

DURHAM REGIONAL POLICE SERVICE DISCIPLINE HEARING

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

**AND IN THE MATTER OF
THE DURHAM REGIONAL POLICE SERVICE**

AND

**CONSTABLE NIGEL LAWRENCE #458
&
CONSTABLE GREG FORAN #837**

CHARGE: NEGLIGENCE OF DUTY

DECISION WITH REASONS

Before: INSPECTOR Bruce Townley

Representation:

Counsel for the Prosecution: Mr. Alex Sinclair

Counsel for the Defence: Mr. William McKenzie

Public Complainant: Mr. Greg Allard

Complainant's Counsel: N/A

Hearing Date: May 30 & 31, 2016

PART I: OVERVIEW

Allegations of Misconduct

It is alleged Police Constable Nigel Lawrence #458 on or about September 10, 2014 did without lawful excuse, neglect or omit to promptly or diligently perform a duty as a member of the Durham Regional Police Service, thereby committing the offence of Neglect of Duty, contrary to Part V, clause 80(1)(a) of the Act as amended, and section 30, clause 2(1)(c)(i) of the “Schedule Code of Conduct”, O. Reg. 268/10 as amended under the Act.

And further that,

It is alleged Police Constable Greg Foran #837 on or about September 10, 2014 did without lawful excuse, neglect or omit to promptly or diligently perform a duty as a member of the Durham Regional Police Service, thereby committing the offence of Neglect of Duty, contrary to Part V, clause 80(1)(a) of the Act as amended, and section 30, clause 2(1)(c)(i) of the “Schedule Code of Conduct”, O. Reg. 268/10 as amended under the Act.

Plea: Not guilty by both officers

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.

Evidence Called - *By the Prosecutor*

Witness 1. Mr. Gregory Allard

Mr. Allard testified that on September 10, 2014 at approximately 8pm, he answered a call from the officers on his intercom in his apartment located at [REDACTED] Rd in Oshawa. The officers asked for his cousin Ryan Allard. Greg unlocked the front door remotely. He told the officers over the phone that he wasn't sure what his cousin was up to but whatever it was it was a lie and that the officers should leave. Officers met Greg Allard, who heard Cst. Foran state "he knows he's the fucking bad guy". Both officers were proceeding to the elevator. Allard responded by asking Cst. Lawrence if he thought that was professional conduct. Allard was miffed at the remarks Cst. Foran made. He stated the more they talked the more he didn't trust the officers.

Allard testified based on his lack of trust that he didn't tell the officers that his cousin Ryan had previously assaulted him. He went on to state that he called in to DRPS communications and asked to have a "little less biased officer" attend to take a complaint of assault against his cousin Ryan. He testified that he waited some time before calling so he could calm down after the interaction with the officers. When he did call sometime later, he advised DRPS communications he wished to complain about his cousin Ryan who had assaulted him a month prior and threatened him two weeks ago. He went on to say that DRPS communications told him that he could wait for officers responding or that he could go to the station. He responded by stating he didn't have a vehicle and that he requested someone from Victim Services because of the stress he was under. He sat down and watched TV for a period of time waiting. Allard called back looking for an update and was told the officers were still conducting an investigation. Allard stated he sat down and continued to watch TV. At approximately 10pm Allard called back again wondering what was going on.

Sometime later, Officers Foran and Lawrence attended Allard's apartment. Allard informed the officers he was going to retrieve his cell phone to record the conversation. Cst. Foran followed Allard as he located his cell phone. As soon as Allard activated the recording app on his phone, he was grabbed by the arm and told to be quiet and listen. He was told he was being arrested for damaging a car. He stated he tried to tell the

officers about his complaint but was not allowed. There was minimal communication before he turned on his cell to record.

