that P/C Desjardins made reference to *“stick it where the sun don’t shine”* after her first reading of the note. Mrs. Rollins stated P/C Desjardins was trying to *“get us to say ‘where the sun don’t shine’”* and she told him that is not what Mrs. Pinkerton said and for him to pay attention as she read the note a second time. She agreed that during the audio recording she read the note, *“a couple times, exactly the way it is written”*. Mrs. Rollins stated she was concerned as her husband was leaving and she *“would be left to deal with this.”*

Mrs. Rollins described the interviews took place all at once, with no time in between. She testified the officer then talked about conflict resolution and a peace bond. Mrs. Rollins indicated she had no desire for a peace bond; she wanted charges laid. Mrs. Rollins stated that P/C Desjardins took the statements from her and her husband and then left and they never heard from him again. Mrs. Rollins testified that before P/C Desjardins left he indicated that it would not be him who would be making the decision on charges, it would be his supervisor. She testified that P/C Desjardins would not tell her who his supervisor was. She requested he call her to advise her about the decision on charges and he did not do so.

Mrs. Rollins stated she contacted the OPP the next day to find out what happened about the charges and P/C Desjardins was not in until that night. She learned at that time that P/C

Desjardins' supervisor was Sgt. Pinkerton. She lodged a complaint with the OIPRD later after Staff Sergeant (S/Sgt) Gagne told her there would not be any charges. S/Sgt Gagne read the police report to her and she told him that was not what the threat was. She then read the note to him. She advised S/Sgt Gagne to listen to the audio statements and at that point he advised he would be assigning D/Sgt Watkins to investigate the matter. She and her husband provided another statement to D/Sgt Watkins in September 2015 at which time they brought the note; D/Sgt Watkins took the note and provided Mr. and Mrs. Rollins a photocopy.

When D/Sgt Watkins listened to the audio recordings he indicated it was not what was written in the report; the report did not match what was in the note. Mrs. Rollins testified that D/Sgt Watkins inquired of them about this difference and they did not know why the report was written differently. D/Sgt Watkins said P/C Desjardins must have made a mistake. At the time, Mrs. Rollins thought it may have been something that Mrs. Pinkerton had said but she now knows that is not the case. There was some conversation about consulting with a crown attorney but she and her husband never heard back about that.

Mrs. Rollins eventually charged Mrs. Pinkerton in a private information and later filed an OIPRD complaint in August 2016 while they awaited the pre-trial. After receiving disclosure she realized there were many discrepancies.

Ms. Rollins testified that she works as a nurse and had always trusted the police. She found this matter extremely frustrating and there were all kinds of discrepancies [on the part of the police]. She stated the police could not even keep track of who the complainant was, as they kept indicating it was her husband and not her. She stated the police said they would correct and change the report and they did not. She testified it does not paint her and her husband in a good light. In referencing audio recorded statements, Mrs. Rollins testified that the police, including D/Sgt Watkins, did not listen to the recordings before speaking to them.

Cross Examination by Defence Counsel, Mr. Wallace

Although Mr. Wallace acknowledged it was not a necessarily relevant question, he asked Mrs. Rollins what a *"menacing hat"* looked like, as she had testified that Mrs. Pinkerton and her mother were wearing menacing hats. She clarified the hat was *"big pointy... like Darth Vader and it looked really peculiar."* Her husband recognized who the women were but she would not have known them unless he told her.

Mrs. Rollins testified that she learned from her husband that Mrs. Pinkerton had called and threatened her and she contacted the police. She agreed she had no first-hand knowledge of the phone call and she read what her husband had written down. It was only after they were waiting for the police to come and Mr. Rollins read it out and noticed the word *"it"* or *"her"* was not on the note that the change to the note was made. The words were written in pencil as that is what he had at the time. She acknowledged her husband was not sure and

that is the reason both words were added. He added the word “it” and she added “her”. Mrs. Rollins agreed that she herself did not hear the phone call.

Mrs. Rollins agreed that P/C Desjardins likely arrived at 1:22 pm. She and her husband had met him before, professionally, in relation to an arson investigation. She conceded that P/C Desjardins noted the time on the tapes and agreed that those times were within the parameters. She agreed that her husband was interviewed and then she was interviewed almost immediately.

The interview times as noted on the audio recording were as follows (uncontested):

- First Interview of Gerald Rollins: 1324 to 1329 hours
- First Interview of Louise Rollins: 1338 to 1345 hours
- Second Interview of Louise Rollins: 1345 to 1355 hours
- Second Interview of Gerald Rollins: 1356 to 1358 hours

Mrs. Rollins reiterated that she read the note twice when P/C Desjardins had indicated “*stick it where the sun don’t shine*” after the recording had ended. She agreed that nowhere on the tape does P/C Desjardins state such a phrase. She testified that P/C Desjardins said this phrase off-tape so it was not recorded and she testified her “*spider senses were tingling.*” She told P/C Desjardins that is not what Mrs. Pinkerton said and told him to pay attention as she read the note again. She was also adamant that P/C Desjardins was asking a lot of questions about the knife, not the threat but she conceded there was relevance to this questioning given the threat was about the knife.

Mrs. Rollins testified that she found a total of four interviews peculiar. She testified that in the second interview with her, P/C Desjardins was talking about alternative resolutions but she agreed with defence counsel that the reason the officer turned the audio recorder back on was because of concerns she had expressed about the matter being investigated properly.

She testified that she and her husband wanted charges laid. It was her understanding that P/C Desjardins was going to the Pinkerton residence to find out their side of the story. She testified that P/C Desjardins did not say he was continuing the investigation. She understood at that point because it was a police officer’s wife it was not appropriate that he continue the investigation however she asked for him to call her when he knew about charges.

Summary of Testimony – Mr. Gerald Rollins

Examination in Chief

In his testimony, Mr. Rollins reiterated the circumstances of the day when the alleged threatening phone call was received. He testified that when his wife returned home he had asked her if there was a confrontation on the road. Mr. Rollins testified that he did not think there was any threat to his wife at the point when he was talking to Mrs. Pinkerton on the

phone noting that she was calm but he did look out to check on his wife and saw her returning to the residence.

Mr. Rollins stated that he wrote the note in his own handwriting and that P/C Desjardins left the note with him and his wife until D/Sgt Watkins seized it. Mr. Rollins testified that he added the word “*it*” on the note before P/C Desjardins arrived but his wife asked whether Mrs. Pinkerton said “*it*” or “*her*”. He stated he was not sure and so his wife added the word “*her*” to the note.

Mr. Rollins testified that after the four interviews took place they had a short debrief and P/C Desjardins made reference to the term, “*sun don’t shine*” instead of “*where it is going to hurt.*” Mr. Rollins stated he thought it was odd and he was not going to repeat the phrase mentioned by P/C Desjardins as his “*spider sense was tingling*”. He testified he told the officer that is not what Mrs. Pinkerton said. He testified that he told P/C Desjardins “*maybe you feel better saying it that way but that is not what she said*”.

Cross Examination by Public Complainant, Mrs. Rollins

Mr. Rollins explained he wrote the note because of past experiences when he was on council; he used to receive a lot of nasty phone calls in relation to landfill issues. The lawyers involved at the time instructed him to do so. A copy of the note, with the additional piece of paper containing information on a vehicle description and the names, Chris Pinkerton OPP, Shannon Pinkerton, Gail Steeves and some other writing, was introduced as an exhibit⁹. Mr. Rollins testified that he wrote the name of Mrs. Pinkerton and his wife wrote the information about the vehicle that she had seen. Mr. Rollins confirmed that P/C Desjardins did not return to their home later that day and further that P/C Desjardins would not provide the name of his supervisor, citing something about confidentiality.

Cross Examination by Defence Counsel, Mr. Wallace

Mr. Rollins testified that P/C Desjardins arrived somewhere between 1:00 to 1:30 pm and the conversation was cordial with a bit of laughing, before the tape was turned on. Mr. Rollins testified that although he did not offer the note to P/C Desjardins, his wife did when the tape was off. Mr. Rollins testified that he did not read the note on the recording as he had given the note to his wife as he thought he would be gone by the time the officer arrived.

Mr. Rollins testified that P/C Desjardins commented that the threat involved the term “*where the sun don’t shine*” but he confirmed he corrected the officer and that the audio recording contained the threat as he said he received it. Mr. Rollins testified that P/C Desjardins left the Rollins residence approximately five minutes after the audio recordings ended. Mr. Rollins testified that his wife had the note in her hand and was trying to get P/C Desjardins to take it and this occurred when the recorder was off.

⁹ Exhibit 16: Photocopy of Note containing threat

Defence Case

Summary of Testimony – P/C Desjardins

Examination in Chief

P/C Desjardins testified that he has been an OPP officer since September 1997 and has never been subject to a *Police Services Act* finding before. At the time of this incident he was assigned to Upper Ottawa Valley OPP detachment that consists of two reporting locations – Pembroke and Petawawa.

P/C Desjardins explained that he used the audio recorder as, typically people talk fast and he is able to catch everything verbatim and he can ask questions. He stated that if he made an error down the road then he could go back to the tape. The first interviews of Mr. Rollins and Mrs. Rollins respectively dealt with information regarding the alleged threat. In the subsequent interviews P/C Desjardins addressed whether Mr. Rollins or Mrs. Rollins would consider an alternative resolution and explained that it is not always a criminal charge that will resolve a situation. Neither was open to that suggestion but P/C Desjardins testified it was simply a suggestion. He uses this approach often in his police work and sometimes it works and sometimes it does not.

