

**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 DAVID DIONNE, #13490  
AND  
MR. STEVEN DICK**

**CHARGES: NEGLIGENCE OF DUTY, DISCREDITABLE CONDUCT, DECEIT**

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**DECISION WITH REASONS**

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

**Appearances:**

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

**Counsel for the Defence:** Mr. James Girvin  
Ontario Provincial Police Association

**Counsel for the Public Complainant:** Mr. Robert Houston  
Burke-Robertson LLP  
Barristers and Solicitors

**Hearing Dates:** May 24 – 26, 2016

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

## **PART I: OVERVIEW**

### **Allegation of Misconduct**

Provincial Constable David Dionne, (PC DIONNE), #13490, being a member of the Ontario Provincial Police (OPP), faces three counts of misconduct, namely, neglect of duty, discreditable conduct and deceit, contrary to sections 2(1)(c)(i), 2(1)(a)(xi) and 2(1)(d)(ii), respectively, of the Code of Conduct contained in the Schedule to Ontario Regulation 268/10, as amended. The edited particulars of the allegations are:

#### Count 1: Neglect of Duty

It is alleged PC DIONNE, without lawful excuse, neglected or omitted to promptly and diligently perform a duty as a member of the OPP.

On or about September 1, 2014, while on-duty, he was dispatched to attend a 911 call at a private residence:

- He failed to attend the residence during his shift.
- He cleared the call with the dispatcher several hours after being dispatched despite not having attended the residence.

#### Count 2: Discreditable Conduct

It is alleged PC DIONNE acted in a disorderly manner prejudicial to discipline or likely to bring discredit upon the reputation of the OPP.

On or about September 1, 2014, while on-duty, he was dispatched to attend a 911 call at a private residence:

- He failed to attend the residence during his shift.
- He cleared the call with the dispatcher several hours after being dispatched despite not having attended the residence.

#### Count 3: Deceit

It is alleged PC DIONNE wilfully or negligently made a false, misleading or inaccurate statement pertaining to official duties.

On or about September 1, 2014, while on-duty, he was dispatched to attend a 911 call at a private residence:

- When he cleared the call with the dispatcher, he implied he had taken some action to confirm there was trouble on the telephone line, which was not true.

On or about September 3, 2014, while PC DIONNE was off-duty, PC Cunning phoned him to ask what action he had taken on September 1, 2014, in relation to the 911 call at a private residence:

- The information he provided to PC Cunning implied he had taken some action, whether by approaching the front door of the residence or by driving by the residence, which was not true.

## **Plea**

On May 24, 2015, PC DIONNE pleaded guilty to neglect of duty and not guilty to deceit. The prosecutor withdrew the discreditable conduct charge.

## **Decision**

After reviewing and weighing the evidence presented, I find PC DIONNE guilty of neglect of duty and deceit. My reasons for this are as follows:

## **PART II: THE HEARING**

### **Exhibits**

The exhibits for this matter are listed in Appendix 'A'. To alleviate unnecessary repetition, all exhibits will be referred to by number without the preface of Appendix 'A'.

### **Representation**

In this matter, Mr. Girvin represented PC DIONNE, Ms. Donnelly represented the OPP and Mr. Houston represented the public complainant, Mr. Steven Dick and family of the late Ms. K [REDACTED] M [REDACTED].

### **Agreed Statement of Facts (ASoF)**

The facts relating to PC DIONNE's neglect of duty are substantially agreed upon by the parties. The edited ASoF, filed as exhibit 8, states:

On September 1, 2014, at 4:43 pm, a 911 call was made from [REDACTED] Street, Casselman, Ontario.

At 6:16 pm, while on-duty, PC DIONNE was dispatched to attend the 911 call at [REDACTED] Street in Casselman. PC DIONNE was told by the dispatcher that there was no voice contact on the line and that Bell had confirmed that there was trouble on the line.

PC DIONNE was contacted by the OPP dispatch at 3:15 am requesting the status of his actions with regards to the 911 call from [REDACTED] Street. PC DIONNE cleared the call shortly thereafter and stated "confirmed trouble on line – NFA". However, at no point during his shift, did PC DIONNE attend or make any arrangements to attend the residence, contrary to OPP policy. PC DIONNE did not have any lawful excuse for not having attended the residence during his shift.

The caller, Ms. M [REDACTED], was found deceased two days later on September 3, 2014, when a neighbour called the OPP concerned for her well-being.

## **Evidence Called - *By the Prosecutor***

### *Witness Susan Lanigan (summary)*

*In evidence-in-chief*, Ms. Lanigan testified she is employed by the OPP as a communications operator. Her employee number is 41995. She identified an Event Chronology, a document taken from the Intergraph Computer Aided Dispatch (ICAD) system. She explained ICAD provides for all system functions and positions on the floor, as well as the operator identification (ID) number associated with the various functions. Her employee ID is on page two of the Event Chronology.

On September 1, 2014, she worked nightshift as a dispatcher on console four and relieved the dayshift dispatcher between 6:30 pm and 6:45 pm. When she took over the console, the event (911 call) was already dispatch assigned. At 3:15:17 am she physically redispached the event to 3E102 – PC DIONNE’s call sign – because without doing this, the event could not be closed. At 3:15:36 am, she clicked on Clear Event, and his badge number appeared and she typed the exact words provided by PC DIONNE to clear the event. At 3:15:37 the event closed and it moved over to the Records Management System (RMS).

Ms. Lanigan spoke with PC DIONNE directly on the radio. From the audio tapes she reviewed, he would have said, “911 ACTIVATION CONFIRMED TROUBLE ON THE LINE NFA.”

Ms. Lanigan advised all 911 calls have to be cleared.

The Event Chronology was filed as exhibit 9.

*In cross-examination* by the public complainant, Ms. Lanigan advised the information on the dispatcher’s screen is minimal compared to the information seen in the Event Chronology. At 16:43:51 of the Event Chronology, Priority=1, means to be dispatched immediately. The entry, ‘UNKNOWN WHAT SHE WANTED TRYING TO MAKE CONTACT’ would have been inputted by the initial call taker who received the information from CERB. ‘OPEN LINE’ means there is dead air on the line, nobody is speaking and there is no background noise. The system automatically inputs the ‘priority’ according to the call type. Ms. Lanigan stated ‘PUTTING IN A TICKET’ could mean contact was made with Bell SMC to see if there were any issues with the phone line and they confirmed there was. ‘ABANDI 911 LAND/UNKNOWN’ is a system generated code which means there was an abandoned 911 call on a land line. At 18:16:56, EVENT COMMENT=PC DIONNE ADVISED, was inputted by an individual with the employee ID of 172853.

Ms. Lanigan advised that when she went on-duty, her console screen likely would have shown the list of units working and logged on. It would have also shown that the call was dispatched and assigned to 3E102.

Ms. Lanigan did not know the specific time she became aware PC DIONNE had been dispatched to the 911 call, but she could confirm she was aware of it at 3:15:17.

Ms. Lanigan advised the Event Chronology's information at 03:15:36 was system generated. At 03:15:37 she had a conversation with PC DIONNE. She called his unit number 3E102 in order to clear off the call. PC DIONNE gave the information he deemed fit to close the call. Ms. Lanigan advised to the best of her knowledge the words she typed, "911 ACTIVATION CONFIRMED TROUBLE ON LINE NFA" were the exact words used by PC DIONNE. She added PC DIONNE's last name and badge number, 13490, to his comments.

Ms. Lanigan agreed 'trouble on the line' could have meant a number of things including a phone had been dropped, a phone pulled out of the wall, and a phone taken away from someone. She advised 911 means immediate dispatch. Ms. Lanigan advised that at the time she was interviewed by the Office of the Independent Police Review Director (OIPRD) investigator, she did not know what NFA (no further action) meant.

Ms. Lanigan has been a dispatcher for 14 years, the last five of which have been with the OPP.

*In cross-examination* by the defence, Ms. Lanigan agreed 'trouble on the line' could also mean that SMC told the dispatcher there was trouble on the line.

*In re-examination*, Ms. Lanigan agreed that SMC's report 'trouble on the line' could also mean there was a fire or a phone line had been yanked out from the wall.

*Witness PC Vincent Oickle, #12593 (summary)*

PC Oickle is a general duties constable posted to the Russell County Detachment and has been since September 1, 2014. Prior to this, he was posted to the Grenville Detachment.

On September 1, 2014, he logged on-duty at 1800 hours. Because he was new to the detachment, his shift mate gave him a tour of the office. At 1853 hours, he and PC DIONNE were dispatched to a domestic dispute in progress. At 1900 hours they arrived at the scene and cleared at 1955 hours. They patrolled Russell, Casselman and conducted radar on the 417. He wrote a few tickets and apprehended a stunt driver.

They were at the office between 0400 to 0600 hours. He accompanied PC DIONNE on patrol for the entire shift.

PC Oickle did not remember PC DIONNE clearing any 911 calls. At 3:15 am he and PC DIONNE would have been somewhere around the 417 on patrol. In PC Oickle's experience, he attends the scene when dispatched to a 911 call.

PC Oickle's notes were tendered as exhibit 10.

*In cross-examination* by the public complainant, PC Oickle testified he has been a police officer with the OPP since April 2008. He acknowledged he was with PC DIONNE between 0139 and 0400 hours on the night in question.