(A video (exhibit 5) was played. Mr. Allard became visibly upset and left the hearing room. A recess was granted to allow Mr. Allard to regain his composure.)Mr. Sinclair continued to ask about what was said and Mr. Allard stated that roughly eight times while he was being arrested, he stated that “He threatened to kill me”, referring to his cousin. Allard also stated that he was told by the Durham Regional Police dispatcher that someone was coming to take his complaint and help him deal with what his cousin had done to him. He went on to say that Cst. Lawrence told him he would be charged with public mischief. That conversation took place in the hallway close to the door leading to the lobby. Allard stated he was then put in a cruiser and taken to the station. At some point after the arrest and while he was still in the cruiser, Allard stated that he asked the officers if it was acceptable to grab someone by the neck and threaten to kill them. When asked if there was a response, he stated that Cst. Foran responded “It’s ok if it’s you”. While in the cell area, Allard stated the officers refused to talk about the complaint.

Mr. Allard went on to state that he filed two complaints with the OIPRD with regards to the officers refusing to take a complaint against his cousin.

In cross-examination,

Mr. McKenzie commenced his cross by asking Mr. Allard about the evidence to suggest his cousin was filing a false charge. He went to talk about information relating to what was being done to him relating to Estate Trustees, one of the three trustees being his cousin. He spoke about some Facebook postings about being robbed in the past and how his family was treating him. He then testified that he felt his cousin had motive to file a false complaint against him on September 10, 2014, because of what had happened in the past. Mr. McKenzie asked Allard if the false complaint was the same complaint that he was arrested for. Allard agreed. Mr. Allard went on to agree that he was convicted of the mischief on September 15, 2015. He advised the Tribunal “If I’m convicted of a crime my cousin’s crime is ok? I was convicted of a bullshit crime falsely, like the two men convicted in Paul Bernardo’s fuckin murders.”

Allard advised, once he calmed down that he was convicted of mischief in criminal court after a trial where his cousins and other witnesses testified. He agreed with Mr. McKenzie that based on his complaint to the OIPRD, the threat and assault had occurred on or about the 26th of August, 2014 and that he had not called the police prior to the day he was arrested for the mischief leaving a 15 day gap. Allard stated the reason he didn't call was because he had little to no faith in the Durham Regional Police.

Mr. McKenzie addressed a statement given by Ryan Allard where it stated the witness had texted him shortly after 8pm and wanted to talk about his mother's estate. Mr. Allard agreed.

Mr. Allard became upset again resulting in a short recess.

Cross examination continued with him questioning Mr. Allard about his cousin's statement. More specifically, that immediately after Ryan Allard, noticed the damage he called the Police and that was the reason Csts. Foran and Lawrence attended. Allard again admitted he had 15 days prior to report the threat and assault and the officers were there to gather evidence against him, he just didn't know what for. Allard went on to reluctantly admit he was convicted in criminal court and placed on probation for a period of time.

McKenzie went on to question Allard about his cousin's original call to police where Ryan Allard called in to say he had been threatened by the witness. Mr. Allard denied threatening his cousin. Allard went on to agree with Mr. McKenzie that the officers were in the building for over two hours investigating the complaint from his cousin Ryan. He also agreed after reviewing the dispatch notes that when Allard called for the third time, that he was scared and worried, and that he hung up on the dispatcher.

Mr. McKenzie began reviewing Mr. Allard's complaint to the OIPRD. Allard agreed he provided the statement on April 10, 2015 and that he complained to the OIPRD March 8, 2015, two days shy of the six month limitation. Allard stated he didn't know and wasn't fully aware of the time he had to file the complaint. He did admit he was aware of the six month restriction in the fifth month and had trouble figuring out how to file the complaint. He agreed in his statement that he told the OIPRD there was no way he did what he was accused of, referring to the criminal charge of mischief. When asked if he

lied to the OIPRD, he agreed that he did, but then retracted the comment and said he didn't lie.

He also admitted when asked by Mr. McKenzie that when the officers first arrived on scene on September 10, 2014 and asked for his cousin, he stated "I told them who I was and whatever my cousin is up to, it's a lie, they could leave." When asked if he told the officers at that time that his cousin had threatened and assaulted him, he agreed that he didn't tell them because the officers seemed disinterested in hearing what he had to say to them, which is the reason he called dispatch instead and asked for a different officer to file the complaint.