In the case of Mrs. Rollins, her second interview was in relation to her expressed concern that this matter would be whitewashed given Mrs. Pinkerton was married to a police officer. P/C Desjardins stated that when Mrs. Rollins expressed this after the first interview, he felt it necessary to capture Mrs. Rollins' concern. P/C Desjardins could not recall if the phrase "*stick it where the sun don't shine*" was expressed by him at this same time but acknowledged he could have said it.

P/C Desjardins did see the note as Mrs. Rollins was reading from it; Mr. Rollins did not have the note. In response to whether or not he was offered the note, P/C Desjardins could not recall but acknowledged that it was an oversight and he absolutely should have taken the note.

P/C Desjardins also acknowledged that he had indicated to Mrs. Rollins that he would get back to her and he did not do so. He was off-duty late that day and back on duty the following day at 3:00 pm and became busy again. On the day of the initial incident he did have a conversation with Sgt. MacDonald who was his supervisor at the Pembroke office wherein P/C Desjardins expressed his concerns about continuing the investigation. Based on that conversation he was aware he was not to continue and someone else would be taking over. Ultimately D/Sgt Watkins took over the investigation. No charges were laid but that was not a decision involving P/C Desjardins.

P/C Desjardins confirmed that in his conversation with Mr. and Mrs. Rollins he made it clear to them that he would not be the one making the decision regarding charges. He testified

that he told them he would speak to his supervisor but he did not say that it was his supervisor that would be making the decision. In respect to the Rollins' allegation that he refused to give the name of his supervisor. He did not recall what he said to them but there was no reason not to give it as something like that is common knowledge.

P/C Desjardins does not have a specific recollection of mentioning the term "*stick it or shove it where the sun don't shine*" but agreed he probably said those words. It is a phrase he is familiar with. He left the Rollins residence some time before 2:20 pm, given it takes approximately five minutes to travel to the Pinkerton residence where he arrived at 2:25 pm. He remained there until 3:11 pm. In that time frame he took a Rights to Counsel, cautioned statement from Mrs. Pinkerton and a witness statement from Mrs. Steeves.

In reviewing the notations made in his notebook, P/C Desjardins stated that prior to the end of his shift he had two other occurrences, a traffic stop and a warrant. In his notes at page eight, he made a note stating that he had re-attended the Rollins residence and that he believed that to be the case.

After leaving the Pinkerton residence he assisted with a traffic stop and that is referenced on page 12 in a late entry the following day. His notes on page nine at 1554 hours deal with the arrest of a male on a warrant. P/C Desjardins' notes on this arrest were not entered into his notebook at the time as his notes were not caught up. The notations at the back of his book, page 100¹⁰, allowed him to catch up and not use a dash-pad. Page 100 included the following: "*1600 arrest 2 cruiser search; 1604 RTC; 1605 cautioned, I don't know what the charge [sic] sir.*"

P/C Desjardins testified that he did not write the arrest notes at the time, and this is indicative that his notes for the Rollins/Pinkerton matter were not up to date at the time. During the course of discussion with his counsel, the week prior to the hearing, when being questioned about whether he made the notes at the time and where the notes came from, P/C Desjardins realized that he had made the scratch notes at the back of his book.

As an explanation for the *re-attendance* entry, the officer testified that the only thing he could think of was that he wrote '*re-attended*' instead of '*re-interviewed*'. He did not go back to the Rollins residence; he attended to two additional calls for service before the end of his shift and he could not have re-attended. In speaking to the term "*re-attended*" in his notebook, P/C Desjardins noted this notation also referenced the topic of alternative resolutions which was the subject of the second set of audio interviews, although P/C Desjardins did acknowledge the topic of the prospect of conviction was not on the audio stick. P/C Desjardins' notes placed him at Pembroke detachment at 4:11 pm where he spoke to his supervisors on the Pinkerton matter, advising he indicated the matter should be investigated

¹⁰ Exhibit 22: Notes of P/C Desjardins, 1600-1605hrs

by someone else given Sgt. Pinkerton was his supervisor. P/C Desjardins testified that he told Sgt. Pinkerton only that the investigation was ongoing, no other details.

P/C Desjardins drove the same police vehicle to Petawawa for the end of his shift. He testified that he believed that the 1804 hours (6:04 pm) notation is in reference to the time that he dictated the police report. He made it clear in this report that the exact wording was available as it was captured as it was read by Mrs. Rollins onto the audio-stick. Further he noted that the threat was written on a scratch pad. He testified he did not know who would take over the investigation but that person would have the audio statements. P/C Desjardins testified that he was not quoting the exact threat in his report as is evident by his use of the term, “*something to the effect.*” He testified that D/Sgt Watkins was assigned as the investigator.

Cross Examination by Prosecution, Ms. Donnelly

P/C Desjardins stated in cross examination that he did not make detailed notes of what was said in the interview as it is difficult to keep up and the audio recording captured it verbatim.

He agreed that he did not listen to the audio tapes prior to completing his report and that the “threat” as stated in the report is not the same statement contained in the audio recording. He further agreed about the importance of making notes. P/C Desjardins concurred with Ms. Donnelly that he did not record, in his notes, the conversation with Sgt. Pinkerton prior to attending the Rollins’ residence but he did note he spoke with Sgt. MacDonald.

It was on the following day that P/C Desjardins made a late entry after realizing he did not have the P/C Sucee traffic stop information in his notes. P/C Desjardins responded to questioning and testified that the audio taped interviews with Mr. and Mrs. Rollins were not meant to be instead of writing notes but it is difficult to keep up with verbatim statements.

When questioned about his notebook entry at 1511 hours on August 23, 2015 encompassing three pages of notes and wherein he indicated that re-attended at the Rollins residence, P/C Desjardins agreed there was little information in respect to his attendance at the Pinkerton residence. He explained this was due to the audio recordings which would have captured the Pinkerton and Steeves interviews but the detail at 1511 hours is information that he added later that day. P/C Desjardins he could not say why he had no information from Mrs. Pinkerton or her mother.

P/C Desjardins was questioned about his notes having been completed before the end of his shift at 1830 hours and within that time period he mistakenly entered “re-attended” in his notebook. P/C Desjardins responded stating that he had done the Pinkerton investigation, followed by two other calls and he had thought he re-attended but it did not make sense that he wrote that. He thought at the time he made his notes, before 6:30 pm, that he had re-

attended but he made an error. He testified that was not certain why he wrote re-attended when he should have written re-interviewed.

When questioned by Ms. Donnelly, P/C Desjardins stated that he believed he would have relied on his notes to respond to the questions from the OIPRD investigator to say that he had re-attended the Rollins residence and this was despite the fact that Mr. and Mrs. Rollins said he did not re-attend and the GPS information said the same. He testified he responded to the OIPRD over 1.5 years after and he relied on his notes to respond despite the information from the Rollins' and the GPS. He testified that it was a week ago while he was with his counsel who inquired about the times for the arrest when he realized that he had in fact not re-attended.

Cross Examination by Public Complainant, Mrs. Rollins

P/C Desjardins testified that he left the Pinkerton residence at 1511 hours; he put that time in his notes and then he went to assist P/C Sucee. When he came in for his shift the next day, he recalled he assisted P/C Sucee and had missed that in his notes. He stated that in reading his notes over he realized he missed the P/C Sucee traffic stop and added a late entry the following day. He wrote the remainder of the information after 1511 hours sometime before the end of his shift that day.

P/C Desjardins testified that he proceeded to go back to Pembroke detachment when he heard P/C Sucee needed assistance. After he assisted P/C Sucee, he then arrested another male on the way back to detachment. At the Pembroke detachment he had a conversation with Sgt. MacDonald and then left to go to Petawawa detachment where he did his notes. He already had 1511 hours in his notes.

Mrs. Rollins questioned P/C Desjardins about not calling her back when he said he would do so. P/C Desjardins testified he never called her back. He testified that he could not as the investigation was continuing. Mrs. Rollins pointed out that in the report P/C Desjardins authored on August 24, 2015, he stated there was no grounds for charges and he indicated that the decision was no longer his. The supplementary report did not say there would be no charges but that he made an opinion based on "*where the fucking sun don't shine*" which was incorrect and he has admitted that.

P/C Desjardins stated that had he maintained carriage of the investigation, he would have reviewed the tapes. He reiterated that he was not the one who would make the final decision on charges as he had explained to Mrs. Rollins that day when he was at her residence. The decision on charges was left with D/Sgt Watkins who was investigating the matter. P/C Desjardins acknowledged he did not seize the note, it was an oversight and he should have.

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.

Summary of Defence Submissions

Mr. Wallace noted the onus is on the prosecution to prove their case based on clear and convincing evidence which is more than simply the balance of probabilities. Mr. Wallace submitted that the issue for the tribunal to decide is, when P/C Desjardins had the file, was he neglectful in his duties and deceitful. Although he could have done better, P/C Desjardins' actions do not cross the line to neglect.