On September 8, 2014, he found out from PC DIONNE there had been a dispatch to an address in Casselman on September 3 where Ms. M [REDACTED] was found dead in her home. This conversation took place at the detachment. He learned the call had been dispatched the first night he reported for duty at the Russell County Detachment.

PC Oickle said it was possible he had told the OIPRD investigator during his November 2014 interview that PC DIONNE had told him the 911 call had come in over the land line. He acknowledged if he told OIPRD that PC DIONNE had said it was a 911 hang-up with trouble on the line, then he likely said it to OIPRD. PC Oickle explained it is not that he could not remember the words of PC DIONNE, it is he could not remember what he said to OIPRD.

*In cross-examination* by the defence, PC Oickle advised the domestic they attended at the start of the shift was a priority call, and lights and siren would have been utilized.

*In re-examination*, PC Oickle advised he and PC DIONNE never attended [REDACTED] Street, Casselman during their shift on September 1, 2014.

*Witness PC Michael Cunning, #13649 (summary)*

PC Cunning has been a front-line officer with the OPP since 2012 and is posted to the Russell County Detachment. He is familiar with [REDACTED] Street, Casselman, but cannot speak to dates because he lost his notebook. He could not tell the tribunal the date of the loss, but acknowledged the notebook was lost after he attended [REDACTED].

PC Cunning advised he had an independent recollection of the events at [REDACTED] Street. He was working the nightshift, 6 pm to 6 am, but again, could not remember the date because he did not have his notes. He was dispatched to the address in response

to an individual who reported his neighbour had not been seen for a few days. He attended with a colleague and located a deceased female. She was in some kind of a computer room lying on the floor. PC Cunning called his supervisor, Sergeant (Sgt.) Cadieux.

PC Cunning stated he also called PC DIONNE on his own initiative because prior to entering the house, he had conducted an address check and found a prior 911 call came from the residence and PC DIONNE was linked to the call. There was no information in the remarks, so he wanted to see if PC DIONNE had attended the address or spoken to anybody. PC DIONNE told him he was unsure if he had attended and mentioned he had a domestic dispute at the same time he received the 911 call. PC Cunning informed Sgt. Cadieux and Detective Sergeant (D/Sgt.) St. Clair of his conversation with PC DIONNE.

PC Cunning advised that PC Lamarche attended the scene with him initially on September 3. Also on scene was the Forensic Identification Officer, Katherine Croney, Sgt. Cadieux, D/Sgt. St. Clair and the Coroner and these individuals knew PC DIONNE had previously been dispatched to a 911 call at the location. PC Cunning believed the 911 call happened two or three days earlier. PC Cunning remained on scene for several hours and believed he left sometime after midnight.

PC Cunning identified a RMS report which stemmed from the incident at [REDACTED] Street. He read aloud the following from PC Croney's Supplementary report:

On the 3<sup>rd</sup> of September, another neighbor expressed concern of not having seen M [REDACTED] therefore he called the police to check on her wellbeing. Officers attended and entered premises by using the back door which was closed but unlocked. M [REDACTED] was found deceased in the upstairs office. She was found laying on her back with the telephone (off the hook) next to her on the floor.

Investigation revealed that K [REDACTED] M [REDACTED] was last seen alive three days ago by her neighbor. On the 1 of September, in the evening, a 911 call was received and confirmed by Bell. Officers attended the scene but there was no answer and the front door was locked.

PC Cunning remembered telling PC Croney at the scene that PC DIONNE said he was unsure whether he attended the residence. PC Cunning was not sure how the message was conveyed.

PC Cunning guessed that after he left the scene he went back to the office to write reports. He could not say though if he went directly to the office. The following day, as

instructed by D/Sgt. St. Clair, PC Cuning contacted PC DIONNE again, who told him he did not attend the residence when the 911 was placed. This was different from when he previously said he did not remember.

PC Cuning advised there was a lot of uncertainty in the room on September 3 in regard to whether PC DIONNE had attended the residence. Because of this, he asked D/Sgt. St. Clair if he wished for him to call PC DIONNE back to verify. D/Sgt. Clair said the call could wait till the next day so he waited until then to make the call. When asked if he pointed out the discrepancy (not sure if he attended versus not having attended) to PC DIONNE, PC Cuning said the conversation he had with PC DIONNE was he did not attend, which he then passed along to the others. He does not recall how long the conversation was with PC DIONNE other than it was not long.

PC Cuning stated he has been dispatched to hundreds of 911 calls. He attends to make sure the party is okay. Officers have to confirm they attended 911 calls.

The RMS report was filed as exhibit 11.

*In cross-examination* by the public complainant, PC Cuning advised priority one calls mean an important call, higher than other calls. The dispatcher probably would not say the call is a priority one call when dispatching a 911 call.

In regard to the Event Chronology, PC Cuning did not know what 'TROUBLE WITH THE LINE' meant. He advised the phone was on the floor when he found Ms. M [REDACTED] deceased. He believed the line had been removed from the wall and he was present when D/Sgt. St. Clair plugged it back in. PC Cuning observed D/Sgt. St. Clair test the phone which connected with 911 when he pressed redial. There was nothing wrong with the phone when it was tested.

PC Cuning agreed he wrote in the RMS report:

A phone was observed off the receiver on the floor next to the left arm of the female. The cord appeared to have been pulled from the wall.

PC Cuning advised he and PC Lamarche were the first officers to attend [REDACTED]. PC Croney arrived after Sgt. Cadieux and possibly after D/Sgt. St. Clair. Hours may have passed between the time he spoke with PC DIONNE and PC Croney's arrival.

As a common practice, before PC Cuning attends a residence, he conducts an address check on his computer.

The first time he called PC DIONNE was after he discovered the deceased and shortly after he called Sgt. Cadieux, prior to the sergeant's arrival. Sgt. Cadieux never instructed him to contact PC DIONNE. He did this on his own initiative because he wanted to know what PC DIONNE did because he had no idea if there was any other person he should be worried about in the residence. He spoke to PC DIONNE on his mobile and PC Lamarche was present when the call was made. He told PC DIONNE he found Ms. M [REDACTED] deceased and there had been an earlier 911 call and he wanted to know what action PC DIONNE had taken. After saying this, PC DIONNE told him words to the effect, 'he wasn't sure if he attended – he could not remember'.

PC Cunning agreed he must have provided OIPRD with a copy of his notes which ended on September 2, 2014. He could not say whether the new notebook he started began on September 3, 2014.

After PC Cunning spoke with PC DIONNE, he told PC Lamarche, Sgt. Cadieux and D/Sgt. St. Clair that PC DIONNE could not remember if he attended the residence.

In regard to PC Croney's Supplementary RMS report where she wrote, 'Officers attended the scene but there was no answer and the front door was locked,' PC CUNNING believed her information came from Sgt. Cadieux. He advised Sgt. Cadieux did not speak with PC DIONNE.

PC Cunning again spoke with PC DIONNE the next day because while at the scene there was confusion as to whether PC DIONNE went to the scene. PC Cunning did not ask PC DIONNE how his memory recovered from the day before. All PC Cunning wanted to know was whether he attended the residence – those were his orders and that is what he reported back.

PC Cunning advised he has known PC DIONNE for approximately four years and considered him a friend.

PC Cunning agreed he told the tribunal he spoke with PC DIONNE on September 4, and was told he (PC DIONNE) did not go. That was the message conveyed to him. There was obviously more said than just 'I didn't go', but that was the message conveyed to him – 'He did not go'.

PC Cunning was provided a copy of the email he sent to the Coroner, D/Sgt. St. Clair and Sgt. Cadieux on September 4, 2016, at 5:12 pm. He wrote:

Good afternoon Dr. Yu,  
Following up from the sudden death last night on [REDACTED]  
Street in Casselman, I spoke to the investigating officer

and he advised that as the call came in as “trouble on the line” and was a call held from dayshift, approximate 1.5 after the original 911 call was placed, he patrolled the area of the house but did not approach the residence or knock on the door.

If you have any further questions or concerns feel free to contact me.

Thank you  
PC Michael Cunning

PC Cunning advised the information ‘he patrolled the area of the house but did not knock on the door’ came from PC DIONNE. PC Cunning agreed there was a contradiction between ‘I didn’t go to the residence’ and ‘I patrolled the area but did not approach the residence or knock on the door’.

PC Cunning did not speak again with PC DIONNE.

The email was filed as exhibit 12.

*In cross-examination* by the defence, PC Cunning recalled the OIPRD investigator told him he was in jeopardy in relation to his two calls with PC DIONNE.

After PC Cunning sent the email to D/Sgt. St. Clair and Sgt. Cadieux, neither officer challenged him in regard to the difference in the information.

PC Cunning is aware that Sgt. Cadieux’s and PC Croney’s information is different than his own. The information they have did not come from PC Cunning.

*Witness Sergeant Rene Cadieux, #10169 (summary)*

*In evidence-in-chief*, Sgt. Cadieux advised he has been with the OPP since July 1999. He was promoted to sergeant in 2013 and is a front-line supervisor posted to the Russell County Detachment.

On September 3, 2014, at 8:55 pm he was advised by the Provincial Communications Centre (PCC) that a 54 year old female was found vital signs absent (VSA) by PC Cunning. The neighbours had called and said she had not been seen for three days. The windows were open and clothes were on the line. The rear/side door was unlocked and the front door was locked. He spoke to PC Cunning while on route and arrived at [REDACTED] Street, Casselman at 9:25 pm. PC Lamarche was there as well as

Cunning and another officer. D/Sgt St. Clair arrived afterwards along with PC Croney. The Coroner arrived at 11:30 pm.