Allard also agreed the first ten minutes of the conversation with the officers focused on personal issues with his cousin involving theft, financial abuse, extortion etc. He also agreed that he told them he didn't trust the officers and that "I just want them to fucking go away because whatever my cousin said I had done wasn't true." And agreed he made this comment to the OIPRD.

Mr. McKenzie went on to review the OIPRD statement, specifically just prior to Allard being arrested. Mr. Allard agreed that prior to him turning on his recording device, he did not inform the officers about the assault and threatening. He admitted that he didn't want to talk until he turned the recording device on. He agreed Cst. Lawrence told him to listen and placed him under arrest. As per the transcript of Mr. Allard's recording, he stated several times "he threatened to kill me". He also agreed that when being arrested, this is the first time he tried to tell the officers of the assault and threat.

Mr. McKenzie asked about previous grievances with Durham Regional Police. Mr. Allard stated there were several past grievances including one where a family member was screaming they were going to kill Mr. Allard while he slept. But when the officer attended, Mr. Allard's mother told the officer to go away because Mr. Allard was autistic and overreacting. Mr. Allard stated he never got an opportunity to speak to the officer.

Mr. Allard went on to state that since his arrest, he made attempts to lay a complaint about his cousin to no avail. He was told by the Police that a detective (unknown) would contact him. That was over four months ago and Mr. Allard had not received any contact. Allard didn't recall the date but it was sometime after his trial. He also stated

that he was scared to report it after he was warned by the officers for filing a false complaint.

In re-examination,

Mr. Sinclair clarified with Mr. Allard as to the reason he didn't file the complaint for a long period of time. Mr. Allard reconfirmed that he didn't know how to file the complaint and that he didn't have faith in the Durham Regional Police.

Allard also stated that dispatch told him the only option he had was to talk to the officers and file a complaint with them.

When Mr. Sinclair asked "What changed your mind with respect to reporting it at all?", Mr. Allard responded "The fact that my cousin had cops there and this wouldn't have been the first time him or one of his associates had filed a less than perfectly truthful complaint for some reason, in a means to control my life."

Mr. Allard's comments,

He stated that he had to deal with several issues including cleaning out his apartment and finding money to hire a lawyer. He was struggling in his personal life and was trying to get stable. This was the reason for the delay in reporting the complaint to the OIPRD. There was never an intention to deceive anyone.

This concluded the Prosecution's case subject to final submissions.

Evidence Called - *By the Defence*

Witness 1. Cst. Nigel Lawrence

Cst. Lawrence testified that he has been a member of the Durham Regional Police for 28 years and is presently a first class constable assigned to 18 division in Whitby. He stated he was working nightshift in uniform on September 10, 2014 and partnered with Cst. Greg Foran. At approximately 8 pm his unit was dispatched to [REDACTED] Rd in Oshawa for a family dispute. The call was received from Ryan Allard that his cousin

Greg had damaged his vehicle. Ryan also advised that he was the executor for Greg's mother's estate and that Greg feels that he (Ryan) is misrepresenting her. Sometime later the officers arrived at the location and located an Allard name on the board and hit the buzzer. The officers ended up buzzing Greg Allard by mistake. Greg opened the door and met the officers in the lobby area and had a conversation. Lawrence testified that the conversation with Mr. Allard didn't go well. He was loud, confrontational and irrational. Lawrence stated that he recalled Allard rambling about numerous issues including gay bashing, threats, and being framed and the police not helping him. Lawrence realized quickly that he was speaking to the wrong Allard. The officers located Ryan a short time later in the same building and commenced an investigation into the complaint that lasted more than two hours. During the investigation, Cst. Lawrence recalls being updated by Dispatch that Greg Allard wanted to speak to the officers.

The officers eventually returned to Greg Allard's apartment in the company of Acting Sgt. McQuoid. Lawrence stated he wanted a supervisor present (with a taser) when they arrested Allard due to his previous conduct. When Lawrence advised Allard that he was arresting him for mischief, Allard became aggressive and difficult. Allard demanded to get his cell phone to record the contact with the officers.