Further, defence counsel submitted that the officer's notation about re-attending the residence was an honest mistake; an honest mistake does not equal deceit. Mr. Wallace submitted *Helbin, Misik, Myers and Chatham-Kent Police Service*¹¹ and *Cate and Peel Regional Police Service*¹² for consideration of the tribunal. I will address the relevance of these cases in my analysis.

Neglect of Duty

Defence counsel submitted that the neglect of duty allegations primarily focus on the note. P/C Desjardins submitted that the officer has accepted responsibility for not seizing the note and he did capture the contents of the note in his audio interview with the public complainant.

The last aspect of this charge was in relation to what the officer noted in his report as compared to actual contents of the threat. Mr. Wallace submitted that P/C Desjardins agreed he should have listened to the tape prior to writing the report however in the report he qualified the threat by noting it was "*something to the effect...*" The report, in fact, directed the reader to the existence of the audio tapes. When the report was written, P/C Desjardins was not expecting to complete the investigation. Mr. Wallace submitted that it would be reasonable to assume that an officer taking over an investigation would listen to the interview to determine what was said. Defence counsel submitted that there was not a qualitative difference between what was noted by P/C Desjardins in his report, described as '*something to the effect*' and the threat as reported by Mr. and Mrs. Rollins.

Deceit

In terms of the allegation of deceit, Mr. Wallace submitted that when P/C Desjardins was answering questions from the OIPRD investigator (re: exhibit #14), it is clear that the materials he was referring to, were his notes. He had relied upon his notes that he had re-attended. It is

¹¹ Exhibit 23: Defence – *Helbin, Misik, Myers and Chatham Kent Police Service, August 2015*

¹² Exhibit 24: Defence – *Cate v Peel Regional Police Service, October 2002 (OCCPS)*

the defence submission that the officer was answering questions and giving what he believed to be honest answers based on his notes but it turns out he was mistaken; Mr. Wallace submitted that this does not constitute deceit, as deceit is knowingly making a false statement.

The officer testified that his realization of this error came about as a result of discovering the scratch note entry at the end of his notebook. The scratch notes establish that P/C Desjardins' notes were not made at the time. P/C Desjardins testified his notes were made sometime after the arrest of a male for an unrelated matter and before the conclusion of his shift.

The significance of the scratch notes establishes that, if the Rollins/Pinkerton notes had been done at the time of the arrest, he would not have needed the scratch notes. This establishes the notes were not made around 3:11pm. Mr. Wallace submitted that there are two factors that make this testimony of P/C Desjardins credible. One has to do with the flow of the interviews and the second is a fundamental question concerning any benefit or reason for P/C Desjardins to lie about it.

The flow of the interviews included P/C Desjardins' attendance at the Rollins residence where he conducted two separate interviews with both Gerald and Louise Rollins that dealt with two independent issues. He interviewed Gerald, then Louise, then Louise for a second time and finally Gerald again. The first interview of Mr. and Mrs. Rollins related to the facts being reported and the second interview was related to possible resolutions. The second interview of Louise also included her concern of a possible cover-up as the complaint involved the wife of a police sergeant. For purposes of transparency, P/C Desjardins turned the audio recorder back on. An alternate resolution was simply a suggestion by the officer which is not out of the ordinary - not every incident needs to go to court. It became clear that neither Mr. nor Mrs. Rollins were interested in an alternate resolution.

Summary of Prosecution Submissions

Neglect of Duty

Ms. Donnelly submitted that P/C Desjardins admitted that he did not seize the note containing the threat and he did not report it accurately in his notes and report. The standard of proof is clear and convincing. Ms. Donnelly outlined the two part test for neglect of duty as identified in *Hewitt and Devine*.¹³

Ms. Donnelly also provided other cases for consideration of the tribunal including *Humphries*¹⁴ and *Wood v Schaeffer*.¹⁵ The prosecution submitted that P/C Desjardins did not investigate to the best of his ability. He did not seize the note and he did not listen to the audio when writing the police report, although he conceded in his testimony he should have.

¹³ Exhibit 25: Prosecution – *Hewitt and Devine v Toronto Police Service, August 1999 (OCCPS)*

¹⁴ Exhibit 26: Prosecution – *Humphries v Kelly and Durham Regional Police Service, July 2003 (OCCPS)*

¹⁵ Exhibit 27: Prosecution – *Wood v Schaeffer, 2013 (SCC) appeal*

Ms. Donnelly submitted that P/C Desjardins did not prepare accurate notes and he should have reviewed the audio prior to making his notes. Ms. Donnelly asserted there was a qualitative difference between what was expressed by Mr. and Mrs. Rollins and what was articulated in P/C Desjardins' police report. Ms. Donnelly submitted that the officer's omission to record the threat as it is in the note or in the recording, served to diminish the severity of the threat. She submitted when Mrs. Rollins contacted the detachment and spoke with S/Sgt Gagne, a portion of P/C Desjardins' report was read and this is a perfect example of why the report needs to match the audio recording.

The prosecution submitted that all police officers should keep diligent records and must justify their decisions rationally. P/C Desjardins did not seize the note and he did not note the wording of the threat in his notebook. Ms. Donnelly submitted that P/C Desjardins should not have re-worded the threat after it had been read to him and these are all unreasonable actions by the officer. Ms. Donnelly submitted that it cannot be said that P/C Desjardins performed his duty faithfully. The prosecution submitted that the circumstances of P/C Desjardins not seizing the note and not capturing the threat accurately, equates to neglect of duty.

Deceit

The prosecution submitted that when P/C Desjardins' notes were received in disclosure by Mrs. Rollins she brought the issue about the officer's re-attendance forward to the OIPRD investigator. Considering all that had occurred or not occurred from Mrs. Rollins' point of view, this was just another frustration wherein she felt her integrity and that of her husband was being challenged.

Ms. Donnelly submitted that the tribunal heard the officer made an error and thought he had made an honest mistake. She submitted that when P/C Desjardins made the notebook entry a mere four hours after the Rollins call for service, he thought he had re-attended and this is not a credible explanation. Ms. Donnelly submitted that even after learning the Rollins' denied his re-attendance along with the GPS information, P/C Desjardins stuck to his original statement, simply stating Mr. and Mrs. Rollins were wrong and his recent awareness of his error is not credible.

Ms. Donnelly submitted that P/C Desjardins did not give proper care in the course of this investigation and this exceeded a mere error in judgement. She submitted that the officer was deceitful when he wrote down he re-attended in 2015. When an officer takes any call for service, proper care must be given and P/C Desjardins did not give proper care.

The prosecution submitted there is clear and convincing evidence of deceit. A finding of guilt in respect to any one of the bullets as outlined in the Notice of Hearing is sufficient to make such a finding. She submitted that P/C Desjardins was deceitful when he wrote in his notes that he re-attended the Rollins' residence. He had a duty to be fair and impartial. Mr. and

Mrs. Rollins called the police thinking that this matter would be taken seriously and that was not the case.

Summary of Public Complainant Submissions

Neglect of Duty

Mrs. Rollins submitted that based on the Notice of Hearing in relation to the neglect of duty allegation, P/C Desjardins made no effort to view the notepad [on which the threat was written] and he was in fact dismissive of it. She stated the officer refused repeated offers by her and her husband to obtain the note. She tried handing it to him and he refused to take it. The note was not seized until three weeks later. Mrs. Rollins submitted that P/C Desjardins was aware of the note documenting the threat, as he had mentioned it in his report, referring to it as a “*small scratch pad*”.

Mrs. Rollins reminded the tribunal that P/C Desjardins failed to accurately record the threat in his notebook and that in the tribunal he admitted that he did not look at the note at the time of the interviews. The note was not seized as evidence until three weeks later by D/Sgt Watkins.

Mrs. Rollins stated that P/C Desjardins did not record the threat in full in his notebook after she said it at least twice and he did not write down the suspect’s version of the threat in his notes either. The officer correctly wrote the first innocuous portion but did not include the crucial second half as provided by Mr. Rollins in the note and by audio. He did not quote the evidence accurately as noted by Mr. Rollins. Mrs. Rollins submitted that P/C Desjardins submitted a benchmark occurrence report that diminished the severity of the alleged threat and did not reflect what was reported by her husband.

Mrs. Rollins stated that she and her husband gave four statements back to back and P/C Desjardins stated repeatedly “*where the sun don’t shine*”. She submitted that in his report, P/C Desjardins deliberately changed the threat to read “*if she has that knife out again, I’ll shove it where the fucking sun don’t shine.*” Mrs. Rollins stated that P/C Desjardins then relied upon this version of the threat in a supplementary report wherein he noted this threat did not constitute a ‘criminal utter threat’. But the version P/C Desjardins relied upon does not match what was reported by Mr. Rollins.

Mrs. Rollins submitted that the entry in P/C Desjardins’ notes about re-attending is deceitful. He did not re-attend and the GPS shows that he did not do so. She stated that her husband left for his trip sometime before 3:00 pm so it is impossible for P/C Desjardins to have re-attended. The following day, P/C Desjardins made a late entry in his notebook wherein he noted on page 12 about the Sucee traffic stop assistance at 1511 hours. She submitted that he made no attempt to address this discrepancy of the 1511 hours entry on page eight, only stating that he made a mistake. The GPS information confirmed P/C Desjardins was at the

P/C Sucee traffic stop and so the earlier notation was deceitful and a fabrication in her opinion. The officer maintained to the OIPRD that the Rollins were wrong and both of them denied he re-attended. She submitted that in the tribunal, P/C Desjardins admitted to the allegation. Mrs. Rollins submitted that P/C Desjardins did not do what he should have done, that he had a duty to do and she did not feel served nor protected by this OPP officer.