When he entered the residence he observed an epipen on the table and asthma inhalers. Sgt. Cadieux described his physical observations in regard to the deceased and residence. Specific to the telephone, it was off the hook and the cord was pulled from the wall. It still functioned though. He also noted a chocolate bar in the fridge that said 'may contain nuts'.

Sgt. Cadieux advised PC Cunning told him at the scene there had been a 911 call placed three days prior and that PC DIONNE had taken the call. Sgt. Cadieux had PC Cunning contact PC DIONNE to find out what had transpired while he took a look around. They were standing in the vicinity of the table adjacent to the kitchen when PC Cunning reported back that PC DIONNE had attended the scene and went to the front door and left. Sgt. Cadieux did not enter this information in his notes. Apart from PC Cunning making this call, he and Cunning remained together while at the scene.

Afterwards, Sgt. Cadieux, along with PC Cunning, passed this information along to PC Croney and D/Sgt. St. Clair. He recalled they were all at the table in the kitchen/dining room discussing the incident. After PC Cunning told D/Sgt. St. Clair that PC DIONNE had attended the scene, the D/Sgt. said, "So Dave attended the front door. Do you know if he attended the side door?" PC Cunning did not know and offered to call PC DIONNE back. D/Sgt. St. Clair said it could wait until the next morning. At 1:00 am, Sgt. Cadieux cleared the scene.

On September 4, 2016, at 4 pm Sgt. Cadieux reported for duty. He debriefed with PC Cunning and D/Sgt. St. Clair and it was there he learned PC DIONNE had not attended the call. Despite Sgt. Cadieux's notes only indicated the detective sergeant was present for the debriefing, he was pretty sure PC Cunning was also present. He did not ask PC Cunning why the information was different, but he knew it was not good, because it was contrary to what he had been previously told.

Sgt. Cadieux spoke briefly with PC Cunning after Cunning was interviewed by the OIPRD. PC Cunning was upset and said he did not remember what he had told Sgt. Cadieux the night of.

In Sgt. Cadieux's experience, he has been dispatched to many many 911 calls. As per policy, officers attend all 911 calls and treat them as emergent until deemed otherwise. All 911 calls are investigated. Sgt. Cadieux has never not attended a 911 call. Even if it

is a pocket dial and a residence is not identified, the area must be patrolled and contact has to be made with someone.

Sgt. Cadieux referred to the Event Chronology. The 'EVENT COMMENT=CCB: 911 ACTIVATION CONFIRMED TROUBLE ON LINE NFA 13490 DIONNE: CCB' meant to him, there was a 911 activation and there was actually trouble on the line. There was no further action required by the officer and this would have been confirmed by the officer by making contact with the party at the household.

Sgt. Cadieux's notes were filed as exhibit 13.

*In cross-examination* by the public complainant, Sgt. Cadieux agreed that according to the Event Chronology, PC DIONNE was advised of the 911 call at 18:16 hours. He agreed the 911 was first reported at 16:43 hours. Sgt. Cadieux advised that according to PC Oickle's notes there was a lot of time spent on general patrol. He agreed there was ample time after the officers attended the domestic dispute to attend the 911 call.

Sgt. Cadieux advised officers never make direct contact with Bell in regard to 'trouble on the line' – it is the PCC who does this.

At no point on September 3, 2014, did PC Cunning tell Sgt. Cadieux that PC DIONNE could not remember what he had done with the 911 call.

Sgt. Cadieux agreed PC Cunning was interviewed by OIPRD on January 19, 2015, and he was interviewed on February 6, 2015. His conversation with PC Cunning took place between the two interviews and it was extremely brief. The only thing PC Cunning said to him was he did not remember what he said to him.

*In cross-examination* by the defence, Sgt. Cadieux advised he worked days on September 1, 2014, and finished at 9:30 pm. He agreed the 911 call should have been assigned to his platoon.

Sgt. Cadieux acknowledged he did not make a note in regard to the information PC Cunning had passed along specific to his discussion with PC DIONNE.

Sgt. Cadieux advised at one point his status as a Witness Officer changed to Subject Officer in the OIPRD investigation. According to an email he received on January 29, 2015, the status change was due to his notes and interviews of others. His status was reverted after his interview.

Sgt. Cadieux advised he wished he had made better notes than he had, but added he has been to a lot of death scenes and unfortunately each one affects him differently. He has his own recollection of events outside of his notes. He remembers things that do not go into his notes. His train of thought at the time was not the 911 call, but to rule out foul play in regard to Ms. M [REDACTED]'s death.

Sgt. Cadieux had no reason not to believe that PC DIONNE did not attend the 911 call based on the information he received from PC Cunning while they were at the scene. His notes on page 17 reflect that PC DIONNE had been dispatched to the call. Sgt. Cadieux never made note that Ms. M [REDACTED] had a severe allergic reaction to nuts despite him locating a chocolate bar in the fridge. There were a lot of things he did that day that he did not make note of. He admitted to OIPRD that hindsight is 20/20 and his notes were terrible and wished they could have been better.

Sgt. Cadieux testified he could tell where the four officers were seated at the kitchen table when PC Cunning reiterated that PC DIONNE had attended the front door. D/Sgt. St. Clair said, "Okay, so Dave went to the front door. Do you know if he went to the side door?" PC Cunning said, "Dave didn't say." D/Sgt. St. Clair instructed PC Cunning to follow-up in the morning and find out if PC DIONNE had checked the side door. At no point did PC Cunning say PC DIONNE could not recall if he attended or not.

The email dated January 29, 2015, in regard to his OIPRD status was filed as exhibit 14.

*Witness D/Sgt. Dave St. Clair, #8908 (summary)*

*In evidence-in-chief*, D/Sgt. St. Clair advised he has been with the OPP for the past 20 years. He is the Area Crime Supervisor for Russell County.

D/Sgt. St. Clair advised that on September 3, 2014, at 2219 hours he spoke with Sgt. Cadieux in regard to a sudden death. Sgt. Cadieux related a number of details including there had been a 911 call on September 1, in which PC DIONNE had reported 'trouble on the line'. Sgt. Cadieux told him PC Cunning had called PC DIONNE who stated he had attended the residence, there was no answer and Bell Canada had confirmed there was 'trouble on the line'.

At 2300 hours, D/Sgt. St. Clair arrived at the detachment. He checked PC DIONNE's notebook for September 1, 2014, and determined there were no notes made in relation to the 911 call. He checked the RMS and found a report which indicated a 911 call was received on September 1 at 1643 hours. There was a comment in the dispatch details from CERB – the 911 centre in North Bay – that a female had been on the line and it

was unknown what she was saying. It also indicated that SMC, which is Bell Canada, confirmed there was 'trouble on the line' and a ticket had been created. The report also indicated PC DIONNE was advised at 1816 hours.

D/Sgt. St. Clair arrived on scene at 2342 hours. He was briefed outside by PC Croney. At 2345 hours he entered the residence where he spoke briefly with PC Cunning. D/Sgt. St. Clair paraphrased their conversation: "So I understand that Dave – Constable DIONNE had been here to the residence?" PC Cunning said, "Yes". D/Sgt. St. Clair asked, "Did he check both doors?" D/Sgt. St. Clair could not remember specifically if PC Cunning had mentioned the front door, but he knows he said he wasn't sure if PC DIONNE had checked the side door. D/Sgt. St. Clair told PC Cunning to follow-up the next day.

D/Sgt. St. Clair viewed the scene upstairs and noted the telephone, which was off the cradle, had a pulsating tone. He pressed redial and it connected to 911.

The following day he spoke with Sgt. Cadieux and PC Cunning about the case although he could not specifically remember if Sgt. Cadieux was present when he asked PC Cunning if had followed-up with PC DIONNE. D/Sgt. St. Clair identified exhibit 12, as the email he received from PC Cunning in regard to his follow-up with PC DIONNE.

D/Sgt. St. Clair referenced OPP Police Orders section 2.1.1 and advised the policy concerning 911 calls is critical policy. Critical policy is the most important policy in Police Orders, and policy which effects public safety. The policy states an officer must attend and there is no discretion not to attend.

S/Sgt. St. Clair reviewed the Event Chronology 3:15:37 entry. He interpreted from the entry that PC DIONNE would have confirmed 'trouble on the line' with no further action.

D/Sgt. St. Clair's notes were filed as exhibit 15 and Police Orders 911 policy as exhibit 16.

*In cross-examination* by the public complainant, D/Sgt. St. Clair advised his notebook entry at 2219 hours referred to information received from Sgt. Cadieux. He advised that in the course of his investigation, he listened to the audio tape of when PC DIONNE was dispatched at 1816 hours. He believed another officer initially answered the phone and transferred or passed it over to PC DIONNE.

D/Sgt. St. Clair believed he found the phone in its cradle, but it had been off and photographed in its off state prior to his arrival. He did not find the telephone line pulled from the wall.

In regard to the Event Chronology's last entry, D/Sgt. St. Clair was not sure whether PC DIONNE meant he confirmed there was 'trouble on the line' or he relied on the earlier information from 1647 hours where SMC confirmed 'trouble on the line'. D/Sgt. St. Clair learned in his investigation that without the examination of a technician, 'trouble on the line' could not be confirmed.