Mr. McKenzie reviewed the transcript of the video captured by Mr. Allard at the time of arrest. Cst. Lawrence agreed it was an accurate depiction of the events. Lawrence advised that during the contact, at no time did Allard indicate who threatened or assaulted him.

There was a struggle when officers arrested Allard and ended up putting him to the ground to gain control. Lawrence stated that Allard looked traumatized and the officers sat him up to allow him to relax and catch his breath.

The officers took Mr. Allard to the station to be processed. The officers proceeded to complete the paperwork on Mr. Allard.

Mr. McKenzie questioned Lawrence as to procedure when investigating a call, and more specifically the call on September 10, 2014 involving the Allards. Lawrence testified that he followed the directive when they investigated Ryan Allard's complaint and ultimately arrested Greg Allard. When asked by Mr. McKenzie why he didn't take a formal

complaint from Greg Allard, Lawrence stated he couldn't communicate with Mr. Allard. Mr. Allard was difficult to deal with and almost impossible to have a conversation with him.

In cross-examination by Mr. Sinclair,

Mr. Sinclair began cross by asking Cst. Lawrence about the police report he completed. More specifically, he reviewed the conversation Lawrence had with Greg Allard. Lawrence stated he recalled the comments Allard made about being framed and the Police not helping him.

Sinclair went on to question him about his interview with the OIPRD on June 15, 2015 and his interactions with Allard on the day of arrest. Lawrence stated that at no time did Greg Allard mention anything about a threat or assault during the initial conversation on September 10, 2014.

Lawrence stated he did recall being advised by dispatch that Greg Allard had called in several times and recalled being told by dispatch that Greg Allard wanted to report a threat and assault against his cousin. Lawrence stated that he added that information to his report to show Greg Allard's attitude and demeanor. Lawrence went on to state that Allard was difficult to talk to. He didn't agree with Mr. Sinclair's suggestion that Greg Allard's complaint was self-serving. Lawrence stated he acknowledged it and carried on with his investigation.

Sinclair went on to review the transcript of the video taken at the time of arrest and conversation subsequent at the station. Lawrence agreed he never asked Greg Allard about the threat and assault.

In cross-examination by Mr. Allard,

Mr. Allard questioned Lawrence in regards to the investigation the night of September 10, 2014.

There was no reexamination by Mr. McKenzie

Witness 2 Cst. Greg Foran

Cst. Foran testified that he has been a Police Constable with Durham Regional Police for more than 25 years and is assigned to 18 Division in Whitby. He went on to state that he was working the night shift with Cst. Lawrence on September 10, 2014 and was dispatched to a family dispute call on [REDACTED] Rd in Oshawa. Foran stated that when they first met Greg Allard, he was loud and confrontational, ranting about issues that didn't make sense. Foran testified he did not have any previous conversation with Allard or make any comments about Allard.

Foran went on to state that they soon learned they were speaking to the wrong Allard and that Greg Allard directed them to his cousin Ryan. The officers proceeded to investigate the original complaint. Foran stated they eventually returned to the apartment to arrest Greg. Foran testified that he allowed Allard to retrieve his phone so he could record the interaction with the officers. Allard's demeanor was similar to the original contact hours before when the officers arrived. He was confrontational and ranting. Foran admitted when asked that he was aware that Allard had contacted dispatch at least three times looking for the officers to attend his apartment. Foran went on to state he had to assist Cst. Lawrence in arresting Allard as he was resisting and the officers had to put Allard to the ground.

In cross-examination by Mr. Sinclair,

Cst. Foran stated that he recalled some of the original conversation he had with Greg Allard and remembers Allard telling the officers about gay bashing and being framed by police. Foran agreed that dispatch advised him and Lawrence three times that Greg Allard wanted to file a threat and assault report. Foran admitted he did not make any entries in his note book regarding the information received from dispatch that Greg Allard wanted to file a complaint. Foran also agreed that when they returned to arrest Allard, he made no attempt to solicit any information about the threat and assault.