Defence Reply

Mr. Wallace submitted that P/C Desjardins did testify in a very credible fashion. It was never challenged that the scratch pad notes were a recent fabrication and no one is suggesting otherwise. The officer only discovered those notes at the prompting of his counsel in response to questions about his notes in preparation for the tribunal; the notes were at the back of his notebook and Mr. Wallace submitted that there should be no adverse inference drawn under those circumstances. Mr. Wallace submitted there was no evidence as to why P/C Desjardins would lie about his re-attendance; there is no reason for him to lie and it was a mistake. Defence counsel reminded the tribunal that the actual verbatim account of the threat is available in Mr. Rollins' first interview.

PART III: ANALYSIS AND FINDINGS

Analysis

I will conduct two independent analyses and make findings for each charge as outlined in the Notice of Hearing, one in respect to the allegation of neglect of duty and the second in respect to the allegation of deceit.

Given the totality of the 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.

Analysis – Neglect of Duty

*Toronto Police Service v. Hewitt and Devine*¹⁶ references the Commission's two part test for neglect of duty as stated in *Soley and the Ontario Provincial Police*.¹⁷

¹⁶ Exhibit 25: Prosecution – *Hewitt and Devine v Toronto Police Service*, August 1999 (OCCPS)

¹⁷ *Soley and the Ontario Provincial Police* (1996) OPR 1098 (OCCPS)

To be found guilty of neglect of duty it must be shown that:

1. *The member was required to perform a duty, and the member failed to perform his duty because of neglect, or did not perform the duty in a prompt and diligent manner.*

Once I determine whether P/C Desjardins was required to perform a duty, I need to then analyze whether he failed to perform that duty because of neglect or did not perform the duty in a prompt and diligent manner.

Once proven, to avoid discipline, it must then be shown that:

2. *The member had a lawful excuse for not performing the duty in the prescribed manner.*

If I determine that P/C Desjardins was neglectful in his duties then I will need to explore if there was a lawful excuse.

I also found *Hewitt and Devine* helpful in clarifying:

The duties imposed on police officers can arise from a number of sources. These include statute, common law rules and orders.

Issues

I have identified the following issues to further guide my analysis in respect to the neglect of duty allegation:

- Does the evidence support that the conduct of P/C Desjardins in this matter crossed the line from a mere performance issue consideration to a matter of misconduct?
- Is there evidence of a deliberateness or recklessness displayed by P/C Desjardins while he had carriage of the threat investigation?

The neglect of duty allegation largely centres on the notepad on which the threat was recorded by Mr. and Mrs. Rollins and on the police report dictated by P/C Desjardins. I have outlined four events that relate to the allegations of neglect of duty specifically that the officer:

- Made no effort to view the wording of the threat and was dismissive toward it.
- Failed to seize the note as a key piece of evidence in a threat investigation.
- Failed to record the actual threat in his notebook.
- In the police report, recorded incorrect wording of the alleged threat and thereby diminished the severity of the alleged threat.

The evidentiary threshold is “*clear and convincing evidence.*” To me, that means in order to find the officer guilty of misconduct, the evidence must be so clear, so reliable, and so convincing as to persuade me the allegations are true and the facts in issue satisfied. As noted in *Emmerson-Stringer*,¹⁸ I must review all the steps taken and those not taken by the officer in considering misconduct. If I find there is clear and convincing evidence to support

¹⁸ Exhibit 29: Prosecution – *Emmerson-Stringer v Ontario Provincial Police*, 2015

even one particular point as outlined in the Notice of Hearing, then I can find the officer guilty of misconduct.

P/C Desjardins had prescribed duties, as do all police officers, as outlined under section 42 of the *Police Services Act* including the duties of: preserving the peace, preventing crimes and other offences and providing assistance and encouragement to other persons in their prevention; assisting victims of crime, among others. I agree with the prosecution that police officers swear an oath of office to undertake these duties impartially and according to the law. Mr. and Mrs. Rollins' call for service involved a threat allegation that, on its face, is a very serious matter.

P/C Desjardins testified that he had concerns about doing this call for service and possible bias as it involved his superior's wife. He testified that according to *Police Orders* it should be someone of a rank higher to conduct such an investigation and he had a phone conversation with Sgt. Pinkerton prior to attending the call. P/C Desjardins went on to undertake the initial response to the call as instructed and then later spoke to Sgt. MacDonald who was the other sergeant on duty. P/C Desjardins was questioned in his testimony about a second phone conversation with Sgt. Pinkerton on the day in question but he could only recall one conversation.

I concur with the prosecutor who noted that anytime an officer takes a call for service, proper care must be given. P/C Desjardins had a duty to be fair and impartial. Mrs. Rollins contacted the OPP with the expectation that her concerns would be taken seriously. Although the case would be transferred to another investigator who would understandably listen to the audio interviews as well as read the related reports, P/C Desjardins had a duty to give proper care in the course of his investigative steps.

The Note – Dismissive, Failure to Seize, Failure to Record Actual Threat in Notebook

I agree with the prosecution's submission as outlined in *Humphries*¹⁹ and *Wood v Schaeffer*²⁰ noting that police officer duties include to investigate crimes and to investigate to the best of one's ability. The prosecution submitted that P/C Desjardins did not seize the note and he did not listen to the audio when writing the police report. P/C Desjardins admitted in his testimony that he failed to take these steps although he conceded he should have. P/C Desjardins had a duty to respond to this call for service in a diligent and unbiased manner, to the best of his ability.

P/C Desjardins conducted audio interviews of both Mr. and Mrs. Rollins. Mrs. Rollins was in possession of the note during the audio interview with P/C Desjardins and she testified that she read the threat from the note. She testified that P/C Desjardins saw that she was holding

¹⁹ Exhibit 26: Prosecution – *Humphries v Kelly and Durham Regional Police Service*, July 2003 (OCCPS)

²⁰ Exhibit 27: Prosecution – *Wood v Schaeffer*, 2013 (SCC) appeal

the note and this aligns with the officer's testimony. Further, Mrs. Rollins testified that in respect to the note "*he [P/C Desjardins] did not want to look at it...he never took it...never touched it.*" Mrs. Rollins testified that P/C Desjardins saw her reading from the note but he never read the words for himself.

P/C Desjardins testified that during the interview with Mrs. Rollins he saw the note as she was reading from it. He did not deny that he may have been offered the note by Mrs. Rollins but he does not recall that occurring. In his testimony, P/C Desjardins admitted that he should have seized the note, indicating it was an oversight on his part and it should have been seized as evidence at the time.

Mrs. Rollins testified that before the interview began, her husband told P/C Desjardins he had the threat written down but that P/C Desjardins was not interested in the note so she took the note while her husband was being interviewed. Rightly or wrongly, this was an assumption formed by Mrs. Rollins concerning the officer's interest in the note. Mr. Rollins testified that he gave his wife the note as he was not certain that he would still be home when the officer arrived. Mrs. Rollins agreed in cross examination that it was fair to say at the point when the first interviews were being conducted, P/C Desjardins was still trying to figure out what was going on.

When questioned about whether it was brought to P/C Desjardins' attention that there was some uncertainty about the words of the threat and the changes made to the note, Mrs. Rollins testified that P/C Desjardins was aware that the note was written by her husband after the call by Mrs. Pinkerton and that her husband, at the outset, had said there had been some changes made to the note. Mrs. Rollins testified this was brought to P/C Desjardins' attention in the few minutes prior to the audio interviews.

In the second audio interview, P/C Desjardins referred to comments that Mrs. Rollins made subsequent to the completion of her first audio interview in respect to her concerns about Mrs. Pinkerton receiving favour because she was married to a police officer. Mrs. Rollins testified that she read the note to P/C Desjardins twice – once in the interview and once at some other point after, to reiterate to P/C Desjardins that the threat was not "*where the sun don't shine*", a phrase that she indicated the officer was "*trying to make them say.*"

A failure to seize the note, although not part of an exemplary police investigation, does not equate to being dismissive. Clearly, it would not have been onerous to have seized and secured the note for the future investigation but I have no evidence that the officer was dismissive of the note. In my mind, being dismissive would take some action beyond not seizing the note.

Mrs. Rollins testified that P/C Desjardins made no effort to view the note and the wording of the threat. There is no evidence to refute that testimony but failing to review or seize the note does not mean the officer was dismissive of it. The note was read to P/C Desjardins by Mrs.

Rollins during her interview and P/C Desjardins noted the existence of the note in the report he authored. It is clear that P/C Desjardins failed to seize the note as a key piece of evidence in a threat investigation. P/C Desjardins admitted this was a mistake. Neither Mr. nor Mrs. Rollins' testimony included words uttered or other actions by P/C Desjardins that would convince me that he was dismissive of the note.