*In cross-examination* by the defence, S/Sgt. St. Clair agreed he told OIPRD that PC Cunning's information in relation to PC DIONNE's actions was ambiguous. His issue was he did not have solid information in regard to whether the back door was locked two days prior. S/Sgt. St. Clair advised that PC Cunning led him through the conversation that PC DIONNE had attended the house. He was not clear whether he had checked the back door. Later as a result of PC Cunning's email, he was led to understand PC DIONNE did not actually attend the house, but he patrolled the area. He agreed the RMS report did not indicate whether PC DIONNE attended or not.

S/Sgt. St. Clair advised the email he received from PC Cunning the next day raised concern that he had received misinformation about PC DIONNE's actions the night before. The email suggested to D/Sgt. St. Clair that PC DIONNE took a response by patrolling the area, but he did not attend the residence.

S/Sgt. Clair advised the Event Chronology comment, 'CONFIRMED TROUBLE ON THE LINE' suggested to him that PC DIONNE attended the residence and confirmed there was trouble 'on the line' – that or he had just paraphrased what he had been told earlier by dispatch.

D/Sgt. St. Clair advised he would not have sat down in the house to brief with PC Cunning and Sgt. Cadieux because it was still considered a scene.

He could not recall if Sgt. Cadieux was present the next day at 1700 hours when he asked PC Cunning if had called PC DIONNE.

*Witness PC Catherine Croney, #9799 (summary)*

*In evidence-in-chief*, PC Croney stated she has been a police officer for 24 years and is currently an OPP Forensic Identification Officer.

On September 3, 2014, at approximately 9:40 pm she spoke with Sgt. Cadieux in regard to a sudden death. In addition to other detail, she learned police attended the residence on September 1 in response to a 911 call, but there was no answer.

PC Croney arrived on scene at [REDACTED] Street at 10:54 pm and met with Sgt. Cadieux, PC Cunning and PC Lamarche. The information shared earlier on the phone

was reiterated, and included: The victim was last seen at her home three days ago; the 911 was confirmed as 'trouble on the line'; and, PC DIONNE attended, but the front door was locked with no answer. She could not recall which officers were present when she was briefed other than it was Sgt. Cadieux who relayed the information to her. This conversation took place outside the house.

PC Croney stated the information about the 911 call was said a couple of times, but she was not sure at what points it was said during the evening. PC Croney never got any impression that PC DIONNE had not attended the house.

PC Croney believed her RMS Supplementary report (exhibit 11) was accurate because it was based on the information conveyed to her at the scene.

*In cross-examination* by the public complainant, PC Croney advised her notes taken at 2139 hours were based on her conversation with Sgt. Cadieux prior to her arrival.

*In cross-examination* by the defence, PC Croney advised she did not know how many officers were involved when she noted on page 11 of her notes, 'police attended but no answer'. PC Croney advised she could not recall if she had a conversation with PC Cunning.

On September 4, 2014, at 8:02 am she completed her RMS Supplementary report. Her report was based on her notes.

PC Croney's notes were filed as exhibit 17.

## **Submissions**

### *By the prosecutor (summary)*

Ms. Donnelly tendered the following authorities and text: *Precious and Hamilton Police Service, OCPC, May 10, 2002; Leeder and Metropolitan Toronto Police Force, OCCPS #70-07, September 8, 1970; Hogue and Ontario Provincial Police, OPPDH, March 18, 2015; Legal Aspects of Policing, Paul Ceysens, Chapter 6.6, Deceit, pages 6-103 to 6-114; Lloyd and London Police Service, OCCPS, May 20, 1999; Geske and Hamilton Police Service, OCCPS, July 3, 2003; and, Perry and York Regional Police Force, OCCPS #72-08, November 24, 1972, all of which were filed as exhibits 18 to 24, respectively.*

She began her submissions by reviewing the allegations against PC DIONNE and the elements of deceit pursuant to the *Police Services Act (PSA)*. She submitted the

evidence heard throughout the hearing demonstrated PC DIONNE willfully and negligently made a false, misleading or inaccurate statement pertaining to his official duties. She referenced Paul Ceyskens' *Legal Aspects of Policing*, page 6-106, and pointed out he referenced *Geske* and *Lloyd* to illustrate his point that inaccurate statements must be separated from those which constitute false or misleading.

Ms. Donnelly submitted that Paul Ceyskens continued to examine the issue of deceit when he wrote:

One legislative objective involves the need for public protection that arises from the potential consequences of inaccurate statements by police officers. The mental element in most legislation therefore captures more than actual intention to deceive, falsify or mislead ("intentionally", "willfully", "knowingly") to also include reckless or even negligent behaviour.

The second legislative objective involves protecting police officers against findings of deceit in situations where an inaccurate statement is the product of honest mistake.

Ms. Donnelly pointed to the three elements of deceit identified in *Hogue*: First there must be a willful or negligent act; second, the act must be a false, misleading or inaccurate statement; and third, the statement must pertain to the officer's official duty. She suggested the same approach could be used for this matter.

Ms. Donnelly submitted in terms of the first allegation, where PC DIONNE cleared the 911 call at 3:15 am, evidence was heard from Ms. Lanigan and PC Oickle. Ms. Lanigan said she inputted what PC DIONNE told her which was, "911 ACTIVATION CONFIRMED TROUBLE ON THE LINE NFA". PC Oickle testified that regardless of 'trouble on a line', it is an officer's duty to attend. PC DIONNE's response to the dispatcher was made in relation to his official duty as a police officer.

Ms. Donnelly advised in terms of whether PC DIONNE's statement was false, misleading or inaccurate, both Sgt. Cadieux and D/Sgt. St. Clair said it led them to believe some action had been taken. There was no evidence from PC DIONNE in regard to what he meant when he cleared the call. PC Cuning, Sgt. Cadieux and D/Sgt. St. Clair all said 911 calls must be attended and cleared. Ms. Donnelly pointed to the ASoF where it is undisputed that PC DIONNE did not attend [REDACTED] Street, Casselman. Despite this, PC DIONNE cleared the call and implied some action had been taken which was not true. Other officers relied on PC DIONNE's information when they checked his RMS report.

In terms of whether PC DIONNE was willful or negligent in making the false, misleading

or inaccurate statement, Ms. Donnelly suggested there is no way he made an honest mistake based on his comments. Even if he had forgotten about the 911 call, he was reminded of it at 3:15 am and decided not to attend at that time. He specifically chose not to follow the critical policy which states all officers must attend every 911 call. When PC DIONNE cleared the call, he intentionally made an inaccurate statement about having taken some action. This can only amount to deceit.

In relation to the second allegation of deceit, Ms. Donnelly submitted PC DIONNE was contacted by PC Cuning about the 911 call he had been dispatched to. PC DIONNE's response to him was therefore made in relation to his official duties. In terms of whether the statement was false, misleading or inaccurate, evidence was heard from Sgt. Cadieux that he understood from PC Cuning that PC DIONNE had attended, knocked on the front door and found it locked. Although PC Croney could not remember if PC Cuning was present when she learned of PC DIONNE's action, her notes at 10:44 pm reflect that he was. D/Sgt. St. Clair testified to the conversation he had with PC Cuning in regard to PC DIONNE's action. If PC Cuning's version of events were true, then why would D/Sgt. St. Clair ask him to clarify if PC DIONNE checked the side door? Ms. Donnelly encouraged the tribunal to adopt Sgt. Cadieux's and D/Sgt. St. Clair's version and find the statement PC DIONNE gave PC Cuning inaccurate.

Ms. Donnelly submitted PC DIONNE's inaccurate statement should be found willful or negligent after taking into account Sgt. Cadieux's and D/Sgt. St. Clair's testimony. It could not have been an honest mistake – he either took some action to attend the call or he did not. Even if the tribunal accepted PC Cuning's version that PC DIONNE told him he could not remember if he attended the call and changed his story the following day when asked to clarify, PC DIONNE's statement was misleading and willful.

Turning to the authorities, Ms. Donnelly pointed to *Precious* which stated on page 15, ...to be guilty of deceit, the conduct must be willful or negligent which would require at the very least an analysis of the state of mind and behaviour of the officer at the relevant time.

Did the officer intentionally attempt to deceive or was he negligent resulting in a false, misleading or inaccurate statement pertaining to his official duties? Willful requires an analysis of intent which could include motive while negligence would give rise to an analysis of behaviour and if such behaviour resulted in a breach of a duty of care.

Ms. Donnelly submitted that when analyzing the behaviour of PC DIONNE, one can only find that he breached his duty to give an honest and accurate statement to cover up the fact he did not attend the 911 call.

Ms. Donnelly pointed to *Geske* which referenced an older authority, *Perry*, a case relied upon to explain what is needed to prove a charge of deceit:

...deceit requires the clearest of evidence to establish that there is no possibility of consistency between the statements upon which the charge is founded, in addition to the other ingredients of proof. It is clear that in order to make a case under this section that the prosecution must prove that a statement was made with the clear intent to mislead or deceive. It is not sufficient to simply prove that the statement was inaccurate.

In the case of *Geske*, the finding of deceit was not affirmed because the officer was able to provide substantial independent evidence that corroborated his explanation. He was able to offer credible explanations for the discrepancies. This is not the same in this matter. PC DIONNE has provided no credible explanation for the discrepancies in his statement and actions. All the tribunal is left with is PC DIONNE's attempt to cover-up his failure to attend a 911 call at [REDACTED] Street, Casselman, where Ms. M [REDACTED] was found deceased.