Sinclair went on to review specifics of the criminal investigation management plan directive with Foran.

In cross-examination by Mr. Allard,

Mr. Allard questioned Cst. Foran in relation to the damage to the vehicle. More specifically, Allard was asking where the evidence was to the second vehicle. Foran responded by stating he wasn't aware of any damage to a second vehicle and that there were two witnesses who saw Allard damage the one vehicle. Allard went onto ask Foran about what he said during the original conversation the night of September 10, 2014. Foran testified that he didn't recall. Then Allard asked Foran why he didn't ask any questions of Allard as they were arresting him, Foran stated "You really didn't give us the opportunity to do that." Foran went on to state that they investigated the incident they were dispatched to. When asked why he never took a complaint from Allard, Foran stated "you had ample opportunity to go to the police to report that, and only after you are under arrest, now you decide to complain about it and make a complaint." "We found it very suspect that you only made the complaint after you were under arrest for damaging your cousin's car."

There was no reexamination by Mr. McKenzie.

Witness 3 Acting Sgt. McQuoid

A/Sgt. McQuoid stated that he has been a police officer for 19 years, with the past 12 years with Durham Regional Police. He was assigned at 18 Division in Whitby as an Acting Sgt. on the night shift September 10, 2014. McQuoid stated he was aware Lawrence and Foran were on a call at [REDACTED] Rd in Oshawa. McQuoid attended the call as there was an indication of a knife being used and it was prudent to have a taser available if required when arresting the suspect. When asked if he had knowledge about Mr. Allard calling in to dispatch wanting to speak to officers about an assault and threat complaint, he stated he was aware of the call but did not direct the officers to look

into Allard's complaint. He stated "Just further information." He agreed with Mr. McKenzie its part of the same occurrence the officers were already investigating.

McQuoid went on to state that one of the officers requested his assistance on the call. They met in the parking lot prior to arresting Mr. Allard. The officers updated him with the status of the investigation and that Allard had used a knife to damage the trunk of the victim's vehicle. They then discussed the grounds for arrest, the investigation to date and how they were going to release him after arresting and processing him. The officers then proceeded to the apartment to locate Mr. Allard. Allard met the officers at the door, with clenched fists and avoided eye contact. His face was almost blank. He appeared unkept and looked like he hadn't slept in a while. His eyes were bloodshot and based on McQuoid's experience, Allard appeared to be having a mental episode. Allard was standoffish. He spoke quickly and wasn't complying with the officers. He was aggressive and confrontational. McQuoid was aware that Allard was recording the interactions with the officers. At no time did McQuoid hear Allard make any comment about an assault or threat by his cousin Ryan. McQuoid assisted in gaining control of Allard once Lawrence placed him under arrest.

When asked, McQuoid believed the officers followed the directive. He went on to state that from his experience, dealing with similar calls like this, the suspect on many occasions calls in to "muddy the water."

In cross-examination by Mr. Sinclair,

A/Sgt. McQuoid was questioned regarding times and how he communicated with the officers prior to arriving. McQuoid didn't recall. He stated he monitors calls and when he feels he should be in the area of a call, he attends. He went on to say that he attended [REDACTED] Rd to assist the two officers. His recollection was Allard clenched his fists and had a bladed stance. He also recalled Allard mentioning something about money owed to him from a will. Sinclair reviewed the video transcript with McQuoid who agreed that Allard stated "He threatened to kill me" several times. When asked, McQuoid indicate that he did not direct the officers to take any steps to investigate Allard's comments. He felt it wasn't a credible complaint. McQuoid qualified his decision based

on the fact that when the officers came to the door, there was no mention about the threat. He also stated Mr. Allard made several other comments to the officers earlier in the evening but never mentioned a threat made by his cousin. McQuoid stated “Mr. Allard decides to say that he was owed money from a Will and not go off and talk to him about being threatened. The first thing I would do or the very first thing anybody, I think, would do when they call Police and say that, “I’ve been threatened”. Mr. Allard didn’t do that. “He didn’t say anything to us along those lines.”