I have considered the fact that P/C Desjardins failed to record the actual threat in his notebook. This act, in and of itself, does not equate to neglect of duty, given the circumstances in this case. The words of the threat were written on a notepad, albeit not seized at the outset; the report prepared by P/C Desjardins indicated the existence of the notepad. According to the testimony of Mrs. Rollins, she read the note to P/C Desjardins while he conducted the audio interview. The fact the audio recording existed was also contained within P/C Desjardins' General Occurrence Report. Given this call involved the wife of P/C Desjardins' supervisor, it would have been prudent for an officer without a reporting relationship to be assigned from the outset. Some of the challenges in respect to this investigation may have been alleviated had that been the case.

I am not concerned with P/C Desjardins' efforts to attempt to resolve this matter through some alternative resolution. I find this would not be an unusual tactic for an officer to attempt to resolve disputes through mediation instead of criminal charges. Police officer duties include to preserve the peace and in many instances, alternative resolutions are more effective in addressing conflicts than charges, certainly in terms of efficiency, expediency and costs.

Finding:

I have considered *Helbi, Misik, Myers*²¹ and although the circumstances are disparate from the matter at hand, the case spoke to the issue of neglect of duty and included a number of cases that have guided my analysis. The Divisional Court in *P.G. v. Ontario*²² noted the following:

Accepting the Board's findings of 'inadvertence', on this record, the only logical conclusion is that the appellant made an honest mistake – he did what he undertook to do but he did it imperfectly.

I do not find there is clear and convincing evidence to support a finding of misconduct in respect to the allegations as outlined in the first three bullets particularized in the Notice of Hearing in relation to the charge of neglect of duty. P/C Desjardins' actions may have been imperfect but that does not equate to misconduct.

²¹ Exhibit 23: Defence – *Helbin, Misik, Myers and Chatham Kent Police Service*, August 2015

²² *P.G. v. Ontario (Attorney-General)*[1996], Div. Court, 90 OAC 103, para 84

Continued Analysis: Neglect of Duty, Wording of the Police Report

I will continue my analysis regarding the last bullet outlined in the Notice of Hearing in respect to the allegation of neglect of duty, specifically whether P/C Desjardins' wording of the police report diminished the severity of the alleged threat. I have considered the prosecution's submission of *R. v Beaudry*²³ wherein the Supreme Court of Canada outlined that an officer can utilize discretion in the execution of his duties but that discretion is not absolute, it must be justified.

Mr. and Mrs. Rollins testified that P/C Desjardins would not provide the name of his supervisor while he was at their residence. P/C Desjardins testified that he did not recall advising the name of his supervisor but he can see no reason why he would not have shared this information. He testified his detachment, because of the two locations – Petawawa and Pembroke – has two sergeants on duty. P/C Desjardins testified that Sgt. Pinkerton was his supervisor, as was the sergeant in Pembroke [Sgt. MacDonald] depending on the location being worked.

P/C Desjardins testified that later on August 23, 2015 while he was at the detachment, after Sgt. MacDonald assisted him with a prisoner, he and Sgt. MacDonald then went to his office. There, P/C Desjardins advised Sgt. MacDonald that he did not feel comfortable conducting this investigation involving Sgt. Pinkerton's wife. It was agreed that Sgt. MacDonald would communicate up the chain of command to have the matter re-assigned. P/C Desjardins testified that after that conversation, it was expected that someone else would be taking over the investigation. Testimony from Mr. and Mrs. Rollins and P/C Desjardins is clear that the conversation at the Rollins residence included the officer indicating that he would not be the one making the final decision on charges in this matter.

Mrs. Rollins testified that P/C Desjardins advised her that he would get back to her and he did not do so. P/C Desjardins testified that he should have made contact with Mrs. Rollins but he returned to duty the following day at 3:00 pm and was sent to a break and enter investigation and returned late. He testified that he did not believe it was a conscious decision on his part to not return a call to Mrs. Rollins. Although I acknowledge P/C Desjardins may have been busy, I do not find this is a reasonable explanation. Although P/C Desjardins may not have been assigned to continue with this investigation, Mrs. Rollins was owed a call to update her as she requested.

Whether Sgt. Pinkerton was P/C Desjardins' supervisor or not, P/C Desjardins was correct when he identified the issue at the outset of his testimony – the issue of bias. The issue of bias is certainly relevant to a member of the public such as Mrs. Rollins who was reporting allegations against an officer's wife. The public has high expectations for police officers to conduct their duties without bias but even the perception of bias can affect public confidence.

²³ Exhibit 28: Prosecution – *R v Beaudry*, 2006 (SCC) appeal

Mrs. Rollins clearly expressed her concerns that this matter would be whitewashed, as Mrs. Pinkerton was the wife of a police officer. P/C Desjardins testified he conducted a second audio interview to capture these concerns. Knowing the concerns expressed by the complainant, P/C Desjardins should have contacted Mr. or Mrs. Rollins at his earliest opportunity to advise of his conversation with Sgt. MacDonald and that someone else would be taking over the investigation.

In her final submissions, Mrs. Rollins stated that P/C Desjardins did not do what he should have done, that he had a duty to do. She stated there was a “*lot of inaction*” and she did not feel served by this OPP officer when he attended her home. Given my understanding of the totality of the circumstances of this investigation, I can empathize with Mrs. Rollins’ frustration with the OPP. But as defence counsel noted, I must consider the investigative actions undertaken by P/C Desjardins while he had this file and although the officer admitted he could have done better, do his actions cross the line from mistake to neglect?

Helbi, Misik, Myers also refers to the Commission’s comments in *Gottschalk*. These comments further highlighted the importance of distinguishing between conduct that involves a mere performance issue versus conduct involving a willfulness or a degree of neglect that could amount to misconduct citing:

It is worth noting that neglect of duty is not an absolute offence. The law is clear that there must be either ‘willfulness’ or a ‘degree of neglect’ which would make the matter cross the line from a mere performance consideration to a matter of misconduct.

It is not the intention of this analysis to determine whether or not this incident involved a threat of bodily harm. The issue before this tribunal is not whether or not this was a credible threat but whether P/C Desjardins committed neglect of duty in relation to this call for service. The public expects a high standard of care from the police. The focus of my analysis is in respect to P/C Desjardins’ response as a police officer to this call for service. It is important to examine both the actions that P/C Desjardins took and those that he did not take and to consider these actions, not with the benefit of hindsight but with the circumstances facing the officer at the time. It remains for me to consider the report completed by P/C Desjardins and whether it diminishes the alleged threat as reported by Mr. and Mrs. Rollins.

Mrs. Rollins provided very credible testimony about having her husband’s knife, being unable to close it and holding it at her side. She also explained in detail about her concerns about the white car and wanting to investigate the activities of the vehicle driver. Knowing none of the involved parties, on the surface, it would appear Mrs. Rollins’ actions in this respect may have been misinterpreted by Mrs. Pinkerton. There is evidence that Mrs. Pinkerton attempted to speak with Mrs. Rollins but given her hearing issues, the miscommunication was compounded. Given all of this information, I find P/C Desjardins took appropriate action in attempting to address this matter by means of some alternative resolution.

It is clear from the audio taped interviews of the public complainant and her husband at the time, that both were very interested in proceeding with charges against Mrs. Pinkerton. Mr. Rollins indicated that he may be open to considering an alternative resolution depending on hearing the rest of the story. From the tone of the interviews it is clear Mrs. Rollins had an impression that Mrs. Pinkerton felt *“she can’t be touched because she is married to a police officer.”* The tribunal did not hear direct evidence about the other side of this situation although from the audio interviews, the officer’s notes and his report I have gleaned that Mrs. Pinkerton called Mr. Rollins as she was concerned about his wife scaring her children. Again, this analysis does not deal with the alleged threat investigation but P/C Desjardins’ response to the initial call.

While he was dealing with this file, P/C Desjardins recorded two audio statements each, from Mr. Rollins and Mrs. Rollins, he then attended the Pinkerton residence and obtained audio statements from Mrs. Pinkerton and her mother Mrs. Steeves, a cautioned statement and a witness statement respectively. Although these statements were not part of the record in this tribunal, a reference to those statements and the related times was entered on to the record.

Upon returning to the detachment, prior to adding the General Occurrence Report, P/C Desjardins testified that he had a conversation with Sgt. Pinkerton and advised him that the investigation involving his wife was ongoing but did not provide any further details. P/C Desjardins testified there may have been some general discussion about Sgt. Pinkerton not accessing the report but P/C Desjardins stressed this was not necessary, describing Sgt. Pinkerton as too professional to do so. Regardless, all Niche reports are time-stamped when accessed by anyone. P/C Desjardins’ notes reference this conversation in general.

A critical point to be resolved is the use of the term *“sun don’t shine”* and whether the report prepared by P/C Desjardins wilfully recorded the threat wording in such a manner that it diminished the severity of the alleged threat. Mrs. Rollins testified the officer was trying to get her to use the words *“sun don’t shine”* on the audio recording by constantly referring to that term while not on audio, between the two interviews. She testified she read the threat from the notepad twice to the officer in response to this and to make the wording clear to him.