In *Leeder*, the officer was found guilty of deceit for submitting a false statement regarding court attendance for a shift he did not work. The finding was upheld on appeal. In this decision, the Commission found on page 2:

There is no doubt in our minds that the Appellant did make a false, misleading or inaccurate statement. To constitute the offence, it is not necessary that the statement be all three of the qualifying adjectives. If it is merely misleading, it is sufficient. Nor does it have to be wilful and negligent. It may be either.

Ms. Donnelly submitted the evidence presented in this hearing was clear and convincing that the statements made in the context of PC DIONNE's duties were inaccurate, misleading or false and they were made willfully to cover-up the fact he had not attended a 911 call. She invited the tribunal to find him guilty of deceit.

*By the Public Complainant (summary)*

Mr. Houston began by stating he collectively represented the public complainant, Mr. Steven Dick, and the sisters and daughter of the late Ms. M [REDACTED], N [REDACTED], L [REDACTED], B [REDACTED] and H [REDACTED]. In the course of his submissions, he planned to refer to exhibits 16, 9, 11 and 12.

Mr. Houston submitted that in as far as protocol is concerned in exhibit 16, it is clear a uniform member shall respond forthwith to a 911 dispatch. The language is mandatory – the word used is shall – and it does not say he/she could or he/she may. It says a

member shall respond forthwith to a 911 dispatch. It does not say anything about whether the dispatch is made instantaneous to the call. The protocol is clear.

Mr. Houston submitted with respect to the comments and words used by PC Cunning on September 3 and 4, 2014, the facts are generally not in dispute. It was of course PC DIONNE's choice he did not testify, so as a consequence the tribunal does not know what was in his mind on September 1, when he initially received the call, nor does the tribunal know what was in his mind when he was reminded of the call sometime after 3:00 am.

The tribunal has heard a great deal of the terminology, 'trouble on the line', but has heard absolutely nothing from PC DIONNE in regard to how, when and in what circumstances he received that information. The tribunal has heard nothing from him in regard to what he understood it to mean. The tribunal did hear though there was confusion in officers' minds from time to time in regard to what it meant. Even if there was confusion, there was still the mandatory requirement to attend the call. It is clear PC DIONNE never attended the residence and he has admitted to this.

Mr. Houston submitted the dispatcher testified she spoke with PC DIONNE at 3:17 am. There are two significant aspects of this. First, she stated clearly she inputted precisely what PC DIONNE told her 'CONFIRMED TROUBLE ON THE LINE NFA', even though she did not know at the time what NFA meant. She now knows it is 'no further action', which clearly demonstrates it was the terminology used by the officer. It was a material record made in reference to the 911 call from that residence which was relied upon.

Mr. Houston advised PC DIONNE stated to the dispatcher he had confirmed there was trouble on the line. That statement was clearly false. Other than he cleared the call with false information, the tribunal does not know if PC DIONNE did anything else. The information he provided was misleading and not only relied upon by the 911 system, but also the members of the OPP.

Mr. Houston turned to the events of September 3, 2014. PC Cunning checked and relied on the 911 call information. PC Cunning told the tribunal when he attended the residence, he found the front door locked and the side door unlocked. The terminology, 'front door locked', is significant because this could not have possibly been known by DIONNE because he did not attend.

Mr. Houston advised there is a contradiction with PC Cunning's evidence and pointed to his RMS report. Despite the fact the report contained substantial detail there is not a single reference to PC DIONNE. Mr. Houston noted that Mr. Girvin took issue with Sgt.

Cadieux's notes and his failure to document PC Cuning's information in regard to PC DIONNE's actions. He submitted if it was of such profound significance from counsel's point of view, why did PC Cuning not even refer to it in the RMS report?

Mr. Houston submitted that PC Cuning's evidence was confusing. The tribunal heard that following his interview with OIPRD, PC Cuning told Sgt. Cadieux he could not remember what he had told Sgt. Cadieux on September 3. It suggests his memory is faulty, he has no notes to rely on and his RMS report is of no assistance.

Mr. Houston submitted that PC Cuning's evidence, 'he told Sgt. Cadieux PC DIONNE could not remember if he attended,' is not reliable for these reasons: Sgt. Cadieux, D/Sgt. St. Clair and PC Croney all made a record that PC Cuning said, 'Officers attended the scene but there was no answer and the front door was locked'. Mr. Houston advised that was precisely the credible information PC Cuning told the officers the night of September 3. How did PC DIONNE know the front door was locked? Either that information was fabricated by PC Cuning or PC DIONNE after having been advised by PC Cuning the body of Ms. Missen had been discovered.

Mr. Houston advised that at best there is some confusion. The credible evidence rests with the testimony of Sgt. Cadieux, D/Sgt. St. Clair and PC Croney.

Mr. Houston submitted Sgt. Cadieux gave his evidence in a clear straight forward manner. It should be of no consequence he did not note what PC Cuning told him in regard to PC DIONNE's actions. Sgt. Cadieux was there to investigate a death and his mind was not turned to PC DIONNE. Likewise, Mr. Houston submitted he found D/Sgt. St. Clair clear and concise. His focus of attention was to determine whether there was foul play.

Mr. Houston submitted that while we may not know who was present or who was seated, it is evident a meeting occurred on September 4, 2014, which was followed by the email from PC Cuning. The email contains PC DIONNE's words that he patrolled the area of the house but did not knock on the door. This version, along with the versions PC Cuning gave the night before are misleading.

Mr. Houston concluded that the standard of proof, clear and convincing, has been met and count 3 has been proven.

*By the Defence (summary)*

Mr. Girvin tendered the following authorities: *Jacobs and Ottawa Police Service, Ontario*

Court of Appeal, [2016] OJ 2431; and, *Cate and Peel Regional Police Service*, OCCPS, December 5, 2002. They were filed as exhibits 25 and 26, respectively.

Mr. Girvin advised the burden of proof never shifts from the prosecutor. The defence need not prove anything. The *PSA* indicates the officer cannot be compelled to testify. This matter was investigated by the OIPRD and Ms. Donnelly is in possession of all their documents. PC DIONNE was interviewed by OIPRD, but neither Ms. Donnelly nor Mr. Houston proffered his statement. They also chose not to tender the audio of the dispatch call which was recorded. From the recent case of *Jacobs* the evidentiary obligation is to provide clear and convincing evidence.

Mr. Girvin submitted the exhibits are relatively objective. There is the Event Chronology, the RMS report, as well as PC DIONNE's notes which D/Sgt. St. Clair testified no entry existed. There has been evidence from PC Oickle who spent the evening patrolling with PC DIONNE and an email from PC Cuning. Words thrown out by Mr. Girvin's colleagues like fabrication, false and cover-up – they were never put to PC Oickle or PC Cuning. It makes no logical sense why PC DIONNE would say on September 3, 'I am going to mislead' in light of the trail of evidence that existed.

Mr. Girvin submitted the evidence of Sgt. Cadieux, D/Sgt. St. Clair and PC Cuning is hearsay. While it is permitted under the *Statutory Powers and Procedures Act*, the tribunal must weigh the credibility of such evidence. It must be kept in mind that Sgt. Cadieux's evidence is double hearsay evidence. His information came from PC Cuning which was hearsay – Cuning processed the information and passed it on to Sgt. Cadieux. Sgt. Cadieux then conveyed the information. Mr. Girvin cautioned the tribunal in accepting Sgt. Cadieux's evidence.

Mr. Girvin submitted, as seen in other legal proceedings, the facts are seldom clear because witness memory is not perfect. One example of this is Sgt. Cadieux's testimony of when they were seated at the table having a discussion with D/Sgt. St. Clair. PC Croney has no recollection of this and D/Sgt. St. Clair rejected the notion of ever sitting down to discuss a case.

Mr. Girvin suggested PC Cuning was a credible witness. He conceded it was unclear the number of times PC Cuning spoke with PC DIONNE. He conceded his lost notebook was problematic, but there was no evidence to suggest the loss of such was nefarious. The lack of notes left PC Cuning to rely on his memory leaving him unreliable on certain aspects of his testimony. It is interesting PC Cuning offered to contact PC DIONNE that very evening – if there had been some error or fabrication, the

last thing he would have wanted to do was to undermine the information he had already conveyed. This evidence goes to PC Cuning's credibility.

Mr. Girvin turned to Ms. Lanigan's evidence and pointed out she was never asked if the information provided by PC DIONNE led her to believe he took action. When she was pressed by Mr. Houston, she refused to answer because she thought it would be speculation. In relation to the first bulleted point for the charge of deceit, there is no evidence to support it.

Mr. Girvin advised PC Oickle, who partnered with PC DIONNE, was unaware of the 911 call. He testified they patrolled Casselman on two separate occasions.

Mr. Girvin submitted PC Cuning recalled PC DIONNE said he could not remember if he attended. It stands in contrast with the testimony of D/Sgt. St. Clair and Sgt. Cadieux. He believed the evidence of PC Crony was not helpful because it was double hearsay. She was not aware of how many officers attended the original 911 call on September 1, 2014.