In cross-examination by Mr. Allard,

Mr. Allard asked McQuoid if innocent people having trouble sleeping. McQuoid responded “Yeah, people, people have trouble sleeping for all sorts of reasons.”

Submissions

By the prosecutor Mr. Sinclair

Mr. Sinclair commenced his submissions by stating it’s the Prosecution’s onus to satisfy the tribunal there’s clear and convincing evidence that misconduct has occurred. He referenced a book of authorities with seven separate cases relating to neglect of duty convictions (exhibit 7).

Sinclair went on to state there was no need for a lengthy credibility analysis as the material facts were not in dispute. What was in dispute was that McQuoid’s version of events was different from the other two officers and that McQuoid’s version was faulty. He referenced McQuoid’s version of Allard’s comments as you’re killing me or you’re trying to kill me contrary to the transcripts that confirm Mr. Allard stated “He threatened to kill me.” Sinclair suggested I should reject McQuoid’s recollection of events.

Sinclair suggested that the officers had a duty to as per the Criminal Investigation Management Plan to “Respond appropriately to all incidents to which they are dispatched happen upon or otherwise assigned during the course of their duties.” Sinclair suggested dispatch provided the officers with information to be acted on and

there is no dispute there was information that was “happened upon.” He stated the officers were obliged to appropriately deal with that information under the directive and under section 22 of the Police Services Act, the officers are obliged to respond appropriately to lesser offences. It was clear that there was a duty for the officers to create a report, whether or not they believed Mr. Allard. There should have been some investigative steps taken to at least record Mr. Allard’s complaint. They had an obligation to submit a report and failed to do so.

Mr. Sinclair went to review the various decisions (case law) in exhibit 7 which included the test for neglect of duty. It states “ *To be convicted of this charge it must be shown that the member failed to perform a duty and the member failed to perform this duty because of neglect, or did not perform the duty in a prompt or diligent manner. Once proven, the member to avoid discipline, must then show that they had a lawful excuse for not performing the duty in the prescribed manner.*” Sinclair went on to say that it was clear that the officers didn’t perform their duty, they admitted that and that there was no lawful excuse.

By Mr. Greg Allard

Mr. Allard stated “I just like to know how you make an absolute definitive concrete decision on something not knowing a single fact when it’s – without having a single piece of information to rely on – they never presented any information that my – any evidence that my complaint was false.” Allard stated the officers didn’t do anything to try to find out. The officers should have tried. He suggested as did Mr. Sinclair it is possible that a self-serving complaint could be true. He finished by stating, “Is that going to be the going standard on every time someone brings evidence to a police officer or a Crown Attorney after they’ve been arrested or investigated?”

By Defence Mr. McKenzie

Mr. McKenzie’s position is that the officers did not have a duty to take a report. And even if they did have to take a report, they had a lawful excuse under the circumstances for not having to do so. No supervisor of the Durham Regional Police was called to

testify by the prosecution to provide insight or whether or not the officers in fact did have a duty to take a report.

The Tribunal did have the benefit of the Acting Sergeant's testimony. A/Sgt. McQuoid did not believe the officers were required to do a report based on the information they had at the time. The officers have over 50 years of experience between them. They have been to thousands of calls and made many arrests. Their common sense has to be factored in when dealing with members of the public. These officers responded to a call and did what they were supposed to do. They ended up doing an 82 page report. "They did their job in relation to the mischief call."

Mr. McKenzie went on to state that from the first time they meet Greg Allard, he was loud, confrontational and irrational. Allard rambled on about a number of different things including gay bashings, threats, being framed and police not helping him. Mr. Allard had 15 days to report the threat and assault prior to September 10, 2014. He had plenty of opportunity to do so. And by mistake, he comes in contact with the officers and his attitude is less than favorable right from the get-go. The officer's collective experience tells them there's something about this guy that they need to be concerned about. Mr. Allard also had an opportunity at that time to complain about the assault and threatening but he didn't say anything.