I have reviewed the audio recording of Mrs. Rollins’ interview. Mrs. Rollins testified that she read from the note written by her husband when she was recorded in the first interview by P/C Desjardins. The actual notepad read as follows:

Copy of Note Written by Gerald Rollins
after he hung up phone

Exhibit # 16
Date Sept 18, 2018
Signature [Signature]
SUPERINTENDENT LISA S. TAYLOR

small note white words
Chicago OUT OF DOORS
country.
Chris Ankerton 090
Shannon Parker for
1378 (STONE)
Ross R. [unclear] walking down
[unclear] walk in East [unclear]

Her
If I see her with that
fucking
knife again I'm going to
stick ^{it} ⁱⁿ ^{her} ^{someplace} where it
will hurt.
me Hang on there - That's a
threat.
Her ^{I mean it.} It's not a threat - It's what
I'm going to do.

Mrs. Rollins read the threat largely as it is noted. Although she had the note in front of her, Mrs. Rollins indicated that Mrs. Pinkerton responded to Mr. Rollins saying, "it's not a threat, it's a promise" while the note read, "It's not a threat, it's what I am going to do". The words "I mean it" are written above the latter reference. Although Mrs. Rollins testified she read it exactly as it was written, that was not the case. Mr. Rollins in his audio statement referred to the term 'someplace' versus his notation of 'somewhere' it will hurt. Regardless, I find these variations are minor and not qualitatively different from what was written on the note.

Mr. Rollins also provided credible testimony about the threat as he heard it and clearly indicated he considered it a threat. Both Mr. and Mrs. Rollins wanted Mrs. Pinkerton charged. I have considered whether or not it is likely P/C Desjardins made the comment, "stick or shove where the sun don't shine." The Rollins testified that P/C Desjardins stated this phrase to them after the audio interview; P/C Desjardins does not recall saying this comment but admitted he likely did, as he is familiar with this common expression. I am satisfied the officer likely uttered that statement but there is no evidence before me to satisfy me that P/C Desjardins was making reference to this expression in order to influence any statement made by either Mr. or Mrs. Rollins.

After the Rollins' residence, P/C Desjardins attended the Pinkerton residence and took a statement from Mrs. Steeves, as a witness to the incident. P/C Desjardins advised Mrs. Pinkerton of her Rights to Counsel and obtained a cautioned statement from her; this is a standard course of action in an investigation when dealing with a suspect. The fact the officer attended the Pinkerton residence and took a cautioned statement from Mrs. Pinkerton is indicative that he took the threat allegation/ investigation seriously.

Mrs. Rollins and the prosecution submitted that when P/C Desjardins completed his report, his omission to record the threat as it is in the note or in the recording served to diminish the threat. I did not find it necessary to conduct a credibility assessment of the witness testimony in relation to the issue of the last bullet point identified under the allegation of neglect of duty, as the evidence of Mr. and Mrs. Rollins is not contradicted in the testimony of P/C Desjardins. Specifically, I must consider whether:

- *P/C Desjardins submitted a Benchmark Occurrence Report which contained incorrect information about the wording of the threat allegedly uttered by Sgt. Pinkerton's wife. The discrepancy between what was reported by the complainant and what was actually recorded by P/C Desjardins, diminished the severity of the alleged threat.*

I found the evidence of P/C Desjardins, and Mr. and Mrs. Rollins credible. P/C Desjardins did not deny saying the term "sun don't shine" to Mr. and Mrs. Rollins while in attendance at their house. Mr. and Mrs. Rollins presented as very strong and confident people who would not be influenced by anyone else in respect to relating the course of events as they experienced it. From their perspective, P/C Desjardins was attempting to have them change their statement on the audio recording. Although I find it is highly probable that P/C Desjardins uttered the "sun don't shine" phrase, I am not convinced his goal was to have them say that phrase. I find P/C Desjardins was courteous and patient with Mr. and Mrs. Rollins in the course of obtaining the audio interviews.

An examination of the audio recording that was taken at the time and which referenced the threat as described by Mr. Rollins, according to his memory, and by Mrs. Rollins as she read the note, and of the occurrence reports completed by P/C Desjardins shortly after the alleged incident, are helpful in assessing whether the officer's conduct crossed the line to neglect.

I have to consider whether there was a wilfulness or neglect by P/C Desjardins as he completed the police reports. P/C Desjardins had a duty to complete the police report in a fair, unbiased manner. The Supreme Court of Canada in *Beaudry*²⁴ outlined that an officer can utilize discretion in the execution of his duties but that discretion is not absolute, it must be justified.

²⁴ Exhibit 28: Prosecution – *R v Beaudry*, 2006 (SCC) appeal

P/C Desjardins submitted a four page General Occurrence Report on August 23, 2015 at 6:04 pm. P/C Desjardins absolutely, considering all the circumstances of this matter, should have reviewed the audio statements before completing his report. I do not find his failure to do so, on its own, to rise to the level of neglect of duty. I have included the totality of the General Occurrence Report although various passages may be out of sequence for the purposes of a more clear analysis. The narrative of that report [verbatim] included the following information:

Gerald Rollins related that he had received a phone call at his residence from a female identifying herself as Shannon Pinkerton. He states that Pinkerton told him that his wife was out on the road with a knife and he might want to ask her about that and ensure she doesn't do that type of behavior again. During the course of conversation, Rollins relates that Pinkerton said something to the effect if she has that knife out again I'll shove it where the fucking sun don't shine. This was how Rollins related the conversation as he remembers it. It should be noted that he had written this down on a small scratch pad. Rollins further related that he asked Pinkerton if that was a threat and that he considers it a threat and he relates that Pinkerton advised that it was not a threat and she had no intention of threatening him but if there was issues involving her children and her while they were walking on the road and his wife with a knife she would have concerns.

Police then spoke to Louise Rollins. Louise provided a history of the issues surrounding her property as well as the road that runs parallel to the property. This would be Stafford Second Line. She related on this day that her husband, Gerald, had driven her out to the road as she wanted to get some feed for her turkey's [sic]. She usually takes snips with her but this particular day Gerald gave her one of his knives and she was using that to cut the feed. She related that she was in a ditch and could not find any feed so she went into the hay field to attempt to do that. While she was in there, she noticed a white vehicle go by of which she provided the first four letters of the marker which appeared to be an Ontario marker. She relates that she went to the road to check on what the vehicle was doing as there are a lot of vehicles by her property and she is very vigilant as a result of past occurrences on her property which she related one was from 1998.

I find there is a difference between what the threat was reported as, and what P/C Desjardins articulated in his report but I must consider if it is qualitatively different and whether this incident was investigated to the best of his ability. Police officers, like all people, make mistakes and I cannot judge the officer's conduct to the standard of perfection. I have considered whether the officer's conduct in the situation was reasonable. *Beaudry* stresses that discretion must be justified.

P/C Desjardins did not recall but did not deny that he may have used the term “*sun don't shine*”. P/C Desjardins testified that he turned the tape back on to conduct the second interview after Mrs. Rollins indicated Mrs. Pinkerton may ‘get off’ on charges due to the status of her husband and not for the purpose of re-recording the threat with the words “*sun don't shine*”.

The officer was aware the words were written down on a notepad and Mrs. Rollins read directly from that note to document the threat when she was being interviewed the first time.

Mrs. Rollins testified that between the first and second set of audio interviews that day, P/C Desjardins was trying to have her say “*sun don’t shine*” on the second recording. I am satisfied that term may have been uttered by P/C Desjardins, given his report and his testimony but I am not convinced that he was trying ‘to get’ her and her husband to say those words although that certainly may have been Mrs. Rollins’ perception. This does not makes sense with the preponderance of evidence, given the words were written down on paper and given she had read them onto the audio recording from that paper.

P/C Desjardins’ wording of the police report included the qualifying term, “*something to the effect.*” After those words, P/C Desjardins then captured the threat as “*if she has that knife out again I’ll shove it where the fucking sun don’t shine*”. I would agree with defence counsel who characterized this as a very crude expression and although I find this expression may not carry the same threatening inference to some people as a comment referencing sticking someone with a knife, “*somewhere where it will hurt*”, these are both threats of bodily harm. I have considered Mrs. Rollins testimony about the seriousness of the term “*stick it*” which is a term, that to farmers refers to killing an animal and letting it bleed out. I can appreciate how she saw that P/C Desjardins’ wording diminished the seriousness of the threat that was reported by her as, “*if I see her with that knife again that fucking knife again I’m going to stick it somewhere it will hurt*”.

P/C Desjardins articulated in his report that Mr. Rollins related that Mrs. Pinkerton advised it was not a threat and that she had no intention of threatening *him*. Mr. Rollins did testify that he did not think there was any threat to his wife at the point he was talking on the phone to Mrs. Pinkerton. He stated that Mrs. Pinkerton was calm, regardless he did look out to check on his wife who was returning to the yard. Mr. Rollins testified that it was not *him* who was being threatened, it was his wife. Again, P/C Desjardins should have consulted the audio in which Mr. Rollins stated Mrs. Pinkerton went on to say, it is not a threat, it was something she will do.

P/C Desjardins had a duty to be fair and impartial. I find the above-noted wording may misrepresent the seriousness of the threat. In Mr. Rollins’ testimony and in the audio recording, he noted the words that Mrs. Pinkerton said to him as, “*it’s not a threat. I mean it. It’s what I am going/will do.*” P/C Desjardins testified that he did not have the exact wording of the threat at his fingertips at the time he dictated his report. Mr. Rollins’ reported version clearly purports it was meant as a threat and the words in the report are not clear. I find there is a difference between what was reported to P/C Desjardins and what he articulated in his report in respect to that phrase but I have to consider whether the report overall was fair and impartial.