Mr. Girvin submitted PC DIONNE was interviewed by OIPRD and in the course he would have been challenged about his statements to PC Cuning. None of this evidence was tendered therefore there is no direct evidence in regard to his statements. A component of deceit is intent and the standard of proof is clear and convincing. Even if the testimony of Sgt. Cadieux and D/Sgt. St. Clair is accepted in regard to PC DIONNE's statement, the statement was hearsay.

Mr. Girvin referred to Sgt. Cadieux's focus on the sudden death, not the 911 call. It was pointed out to Sgt. Cadieux the 911 call occurred during his tour of duty, but not dispatched. As a sergeant, he did not demonstrate a high degree of interest in determining why his platoon had not been dispatched. This fact should be considered when weighing the reliability of his evidence.

The tribunal should find it troubling Sgt. Cadieux did not have notes in regard to his conversations or directions to PC Cuning. It should be noted Sgt. Cadieux said both PC Cuning and PC DIONNE were excellent officers. Mr. Girvin submitted Sgt. Cadieux came across extremely credible, but not all credible witnesses are reliable. It was not until Sgt. Cadieux's status as a Witness Officer changed that he had additional recollections of his conversations with PC Cuning. He mentioned several times he was concerned about his jeopardy. It should be noted that having an interest in the outcome can tacitly or overtly influence what people say – sometimes it is conscientiously and sometimes inadvertently.

Mr. Girvin advised a significant amount of time was spent on the terminology, 'trouble on the line'. D/Sgt. St. Clair conceded it could have been a statement to deceive, but he also conceded it could have been a recounting of a statement provided by one of the dispatchers. This is an important and interesting piece of evidence because the tribunal will have to determine if it was meant to mislead or simply a recounting of what had already been said. He suggested there is a lack of evidence to make a determination either way.

Mr. Girvin submitted the case law is settled in regard to deceit. *Leeder* is from the 1970s and the rules of evidence have changed over the past forty years. There is some passing value in *Perry* which is referenced in more recent cases. The recurring theme in more recent cases is intent is a necessary element and pointed to *Precious*, page 15, which stated:

Willful requires an analysis of intent which could include motive...

The term cover-up has been suggested by counsel and it is a very enticing phrase, but it makes no logical sense for PC DIONNE to engage in deceitful conduct when the evidence is already out there – there was a RMS report, notes had already been made and he had patrolled with a fellow officer. *Geske* also makes reference to intent.

Mr. Girvin pointed to *Cate* and submitted there were useful case references on page 7. Deceit is unique in contrast to other cases because intent and actions must be proven.

Mr. Girvin referenced the standard of proof established in *Jacobs*. He also pointed to the analysis conducted in *Hogue* specific to the standard. In *Hogue* there was direct evidence, and it was found the officer's statements were misleading. It would be appropriate to find PC DIONNE not guilty of deceit since there is now a higher standard of proof than what existed in *Hogue*.

#### Prosecutor's response

Ms. Donnelly agreed PC DIONNE did not have to testify and it was up the prosecutor to prove the case. If Mr. Girvin was suggesting the prosecutor's case was misleading and insufficient, she pointed out he had full disclosure and chose not to present the evidence. It is unfair of Mr. Girvin to say at this point the prosecutor ought to have called other evidence.

### **PART III: ANALYSIS AND FINDINGS**

I have reviewed the evidence and considered counsels' submissions. While I may not address them in their entirety or any in any set order, they remain foremost in my mind as I work through my analysis and make findings.

#### ***Summary of misconduct***

PC DIONNE's alleged misconduct is distilled to this:

On September 1, 2014, at 6:18 pm, while at the detachment, PC DIONNE was dispatched to a 911 call at [REDACTED] Street, Casselman. He was negligent in that without lawful excuse, he failed to respond or take any action in response to the call. When he cleared the call with the dispatcher some nine hours later, it is alleged he implied he had taken some action to confirm there was 'trouble on the line'. This was not true.

On September 3, 2014, PCs Cunning and Lamarche attended the same residence in response to a complaint that the resident had not been seen for three days. It was at that time the officers discovered the deceased, Ms. M [REDACTED] n, in her home. Evidence indicated she may have been in medical distress when she called 911 before passing away.

Upon discovering the body, PC Cunning contacted PC DIONNE to determine what action he had taken in response to the 911 call. It is alleged PC DIONNE implied he had taken some action, either by approaching the front door or driving by the residence. Neither was true.

#### ***Issues to be decided***

PC DIONNE does not dispute his negligence. By way of his guilty plea and agreed to facts<sup>1</sup>, he has acknowledged he failed to take any action in response to the 911 call.

In dispute is the allegation of deceit. The issues which I need to decide can be narrowed to these three questions:

- 1. Did PC DIONNE imply he had taken some action in response to the 911 call when he gave the dispatcher the clearing information, "911 ACTIVATION CONFIRMED TROUBLE ON THE LINE NFA"?*
- 2. Did PC DIONNE imply he had taken some action, either by approaching the door or driving by the residence, when he spoke to PC Cunning?*

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<sup>1</sup> Exhibit 8: Agreed Statement of Facts

3. *Only in the clearest of cases, can a police officer be found guilty of deceit. Decision makers are often reminded that a long mile must be travelled to prove such a serious charge. Keeping in mind the standard of proof in police disciplinary matters as stated in section 84.1 of the PSA and upheld in Jacobs, has the prosecutor met the burden in the case of PC DIONNE?*

My analysis will include an examination of the witnesses' testimony and evidence with an eye to the standard of proof and case authorities. It will be captured under the aforementioned issues.

### **Analysis and Findings**

1. *Did PC DIONNE imply he had taken some action in response to the 911 call when he gave the dispatcher the clearing information, "911 ACTIVATION CONFIRMED TROUBLE ON THE LINE NFA"?*

I turn first to the Event Chronology<sup>2</sup> and for ease have reproduced what I believe to be the salient points.

#### **Event Chronology**

Date	Time	Term	Operator	Action
2014/09/01	16:43:51	console28	176192	EVENT CREATED: Location= [REDACTED] ST CAMB CAS...Sub Type Code=ABANDI- 911 LAND/INKNOWN... CERB ADVISING THERE WAS A FEMALE ON THE LINE UNKNOWN WHAT SHE WANTED TRYING TO MAKE CONTACT
2014/09/01	16:44:15	console28	176192	EVENT COMMENT=OPEN LINE
2014/09/01	16:44:18	console28	176192	EVENT COMMENT=NO VOICE CONTACT
2014/09/01	16:44:27	console28	176192	EVENT COMMENT=CAN HEAR NOTHING IN THE BACKGROUND
2014/09/01	16:44:31	console28	176192	EVENT COMMENT=WILL CHECK WITH SMC
2014/09/01	16:47:12	console28	176192	EVENT COMMENT=SMC CONFIRMING TROUBLE WITH THE LINE
2014/09/01	16:47:15	console28	176192	EVENT COMMENT=PUTTING IN A TICKET
2014/09/01	16:55:08	console04	172853	...Code=ANBANI-911 LAND/UNKNOWN
2014/09/01	17:15:05	console04	172853	EVENT COMMENT=>>>>
				EVENT COMMENT=IN HOUSE CHECK, NO CALLS SINCE 2008 AND IN DIFFERENT SIR NAME (sic)
2014/09/01	18:16:56	console28	172853	EVENT COMMENT=PC DIONNE ADVISED Unit=3E102, Employee=13490, Employee=12593
18:17:54 to 18:37:30 (times and codes)				
2014/09/02	03:15:36	console04	419935	...ABANDI - 911...
2014/09/02	03:15:37	console04	419935	EVENT COMMENT=CCB: 911 ACTIVATION CONFIRMED TROUBLE ON THE LINE NFA 13490 DIONNE :CCE

<sup>2</sup> Exhibit 9: Event Chronology

The accuracy of the Event Chronology was not challenged during the hearing; therefore I accept it as a true and accurate record of the 911 call received by the PCC on September 1, 2014.

I note it was at 16:43:51 hours, when civilian employee ID 176192 was notified of an incoming 911 call from [REDACTED] Street, Casselman. At 16:44:31 hours, the dispatcher typed, 'WILL CHECK WITH SMC'. Three minutes later the dispatcher made two more entries, 'SMC CONFIRMING TROUBLE WITH THE LINE'; and, 'PUTTING IN A TICKET'.

A significant amount of time was spent during the hearing exploring the meaning and source of these two entries. Based on witness testimony, I gleaned 'trouble with the line' did not exclude the possibility of a technical problem on the part of the service provider nor did it exclude the possibility of an end-user generated problem, such as a phone off the hook, the cord disconnected, or meltdown caused by a fire. Regardless of how one may interpret 'trouble on the line', the OPP critical policy is clear with respect the action an officer must take. It states:

...a uniform member shall respond forthwith to a 911 dispatch, regardless of a possible network malfunction, and proceed to the location, treating the incident as an emergency until proven otherwise.<sup>3</sup>

Subject to this policy, I find the uncertainty created by the term, 'trouble on the line', bears no relevance on the course of action an OPP officer must follow. It is simple – a uniform member shall respond forthwith to a 911 dispatch.

I further note at 17:15:17 hours, a different dispatcher entered information which appears to be a result of a history check on the phone line. I am uncertain where the dispatcher got this information from. Irrespective, it too would bear no relevance on an officer's duty to respond forthwith.