Prosecutor's reply Mr. Sinclair

Mr. Sinclair responded to the comment that no one from management was called to support the criminal investigation management plan directive. The directive is clear on its face. Mr. Sinclair responded to Mr. McKenzie's comments about Mr. Allard failing to notify the officers about the threat and assault. Mr. Allard certainly took steps to disclose that to the service.

By Mr. Greg Allard

Mr. Allard stated that because he has maintained his innocence in the criminal matter, and that he must be lying because he was convicted, that it's irrelevant by him maintaining his innocence. Allard went on to clarify how the night began with Cst. Foran stating "He knows he's the fucking bad guy right?" He went on to say that Cst. Foran

had no recollection or notes about the incident. Allard stated, “So me being aggressive or upset during the first response, entirely probable. Could have been due to their conduct.” He felt this was an important point in the defence’s argument. He went on to say that was the reason he called dispatch to have other officers attend because he didn’t trust Lawrence and Foran. His only other option was to get to the station but he didn’t have any cab fare or access to a vehicle. That left the only option to speak to the officers already there who didn’t take his complaint.

PART III: ANALYSIS AND FINDINGS

Summary of misconduct

Cst. Lawrence and Cst. Foran are alleged to have committed misconduct in that on or about September 10, 2014 they did without lawful excuse, neglect or omit to promptly or diligently perform a duty as a member of the Durham Regional Police Service, thereby committing the offence of Neglect of Duty, contrary to the Schedule Code of Conduct of the Police Services Act.

The Tribunal heard from one witness for the prosecution and three witnesses for the defence. The first witness to testify was the complainant Mr. Greg Allard. Allard stated that on September 10, 2014 he was approached by Cst. Lawrence and Cst. Foran at his apartment building located at [REDACTED] Rd in Oshawa. Officers soon realized they had the wrong Mr. Allard as they were looking for Greg’s cousin Ryan. Greg admitted being upset and confrontational as he testified that Cst. Foran made a comment “he knows he’s the fucking bad guy.” Officers proceeded to locate Ryan Allard and commenced an investigation. Over the next few hours, Greg contacted Durham Regional Police dispatch on several occasions advising that his cousin Ryan threatened and assaulted him and that he wanted to file a report. He testified that the threatening and assault happened 15 days previous but he never contacted the Police because he had little to no faith in the Durham Regional Police. Officers re-attended his apartment a few hours later and Allard was advised he was going to be arrested for mischief. Greg retrieved his cell phone to allow himself to record the interaction with the officers. After a

brief struggle, officers arrested Allard, processed him in Oshawa and charged him with mischief as a result of the investigation. After a trial a year later, Allard was convicted of mischief. Allard still claims he is innocent of the charge and shouldn't have been convicted. He went on to tell the Tribunal that since his arrest, he made attempts to lay a complaint of the threat and assault to no avail. He advised he attended the station in Oshawa and spoke to someone who advised him a detective would contact him. That has never happened.

The next witness to testify was Cst. Lawrence. He and Cst. Foran were dispatched to [REDACTED] Rd for a family dispute. Dispatch advised the complainant's vehicle had been damaged by his cousin. The officers attended and located an Allard on the board. They buzzed the number and were let in. They were met in the hallway by Greg Allard and after a brief conversation, they realized they had the wrong Allard and proceeded to the proper apartment to speak to Ryan Allard. They commenced an investigation that lasted more than two hours. Lawrence testified he recalled Dispatch advising him that Greg Allard wanted to speak to the officers.

The officers proceeded to contact their Sgt. to discuss how they were going to arrest the suspect because of his attitude and that there were concerns a knife was involved in the mischief to Ryan's vehicle. Acting Sgt. McQuoid attended and after a brief conversation, the three re-attended Greg Allard's apartment and advised he was going to be arrested. Officers allowed Allard to use his cell phone to record the arrest. When officers placed him under arrest, Allard became confrontational and a struggle ensued. Details of the arrest are included in exhibit 5, the video with audio and a related transcript. During cross examination, Lawrence agreed that he never asked Allard about the threat and assault allegations.