The officer did qualify later in the same report that Mr. and Mrs. Rollins perceived the statement as a threat, they were extremely concerned and that they wanted Mrs. Pinkerton charged. This portion of the report read as follows:

During the course of the conversation, it was determined that the Rollins wished there be charges for threats, they perceived the statement as a threat, they were extremely concerned that as Shannon Pinkerton's husband was a member of the Ontario Provincial Police that nothing would be done and that she should be held to a higher accountability than most people and she should be charged accordingly. Police discussed options to charging and alternate resolutions but the Rollins' were not open to this and the Rollins' were advised that as the investigation is continuing, it was only a suggestion to give some thought to a resolution at this point until the investigation could be completed.

P/C Desjardins' General Occurrence Report also included the following information:

She [Mrs. Rollins] further related that she had seen two females with children and a stroller on the road earlier and when she walked out on the road she was surprised that they had not walked on farther down to where she expected them to be. She saw them and they were stopped and she states that she had a knife in her hand, which she was holding in her right hand, blade open, thumb on the knife blade and pointing forward. She then said she lowered this knife to her right side leg, thigh area, and she kept her knife because she had her dog with her and sometimes she gets close and she'd poke him away with it. She stated that she thinks the female, whom she identified as Shannon Pinkerton, was talking to her but does not know what she said as she is hearing impaired and did not have her hearing aids in. She related she went back into the field after seeing Pinkerton and the other female and the children and the stroller. Louise was adamant that she didn't approach them, didn't point the knife at them and didn't use the knife in an aggressive way. She also relayed that as a result of one of their complaints against a female named Dobson, she felt that maybe Pinkerton was trying to get even as Dobson was a friend of hers. Louise Rollins stated she did not hear any threat but was advised by her husband of the perceived threat. She had a small sticky pad notepad where she alleges her husband, Gerald, had written down the words stated by Pinkerton.

Police left the residence and attended at the Pinkerton residence and spoke with Shannon Pinkerton. Pinkerton offered to provide a statement and she stated that they had been on Stafford Second Line walking past the parts of the road bordering the Rollins' property. They had noticed some turkey's [sic] on the road, stopped close to where they were to see if they could see them. While they were doing this, the female that they knew as Rollins, appeared on the road staring at them with a knife in her hand. Pinkerton relates that the female did not approach them but stood there and when Pinkerton said hi how are you, she did not reply and when she waved at Rollins, she did not return the wave. She just kept standing there starring [sic] at them. Pinkerton

relates that Rollins went back into the field and they left the area and went home.

Pinkerton is extremely upset as her children were very frightened and were afraid of who the lady was. The eldest daughter observed the knife in the hand of Rollins' and questioned the mother as to why that lady had a knife. Police also spoke with Gail Steeves, who is the mother of Shannon Pinkerton. Her statement relates similar to Shannon's with the exception that she did not overhear the conversation on the phone that Pinkerton had with Rollins. It should be noted that the Rollins, both Louise and Gerald, feel that as Shannon Pinkerton is a wife of an active OPP member, that she should be held accountable to a higher standard. They also felt that because she was a police officer's wife, she should have known better and she should be charged. They felt that as a result of her husband being a police officer there would be interference or the complaint would not be taken seriously.

Investigating officer PC DESJARDINS explained to them that the investigation is continuing, all avenues will have to be investigated and the fact that Pinkerton is the wife of an active member has no bearing on the investigation. The investigation will be completed according to standard investigative protocol and when it is complete and further discussions will be had with the complainant. This involves determining if there is a violation under the Criminal Code in reference to threats as well as ensuring that all parties are safe. Shannon Pinkerton has assured police that she will avoid walking near or on the roadways bordering on the Rollins' property at Mountain Road and Stafford Second Line but did relate that the Rollins' have a property which is just across the road from her mother's place.

Both Steeves and Pinkerton will avoid contact with either Rollins. The investigation is continuing, the audio statements are on an audio stick which is in the officer's possession and will be transcribed forthwith.

P/C Desjardins did write a comprehensive report on August 23, 2015. It was not a perfect report and the threat was not captured as it was reported. In his testimony, P/C Desjardins indicated that he was not required to continue with this investigation following his conversation with Sgt. MacDonald. The following day P/C Desjardins completed a supplementary report on the evening of August 24, 2015 indicating that he reviewed the Criminal Code definition for "Utter threats". In this report he concluded that under section 264.1(1) A – cause death or bodily harm to any person, the facts in issue were not met in respect to the statement that was uttered by Pinkerton to Gerald Rollins. In that report he indicated that he would contact Mr. Rollins the following night to advise him of such. As P/C Desjardins testified he did not make contact with Mr. or Mrs. Rollins at any time to advise them of his conclusion.

Knowing Mrs. Rollins' expressed concerns about 'whitewashing', the complainants' clear request for charges and their lack of interest in any alternative resolution, P/C Desjardins had

a duty to accurately report the threat according to Mr. Rollins' statement and to fairly represent what was reported.

Discretion used, must be justified. Although P/C Desjardins may have minimized the seriousness of the threat involved, he did qualify it by using the term, "*something to the effect.*" Given Mrs. Rollins' occupation and experience as a farmer, I can understand why she felt so strongly that P/C Desjardins' report minimized the wording of the threat. I find however, that whether someone was allegedly threatened in respect to a knife to 'stick it/or her' somewhere it will hurt or to shove a knife where the 'fucking sun don't shine,' both terms, on the face, could constitute a threat.

I find P/C Desjardins fairly reported Mrs. Rollins' account that she did not approach the Pinkertons, did not point or use the knife in an aggressive way and that she did nothing to deserve the threat. P/C Desjardins noted on his report that the investigation was continuing and all of the statements were on an audio stick and would be transcribed. Given that P/C Desjardins also reported on the existence of the note containing the words of the alleged threat and that he believed the investigation would be continued by someone else, I find he used his discretion appropriately.

When Mrs. Rollins contacted S/Sgt Gagne on August 24, 2015 and spoke to him about the occurrence, he referenced the words in P/C Desjardins' General Occurrence Report. Mrs. Rollins clarified that what was read to her was not the threat that was reported and she encouraged S/Sgt Gagne to listen to the audio recording. It was at that point that D/Sgt Watkins was assigned to investigate.

Overall, I find P/C Desjardins' actions in respect to this investigation to be less than stellar. Recognizing how strongly Mr. and Mrs. Rollins felt about this alleged threat, P/C Desjardins should have seized the note at the time of the interview and he should have kept them informed that he had turned the matter over to Sgt. MacDonald and that someone else would be assigned to investigate. Evident in his report and in his testimony, P/C Desjardins was keenly aware that the response to this complaint/investigation would be of significant concern for Mr. and Mrs. Rollins. After her phone conversation with S/Sgt Gagne on August 24, 2015, Mrs. Rollins would have been aware that P/C Desjardins was not the investigating officer for this occurrence and that someone else would be assigned. Although this information should have come from P/C Desjardins, this was all information he had shared with the complainants at the time; Mrs. Rollins was now aware this was the case.

Mr. and Mrs. Rollins clearly testified about their feelings that a police officer's spouse should conduct themselves to a higher standard. I note that although police officers are held to a higher standard than community members, there is no such onus on a spouse or any other family member of a police officer to conduct themselves to a higher standard. Although it may

be an optimal standard there is no such onus on those who have not chosen the policing profession themselves.

OPP officers generally police smaller communities and they must be vigilant in performing their duties in a professional and unbiased manner. Despite any determination as to whether there were any true public safety concerns involved in this matter, I understand the frustrations of Mr. and Mrs. Rollins who reported an incident, reported concerns there would be a cover-up and although I am convinced there was no concerted effort to have the wife of a police officer “get away” with something, I understand how they perceived there was some bias and that the OPP let them down. Despite this, I cannot lay this all at the feet of one officer.

Neglect of duty is a very serious charge. I do not find the overall police response by P/C Desjardins, specifically, to be neglectful or reckless. He performed his duties in a prompt manner. Albeit, he was less than diligent when it came to articulating the specific threat, there was no wilful attempt to diminish the incident. P/C Desjardins was aware that this matter would not be investigated by him. Given he had taken the audio statements and noted their existence in his report, it is reasonable he would have understood that any assigned investigator would listen to these audio statements in order to assess any substance for an ‘utter threats’ charge. Further, his report noted the existence of a notepad containing the words of the alleged threat.

I am not convinced that P/C Desjardins’ actions exceeded mere errors in judgement. In the evidence received through the tribunal, I find P/C Desjardins was a hard-working officer who attended to his traffic enforcement duties and responded to calls for service in a professional manner in the course of a busy shift. P/C Desjardins took the initial investigation, took numerous statements and completed a lengthy General Occurrence Report in the midst of assisting a fellow officer and making an arrest of an outstanding wanted party. The actions in relation to the Rollins’ investigation were undertaken while the officer was tasked with several other assignments and ultimately in relation to an investigation that was to be re-assigned. Although the officer may not have performed his duties in an optimal manner or to the high standard expected of an OPP officer, I cannot say he did so in a reckless or deliberate manner.