I find the Event Chronology undisputedly indicates PC DIONNE was dispatched to the 911 call at 18:16:56 hours. I infer he received the call while still at the detachment because he was partnered up with PC Oickle and PC Oickle had still not left the office<sup>4</sup> – that coupled with D/Sgt. St. Clair's testimony that the phone was either "transferred" or "passed" over to PC DIONNE, which is language typically used when a call is received by a land line.

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<sup>3</sup> Exhibit 16: Police Orders, section 2.1.1

<sup>4</sup> Exhibit 10: PC Oickle's notes

No evidence was proffered in regard to the original conversation between PC DIONNE and the dispatcher, other than the Event Chronology which indicated he was advised.

I accept the undisputed evidence of D/Sgt. St. Clair that PC DIONNE made no entry in his notebook in regard to the 911 call.

I accept at 03:15:36 hours dispatcher, Ms. Lanigan, inquired with PC DIONNE the status of the 911 call. One second later he responded, "911 ACTIVATION CONFIRMED TROUBLE ON THE LINE NFA". The fact Ms. Lanigan did not know what NFA stood for, satisfied me beyond a doubt the words she typed truly and accurately reflected what PC DIONNE said.

I draw on my own 15 years of field experience, which included clearing incidents via the radio and monitoring radio calls and in the earlier years, occasionally dispatching, when I say PC DIONNE's clearing information unquestionably implied he had taken action in response to the 911 call. Although he did not say what the action was, his response to the dispatcher sufficiently indicated that whatever he did, nothing more had to be done. As much was said when he ended the call with "NFA". Sgt. Cadieux and D/Sgt. St. Clair's testimony established much the same. They both interpreted PC DIONNE's clearing information to mean he had taken some action in response to the 911 call.

More specifically, Sgt. Cadieux testified "911 ACTIVATION CONFIRMED TROUBLE ON THE LINE NFA" meant to him there actually was some kind of trouble with the line, and this would have been confirmed by the officer making contact with the party at the household. D/Sgt. St. Clair said he interpreted the comment to mean PC DIONNE would have confirmed there was trouble on the line. He also said he did not know if PC DIONNE meant he had confirmed there was trouble on the line or if he was simply repeating what had been said to him at 1647 hours. Without the benefit of hearing from PC DIONNE, a right which he exercised, this tribunal will not speculate on what PC DIONNE was thinking. That said it is unconscionable to believe an officer would think he/she need only regurgitate dispatch information in order to clear off a call without having taken any action, especially in relation to a 911 dispatch.

I find on the face of PC DIONNE's statement to the dispatcher at 03:15:36 hours he implied he had taken some kind of action in response to the 911 call. Based on the ASoF<sup>5</sup> this was not true. To this end, I find PC DIONNE's clearing information was misleading.

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<sup>5</sup> Exhibit 8: Agreed Statement of Facts

Next, I will examine if the statement was made willfully or negligently. I find *Lloyd* a helpful guide because aside from other things it referenced *Perry's* definition of deceit:

A fraudulent and cheating misrepresentation, artifice, or device, used by one or more person to deceive and trick another, who is ignorant of the true facts, to the prejudice and damage of the party imposed upon.<sup>6</sup>

Subject to this definition, I find the clearing information PC DIONNE provided at 03:15:36 hours was a misrepresentation of the facts used to deceive others that he had actually taken some action in response to the 911 call. The only person other than PC DIONNE who may have been wise to this at that particular time was Ms. M [REDACTED], who reached out for help, dialed 911 and help did not come.

The Commission went on to say in *Lloyd*:

This definition remains sound. 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.”<sup>7</sup>

And further, the Commission went on to distill ‘willfully or negligently’ even more when it cited *McCoy and Fort Francis Police Services (1969), 1OPR 16 (OPC)*:  
“an intention to deceive”.<sup>8</sup>

Conversely, *Precious* stated on page 15:

...to be guilty of deceit, the conduct must be willful or negligent which would require at the very least an analysis of the state of mind and behaviour of the officer at the relevant time.<sup>9</sup>

Bundling these excerpts into one, it is clear to me that in order to establish deceit, it must be decided whether the misleading statement was made willfully or negligently and this can be determined by the officer’s state of mind or actions. In this matter, I find there was willfulness to PC DIONNE’s misleading statement, and it cannot be viewed as anything else, based on these facts:

- a) Only nine hours had passed from the time he was dispatched to the time he gave the clearing information – the limited time lapse is significant in that the passage of such would not have frayed his memory.
- b) His workload that evening was extremely light – he and PC Oickle responded to only one call for service, and the rest of the evening was spent running radar and

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<sup>6</sup> Exhibit 22: *Lloyd and London Police Service*, OCCPS, May 20, 1999, page 9

<sup>7</sup> Exhibit 22: *Lloyd and London Police Service*, OCCPS, May 20, 1999, page 9-10

<sup>8</sup> Exhibit 22: *Lloyd and London Police Service*, OCCPS, May 20, 1999, page 10

<sup>9</sup> Exhibit 18: *Precious and Hamilton Police Service*, OCPC, May 10, 2002, page 15

patrolling.<sup>10</sup>

- c) According to PC Oickle's notes, PC DIONNE was simply patrolling when he provided the dispatcher the clearing information – therefore no distraction existed which may have otherwise contributed to an error.
- d) Even after being reminded of the 911 call at 0315 hours, he did nothing.
- e) Motivation to mislead on PC DIONNE's part existed because he was in direct contravention of the OPP's critical policy surrounding 911 calls.<sup>11</sup>

*Finding:*

Based on my analysis, the evidence is abundantly clear and convincing that PC DIONNE willfully made a misleading statement when he implied with the dispatcher he had taken some action to confirm there was trouble on the line, which was not true.

*2. Did PC DIONNE imply he had taken some action, either by approaching the door or driving by the residence, when he spoke to PC Cuning?*

The facts in this issue are contentious and disputed. They basically narrow down to what was said between PCs DIONNE and Cuning and what PC Cuning conveyed to the others in relation to these conversations. In this regard, I will rely on exhibit 12 and the testimony of PC Cuning, PC Croney, Sgt. Cadieux and D/Sgt. St. Clair.

With the exception of some minor variances, Sgt. Cadieux, D/Sgt. St. Clair and PC Croney's evidence was similar and largely in agreement. While at the scene, they were under the mistaken belief that PC DIONNE attended [REDACTED] on September 1, 2014, in response to the 911 call. They understood he checked the front door, found it locked and left.

Sgt. Cadieux and D/Sgt. St. Clair testified they got their information from PC Cuning. PC Croney could not independently remember if it was Sgt. Cadieux or PC Cuning who had told her this, but her notes<sup>12</sup> indicate she was briefed by both upon arrival. Her RMS Supplementary report reflected the following, which according to her was discussed a couple of times while at the scene:

On the 1<sup>st</sup> of September, in the evening, a 911 call was received and confirmed by Bell. Officers attended the scene but there was no answer and the front door was locked.<sup>13</sup>

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<sup>10</sup> Exhibit 10: PC Oickle's notes

<sup>11</sup> Exhibit 16: Police Orders, section 2.1.1

<sup>12</sup> Exhibit 17: PC Croney's notes

<sup>13</sup> Exhibit 11: RMS report

PC Cunning is the only officer who actually spoke with PC DIONNE that evening and the following day. According to him PC DIONNE said he could not remember if he had attended the 911 call because he had a domestic dispute call at the same time. In stark contrast to the testimony of the other three witnesses, PC Cunning said it was this information he conveyed to the others, and not that PC DIONNE had attended and found the front door locked.

I accept the evidence of Sgt. Cadieux, D/Sgt. St. Clair and PC Croney over PC Cunning for several reasons. The minor contradictions I found in their testimony were negligible – such as whether they were sitting or standing or inside or outside when they talked or whether PC DIONNE knocked at the front door or just approached it. These variations in fact made their testimony all the more believable. Sgt. Cadieux, D/Sgt. St. Clair and PC Croney spoke clearly and concisely and conveyed their evidence in a forthright manner. They had nothing to gain or lose from telling the truth and I found their delivery genuine. Sgt. Cadieux readily admitted his own failure to take concise and detailed notes, which was correct – his notes did not comply with OPP policy. D/Sgt. St. Clair and PC Croney had detailed notes on the salient points of the 911 call and the purported action taken by PC DIONNE.

I find the email PC Cunning crafted on September 4, 2014, documentary evidence which supports Sgt. Cadieux's, D/Sgt. St. Clair's and PC Croney's testimony. In it he wrote:

Good Afternoon Dr. Yu

Following up from the sudden death last night on [REDACTED] Street in Casselman, I spoke to the investigating officer and he advised that as the call came in as "trouble on the line" and was a call held for from dayshift, approximate 1.5 hours after the original 911 call was placed, he patrolled the area of the house **but did not approach the residence or knock on the door.**<sup>14</sup> (*bolded added*)

His words, '...but did not approach the residence or knock on the door' points to the fact he conveyed to the investigators PC DIONNE knocked on the front door. It was an issue PC Cunning created in the minds of the investigators and one that he needed to resolve and accomplished by his select words in the email. Further, had PC Cunning conveyed to the others that PC DIONNE was unsure if he had even attended the 911 call, it does not make sense he did not set the record straight when D/Sgt. St. Clair pointedly asked him if PC DIONNE had checked the side door.