The next witness was Cst. Foran who testified that he was partnered with Cst. Lawrence on September 10, 2014. They attended [REDACTED] and soon after speaking to Greg Allard, who was loud and confrontational, they realized they were speaking to the wrong person. Foran testified that he was aware dispatch had been contacted several times by Greg Allard during the investigation and made no attempt to take a report from him. He found it suspect that Allard only wanted to make a complaint about his cousin after he was being investigated for the mischief.

The next witness was Acting Sergeant McQuoid who assisted the officers during the arrest. McQuoid stated he was also aware that Allard had called in during the investigation to complain about the assault and threatening. He viewed the calls from Allard as “just further information.” He also felt that based on his experience, the officers followed the directive and having dealt with similar calls of this nature, the suspect calls in to “muddy the waters.”

Issues to be decided

After hearing all of the evidence, reviewing cases submitted and understanding the definition of neglect of duty under the Police Services Act, I must decide whether the officers neglected their duty, based on *clear and convincing evidence*. Were they obligated to take a report from Greg Allard based on the circumstances they were facing at the time? There are no credibility issues with any of the witnesses in this case. The fact that Mr. Allard didn't complain to the OIPRD until almost six months later is irrelevant in my opinion. It was within the limitations of the legislation. Although I question why Mr. Allard didn't make any attempts to file a complaint about the assault and threatening until some 15 days later and after he knew he was being investigated for the mischief to the vehicle, this did not factor into my decision.

The officers were dispatched to a priority call that involved family members in a dispute that involved the use of a knife. These types of calls, based on my experience are highly volatile because family members are involved. Additionally, the emotional stressors, estate issues and related money, played an important role in this incident.

Officers Lawrence and Foran were at an elevated level of awareness due to the information that came in, including the potential threat of a weapon. They continued on and completed a thorough investigation that led to the safe arrest of Greg Allard, although after a brief struggle. Prior to affecting the arrest, the officers briefed their supervisor who was aware of the multiple calls to dispatch and gave no direction to the officers to take action on Mr. Allard's complaints.

Something triggered Greg Allard that evening to decide to call Durham Regional Police to file a complaint of threatening and assault that allegedly occurred 15 days earlier. Was it the fact that he realized he was now under investigation and wanted to retaliate

against his cousin? Only he really knows the answer to that but that fact of the matter is that didn't weigh in my decision.

A reasonable person may interpret what Mr. Allard did after the officers originally spoke to him as questionable and that he may have been using the officers as leverage to get back at his cousin while the officers were involved in the original investigation.

Should Cst. Lawrence and Foran have notified Greg Allard of his options to file a complaint against his cousin based on the volatile situation they were in, the confrontational and uncooperative state he was in at the time? These officers have over 50 years' experience between them and I'm not about to question what they should have done at the time. Based on my experience, I may have considered advising Greg Allard that he could come to the station to speak to an officer later or file a private complaint with a Justice of the Peace at his convenience.

This alone does not constitute Neglect of Duty under the Police Services Act.

Based on the lack of clear and convincing evidence in this hearing, I find Constable Nigel Lawrence and Constable Greg Foran not guilty of the offence of Neglect of Duty.

Dated this 26th of July, 2016

Insp. Bruce Townley

APPENDIX A

- 1. Order to Conduct the Hearing**
- 2. Notice to Attend a Hearing (Cst. Foran)**
- 3. Notice to Attend a Hearing (Cst. Lawrence)**
- 4. Book of Documents (Submitted by Mr. Sinclair)**
- 5. Memory Stick of video and statement of Complainant G.A. (Submitted by Mr. Sinclair)**
- 6. Transcript of audio recording of G.A. (submitted by Mr. McKenzie)**
- 7. Book of Authorities (Submitted by Mr. Sinclair)**