Finding:

The evidence to support a finding of guilt for neglect of duty must be so clear and reliable as to convince me that the allegations are true and the facts in issue are satisfied. After conducting a careful analysis, I do not find there was a wilfulness or deliberateness on the part of P/C Desjardins in completing his report in this respect and so I find P/C Desjardins not guilty of neglect of duty.

Deceit

Deceit is an extremely serious allegation against a police officer. The Commission in *Cate*²⁵ provided me guidance, as cited in *Perry and York Regional Police Service*,²⁶ which defined deceit as follows:

A fraudulent and cheating misrepresentation, artifice or device, used by one or more persons to deceive and trick another, who is ignorant of the true facts, to the prejudice or damage of the party imposed upon.

Cate also provides clarification by noting, in the analysis in relation to *Lloyd and London Police Service*,²⁷ that”:

In order to establish a charge of deceit it is necessary to show that an officer “willfully or negligently makes a false, misleading or inaccurate statement pertaining to official duties”. As was noted in McCoy and Fort Francis Police Service (1969), 1 O.P.R. 16 (O.P.C.) that to properly convict an officer under this provision it is necessary to show “an intention to deceive”.

The Commission in *Cate* also outlined:

Further, an inaccurate statement by itself, in the absence of proof of willfulness or intent will not support a conviction. As we said in Burgess and St. Thomas Police Service (1989), 2 O.P.R. 822 (O.P.C.) at page 828:

The above-noted statements which constitute the heart of the charge of deceit can reasonably said to be inaccurate or incomplete. It is a long mile, however, between the point at which one can find a statement inaccurate and the point at which one can find a statement was made with intent to mislead or deceive.

The prosecution submitted there is clear and convincing evidence of deceit. A finding of guilt in respect to any one of the bullets as outlined in the Notice of Hearing is sufficient to make such a finding. Ms. Donnelly submitted that P/C Desjardins was deceitful when he wrote in his notes that he re-attended the Rollins’ residence.

I have carefully considered the allegation of deceit in relation to P/C Desjardins. I find that he clearly relied on his notes in responding to the questions of the OIPRD investigator. Although P/C Desjardins certainly should have given greater consideration to researching his responses to the OIPRD investigator, I find he answered the questions in a manner he believed to be true based on a review of his notes at the time, well over a year later. I find P/C Desjardins’ testimony credible in relation to a late discovery of his scratch notes entry on page 100.

²⁵ Exhibit 24: Defence – *Cate v Peel Regional Police Service*, October 2002 (OCCPS)

²⁶ *Perry and York Regional Police Service* (1972), 1 O.P.R. 89 (O.P.C.)

²⁷ *Lloyd and London Police Service* (20 May, 1999), unreported, O.C.C.P.S., pages 10,11

In his cross examination by the prosecution, P/C Desjardins agreed that when he was asked by the OIPRD investigator about his re-attendance at the Rollins residence, he referred to his notes and although he now agrees it was an error, he believed at the time he had re-attended the residence. He agreed with the prosecution that he should have looked into it further when the discrepancy arose. Ms. Nagar, OIPRD investigator acknowledged she did not question the officer specifically about his re-attendance in his interview, only via an email.

P/C Desjardins responded to the OIPRD investigator's questions via email indicating the Rollins' were wrong about him re-attending and asserted that he did re-attend. As the prosecutor noted, I can understand that this statement clearly had an effect on Mr. and Mrs. Rollins. The officer simply stated that Mr. and Mrs. Rollins were wrong. P/C Desjardins did not look into the possibility that he was wrong and did not admit this was the case until just prior to the hearing. P/C Desjardins testified he made scratch notes at the back of his book and it was not until, in preparation for this hearing, given questions by his counsel, that he came upon an entry and noted the discrepancy, bringing it to the attention of his counsel. There is no evidence to suggest that the scratch notes were a recent concoction.

Scratch notes are common in policing as it is often difficult to remain contemporaneous with notes when responding to numerous calls for service in a short time period. The evidence would indicate to me that overall P/C Desjardins is a conscientious, hard-working officer, stopping vehicles, assisting cohorts and arresting suspects according to his duties. Although I would agree with the prosecution that P/C Desjardins would not have needed scratch notes if his notes were made at the time, I find it is understandable given the duties he undertook that day. The existence of scratch notes may indicate that his notes were not made at or in the vicinity of 3:11 pm.

I would agree with the prosecution who questioned how one could make a mistake about whether or not he re-attended when making notes three hours after an event. However, I have considered P/C Desjardins' explanation that he may have meant to write re-interview versus re-attend. The flow and timing of the interviews would support this. His notes indicate "*audio stick interviews complete*" after the term, '*re-attended*'. I find P/C Desjardins clearly made a mistake in separating the two interviews and this may have been complicated by the fact he dealt with several issues following his interviews with the Rollins' and his notes were not completed contemporaneously.

I have considered the question of intent in P/C Desjardins' indication that he re-attended the Rollins' residence when he did not. Generally, lying involves some sort of purpose - to gain some type of advantage or benefit. I cannot think of a benefit to the officer to say he re-attended when he did not. The officer would have been aware that police vehicles are equipped with GPS technology and such a statement would have been easily refuted through technology, not to mention through the witnesses, Mr. and Mrs. Rollins.

Given the number of matters the officer dealt with after his attendance at the Rollins' residence, I am not convinced his notes were made contemporaneously and possibly a rush to complete his notes may have contributed to the mistaken entry. I am not fully certain why this error occurred but I cannot find there is an intention to deceive. The times of the interviews are all captured on the audio recording and it would be abundantly clear from the times noted on the recording that the officer did not re-attend and discuss alternative resolutions with Mr. and Mrs. Rollins.

Having considered all of the evidence, it is clear that P/C Desjardins did not re-attend the Rollins' residence on the day in question although his notes indicate otherwise. P/C Desjardins admitted he did not re-attend and that he had made a mistake in his notes and in his response to the OIPRD investigator, based on a review of those notes.

Finding:

Burgess, referenced in *Cate*, has provided me guidance in that, "*It is a long mile, however, between the point at which one can find a statement inaccurate and the point at which one can find a statement was made with intent to mislead or deceive.*" Although P/C Desjardins may not have given proper care to this investigation or to his responses to the OIPRD investigator, I do not find his actions deceitful. I do not find there is clear and convincing evidence to support a finding of misconduct in respect to the allegation of deceit. I find P/C Desjardins not guilty of the allegation of deceit.

PART IV: DECISION

After a careful analysis, based on the evidence before the tribunal, I do not find there is clear and convincing evidence to support a finding of misconduct against P/C Desjardins in respect to either allegation. I find P/C Desjardins not guilty of neglect of duty and not guilty of deceit.

2019-06-03

X 

Signed by: Lisa Taylor LS (M)

Lisa Taylor
Superintendent, OPP Adjudicator

Date electronically delivered: June 3, 2019

Appendix A

The following exhibits were tendered during the hearing:

- Exhibit 1: Delegation - Adjudicator Superintendent Walton
- Exhibit 2: Designation - Prosecutor, Inspector Young
- Exhibit 3: Designation - Prosecutor, All Officers
- Exhibit 4: Delegation - Adjudicator Superintendent Taylor
- Exhibit 5: Designation - Prosecutor, Inspector Tovell
- Exhibit 6: Designation - Prosecutor, Inspector Doonan
- Exhibit 7: Designation - Prosecutor, Ms. Donnelly
- Exhibit 8: Occurrence Report and Supplementary Report SP15232053
- Exhibit 9: Occurrence Details SP15232053
- Exhibit 10: Handwritten note by Mr. Rollins (threat)
- Exhibit 11: Notes of P/C Desjardins
- Exhibit 12: Email exchange between D/Sgt Nicholas and Ms. Nagar, OIPRD – May 16-17, 2017
- Exhibit 13: Email exchange between D/Sgt Nicholas and Ms. Nagar, OIPRD – May 26, 2017
- Exhibit 14: Email exchange between D/Sgt Nicholas and Ms. Nagar, OIPRD – May 26 - June 19, 2017
- Exhibit 15: OIPRD synopsis and complaint timeline
- Exhibit 16: Photocopy of Note containing threat
- Exhibit 17: Audio Recording – Gerald Rollins, August 23, 2015
- Exhibit 18: Audio Recording (second interview) – Gerald Rollins, August 23, 2015
- Exhibit 19: Audio Recording – Louise Rollins, August 23, 2015
- Exhibit 20: Audio Recording (second interview) – Louise Rollins, August 23, 2015
- Exhibit 21: Notes of P/C Desjardins, August 23-24, 2015
- Exhibit 22: Notes of P/C Desjardins, 1600-1605hrs
- Exhibit 23: Defence – *Helbin, Misik, Myers and Chatham Kent Police Service*, August 2015
- Exhibit 24: Defence – *Cate v Peel Regional Police Service*, October 2002 (OCCPS)
- Exhibit 25: Prosecution – *Hewitt and Devine v Toronto Police Service*, August 1999 (OCCPS)
- Exhibit 26: Prosecution – *Humphries v Kelly and Durham Regional Police Service*, July 2003 (OCCPS)
- Exhibit 27: Prosecution – *Wood v Schaeffer*, 2013 (SCC) appeal
- Exhibit 28: Prosecution – *R v Beaudry*, 2006 (SCC) appeal
- Exhibit 29: Prosecution – *Emmerson-Stringer v Ontario Provincial Police*, 2015