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<sup>14</sup> Exhibit 12: Email from PC Cunning

In sum, Sgt. Cadieux's, D/Sgt. St. Clair's and PC Croney's testimony was in harmony with one another – their testimony fit and flowed. I found all three compelling, credible and reliable witnesses.

Comparably, I found PC Cuning a reluctant witness. His testimony stood in contrast to the other three. Despite authoring the Sudden Death report<sup>15</sup>, he could not remember the date he found Ms. M■■■■, citing his lost notes. His answers were brief and it seemed like counsel was pulling teeth when they tried to pinpoint the date of the lost notes. For the most part, PC Cuning appeared extremely uncomfortable and guarded. It struck me odd that PC Cuning could not remember in January 2015 what he had told Sgt. Cadieux at the scene, only to have his memory return 18 months later for the hearing. Mr. Houston described PC Cuning's testimony as confusing and this was a kind way of putting it. I found him unbelievable – one who lacked complete credibility surrounding his discussions with the investigators on the night Ms. M■■■■ was found.

This leads me to find PC Cuning told the officers at the scene that PC DIONNE had attended the residence, found the front door locked and left – rather than PC DIONNE being unsure if he attended. I am convinced PC Cuning intentionally attempted to mislead this tribunal into believing the latter – but it is not he who is the subject of this tribunal, it is PC DIONNE.

I agree with counsel, it is unknown how many calls occurred between PCs Cuning and DIONNE on September 3 and 4, 2014. PC Cuning said two, but the evidence points to more. He said he called PC DIONNE on his own initiative before Sgt. Cadieux arrived. Sgt. Cadieux said he directed PC Cuning to make the call, and the call was made after he arrived. Then there was at least one known call the following day.

I find that as certain as I am in regard to what PC Cuning said the night of September 3, 2014, I struggle knowing what PC DIONNE's role was in the misrepresentation of the truth. I am not sure if PC DIONNE told PC Cuning he had attended and approached the front door, or that he did not attend, or that he could not remember because he had a domestic call at the same time. If in fact it was the latter, I find PC DIONNE misrepresented the facts because the domestic call did not come in until 37 minutes after the 911 call – not at the same time. Nonetheless, I am not sure if PC DIONNE and PC Cuning conspired to come up a story that some action had been taken or if PC Cuning acted alone and fabricated the story. The evidence is inconclusive and not clear in my mind either way.

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<sup>15</sup> Exhibit 11: RMS report

I turn my mind to the email PC Cunning sent on September 4, 2014, where he stated PC DIONNE did not approach the residence or knock on the door, but did patrol the area of the house. When asked about the contradiction from the night before, PC Cunning said with conviction the information contained in the email came from PC DIONNE. Given the tone and manner in which he responded to this and in light of the exhaustive questions put to him by counsel surrounding this issue, I found this piece of PC Cunning's testimony persuasive. But does this in itself meet the threshold of clear and convincing?

Contrary to Mr. Girvin's argument, I find it logical PC DIONNE would want to continue with the facade in light of the trail of evidence already established. A record had been created that he misled the dispatcher. It was helpful that his partner, PC Oickle, appeared to have been struck with selective memory and hearing. I say this because PC Oickle could recall what PC DIONNE told him, but he could not remember what he said to the OIPRD investigator – one would have thought it was the same. PC Oickle also did not hear the radio exchange between the dispatcher and PC DIONNE which I found peculiar since they were in the same unit with no distraction when the exchange occurred.

Although the evidence points to the fact PC DIONNE had a role in the misrepresentations put forward by PC Cunning, it remains nonetheless fragile and not clear in my mind.

*Finding:*

Based on my analysis, the evidence is not clear and convincing. Consequently, I do not find the prosecutor has met the burden of proof in the second allegation of deceit. I cannot say whether PC DIONNE implied to PC Cunning that he had approached the door or patrolled the area of the house.

3. *Only in the clearest of cases, can a police officer be found guilty of deceit. Decision makers are often reminded that a long mile must be travelled to prove such a serious charge. Keeping in mind the standard of proof in police disciplinary matters as stated in section 84.1 of the PSA and upheld in Jacobs, has the prosecutor met the burden in the case of PC DIONNE?*

In this matter, I have determined the prosecutor has proven only one of the two allegations listed in the charge of deceit. Does this on its own amount to the so often referred to long mile? I turn my mind first to *Perry* for guidance, where the Commission had this to say:

The Commission is of the opinion that to prove a charge of deceit requires the clearest of evidence to establish that

here is no possibility of consistency between statements upon which the charge is founded, in addition to the other ingredients of proof.<sup>16</sup>

I infer this excerpt to mean that had PC DIONNE been able to explain what he meant when he said, “911 ACTIVATION CONFIRMED TROUBLE ON THE LINE, NFA” the inconsistency being the fact he did not, may not have been so inconsistent with the truth after all. Absent this evidence, I am left with the testimony of D/Sgt. St. Clair and Sgt. Cadieux, and they along with me interpreted PC DIONNE’s statement to imply he had taken some kind of action.

I next turn to Paul Ceyskens’ *Legal Aspects of Policing*. It states:

The central issue concerning this category of deceit involves discerning the point beyond which a false, misleading or inaccurate statement is culpable, as the law is clear that inaccuracy alone is not sufficient to establish this category of deceit.<sup>17</sup>

I find PC DIONNE’s statement went beyond the point of inaccuracy and implicated his culpability. He either took action in response to the 911 or he did not – it is that simple. In light of the ASoF<sup>18</sup> the tribunal knows the latter is true – he took no action.

Ceyskens went on to say:

The second legislative objective involves protecting officers against findings of deceit in situations where an inaccurate statement is the product of honest mistake.<sup>19</sup>

This tribunal is satisfied PC DIONNE’s statement was not the product of an honest mistake, and the reasons for this were outlined earlier on pages 29 and 30.

Lastly, I turn back to *Lloyd* for guidance in regard to the long mile that needs to be travelled before deceit can be proven:

The above-noted statements which constitute the heart of the charge of deceit can reasonably be said to be inaccurate and incomplete. It is a long mile, however, between the point of at which one can find a statement inaccurate and the point of which one can find a statement was made with intent to mislead or deceive.<sup>20</sup>

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<sup>16</sup> Exhibit 24: *Perry and York Regional Police Force*, OCCPS #72-08, November 24, 1972, page 4

<sup>17</sup> Exhibit 21: *Legal Aspects of Policing*, Paul Ceyskens, Chapter 6.6, Deceit, pages 6-103 to 6-114, page 6-106

<sup>18</sup> Exhibit 8: *Agreed Statement of Facts*

<sup>19</sup> Exhibit 21: *Legal Aspects of Policing*, Paul Ceyskens, Chapter 6.6, Deceit, pages 6-103 to 6-114, page 6-106

<sup>20</sup> Exhibit 22: *Lloyd and London Police Service*, OCCPS, May 20, 1999, page 10

*Lloyd* is a valuable reminder to decision makers that inaccurate statements on their own without the element of willfulness or negligence do not constitute deceit. Such was the case in *Hogue*<sup>21</sup>, where the officer's misstatements were found to be an honest mistake and not a willful misrepresentation. I cannot say the same for PC DIONNE.

*Finding:*

Based on my review of the case law and legal text, I am satisfied the clear and convincing evidence found in the first allegation of deceit is sufficient to make a finding against PC DIONNE. His brief, but potent words willfully misrepresented the truth in regard to his action/inaction to the 911 call. On the strength of his words, I find the long mile was travelled.

#### **PART IV: DECISION**

My analysis and reasons for the said findings lead me to find PC DIONNE guilty of neglect of duty and deceit, as charged.



Robin D. McElary-Downer  
Superintendent  
OPP Adjudicator

Date electronically delivered: July 7, 2016

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<sup>21</sup> Exhibit 20: *Hogue and Ontario Provincial Police*, OPPDH, March 18, 2015

## APPENDIX 'A'

- Exhibit 7: Prosecutor's designation
- Exhibit 8: Agreed Statement of Facts
- Exhibit 9: Event Chronology – Computer Automated Dispatch (CAD)
- Exhibit 10: PC Oickle's notes
- Exhibit 11: RMS report
- Exhibit 12: Email from PC Cunning
- Exhibit 13: Sergeant Cadieux's notes
- Exhibit 14: Acting Sergeant Major Warren's email
- Exhibit 15: D/Sgt. St. Clair's notes
- Exhibit 16: Police Orders, section 2.1.1
- Exhibit 17: PC Croney's notes
- Exhibit 18: *Precious and Hamilton Police Service, OCPC, May 10, 2002*
- Exhibit 19: *Leeder and Metropolitan Toronto Police Force, OCCPS #70-07, September 8, 1970*
- Exhibit 20: *Hogue and Ontario Provincial Police, OPPDH, March 18, 2015*
- Exhibit 21: Legal Aspects of Policing, Paul Ceysens, Chapter 6.6, Deceit, pages 6-103-6-114
- Exhibit 22: *Lloyd and London Police Service, OCCPS, May 20, 1999*
- Exhibit 23: *Geske and Hamilton Police Service, OCCPS, July 3, 2003*
- Exhibit 24: *Perry and York Regional Police Force, OCCPS #72-08, November 24, 1972*
- Exhibit 25: *Jacobs and Ottawa Police Service, Ontario Court of Appeal, [2016] OJ 2431*
- Exhibit 26: *Cate and Peel Regional Police Service, OCCPS, December 5, 2002*