

IN THE MATTER OF
ONTARIO REGULATION 123.98
MADE UNDER THE POLICE SERVICES ACT, R.S.O. C.P. 15
AND AMMENDMENTS THERETO;
AND IN THE MATTER OF

POLICE CONSTABLE ANDRE GUERTIN #180
AND THE
TIMMINS POLICE SERVICE

JUDGMENT

APPEARANCES:

Mr. David Butt	for Constable Andre Guertin
Mr. Nathaniel Marshall	
Mr. Alex Sinclair	
Legal Counsel	for Timmins Police Service

Before

Deputy Chief Terence Kelly
York Regional Police Service (Retired)
Hearing Officer.

Sent Electronically.

JUDGMENT

POLICE CONSTABLE ANDRE GUERTIN BADGE NUMBER 180

TIMMINS POLICE SERVICE

Date: July 25,2016.

DEPUTY CHIEF TERENCE KELLY (RET:) before dealing with judgment in this matter, I wish to thank Mr. David Butt, defence counsel, Mr. Nathaniel Marshall, and Mr. Alex Sinclair, the Service prosecutors, for their able arguments and exhibits tendered, all of which assisted me in reaching my decision.

Police Constable Andre Guertin, Badge Number 180, has pleaded not guilty to two counts of Unlawful or Unnecessary Exercise of Authority, laid under the ***Police Services Act***. These charges have been adequately detailed in the Notice of Hearing.

In general the rules of evidence will be followed. If there is an easing of the rules it is essentially in an attempt to arrive at the truth while balancing the need for fairness towards the officer and also ensuring natural justice.

Charges: Number 1- Unlawful or Unnecessary Exercise of Authority.

Number 2- Unlawful or Unnecessary Exercise of Authority.

Alleges on or about September 2, 2014, you did attend the residence of Ms. Emily Sebalj. After entering the residence you attended Ms. Sebalj's bedroom. Ms. Sebalj stated that she wanted you out of the residence. Ms. Sebalj was yelling and screaming. She advised that she was using her cell phone to record the interaction.

In an interview with the Professional Standards Bureau, you stated that you believed that you had grounds to place Ms. Sebalj under arrest for Breach of Peace.

You advise Ms. Sebalj that she was under arrest. You used force on Ms. Sebalj during the course of the arrest. The force used included the use of your knee to hold Ms. Sebalj down on a bed.

Your arrest of Ms. Sebalj for Breach of Peace was unnecessary and/or unlawful. As a result, your force during the course of the arrest was unnecessary and/or unlawful.

The first witness for the prosecution. Ms. Emily Sebalj, testified, on September 2, 2014 she returned home from break at her workplace. She stated she was upset and experiencing panic attacks. Once at her residence she locked the door and entered her bedroom. She was unable to find her prescribed medication and started to use different methods to assist with her panic attacks. Her boyfriend Ryan Bruneau who was present at the dwelling attempted to calm her down. Nothing seemed to be helping.

Approximately twenty (20) minutes later the front door to their dwelling opened and two police officers entered. One of the officers entered her bedroom, Constable Guertin. The other officer, Constable Minard remained in the main entrance area with her boyfriend.

Ms. Sebalj stated she asked Constable Guertin why he was in her bedroom and asked him to leave. To which she got no response. Constable Guertin then asked her why she was crying. She stated the conversation got heated, and she asked him a third time to leave and it became clear that he was not leaving the bedroom. She stated, she attempted to leave the room and he blocked her, at this time she began to record the events on her cell phone the officer became upset, slapping the cell phone from her hand, which caused her to fall onto the bed. Constable Guertin at this time started to handcuff her. She stated she was very distraught and began yelling. At this time, her boyfriend and the other officer, Constable Minard, came into the room asking what was going on.

Shortly after her boyfriend entered both he and Minard took her outside and removed the handcuffs which had been applied by Constable Guertin.

When further questioned by the Service prosecutor, she stated that both of the officers upon entering the dwelling asked what was going on. Ms. Sebalj stated she suffers from anxiety attacks which result in her being distraught, having breathing difficulty and bouts of crying, for which she is prescribed medication. Ms. Sebalj stated she told the officers she was having an anxiety attack, was in an emotional state, upset and crying, that her anxiety got a lot worse because of Constable Guertin's actions. Further, Constable Guertin was told it was not a domestic situation. She further advised the Service prosecutor that, prior to the police arriving, she was yelling but didn't believe people outside the dwelling could hear her, that there was no domestic violence, no threats to break property or to harm Mr. Bruneau.

Under cross examination by defence counsel, Ms. Sebalj agreed the statement given to the O.I.P.R.D. was correct and accurate. Also, the statement given to the Timmins Police Service on April 8th, 2015 was the truth with no exaggeration. She reviewed the document and signed it. She also agreed the affidavit given in her lawyer's office was truthful and accurate.

When questioned about her anxiety attacks, she responded that she takes medication for them on a daily basis, sometimes they don't work and she takes other medications as a last resort, stating she could have used these medications on the day in question and became more distraught trying to find them.

She agreed with counsel that on the day in question she was distraught and crying, her boyfriend Ryan was trying to assist her with her anxiety, but could not resolve it.

When asked about the statement given to the Timmins Police Service, Exhibit #4 Tab 5. She stated she told them the truth. When asked further if it was possible neighbours could hear the altercations, she responded "I guess neighbours could hear me, way of realizing why the police were there." Further, that she was made aware there was a 911 call that brought police to the house.

When questioned about Exhibit #7 Transcribed Domestic Complaint (T114016582) Sept 2nd, 2014 about caller hearing screaming outside house, was the caller mistaken. Ms. Sebalj stated there were no comments outside of the house, always inside their residence, that the caller got a lot wrong, someone trying to make something out that it's not.

When questioned about the conduct of Constable Minard, Ms. Sebalj stated that he was a nice officer, doing job very well, and agreed there was no reason to disbelieve him. However, after reading Constable Minard's statement, stated she disagreed with certain comments contained within.

When questioned about Exhibit #4, Tab 9, the Triage/Emergency Nursing record September 2nd, 2014 at the Timmins and District Hospital, where she advised the crisis worker she was at home around 3:00 pm that afternoon and was having an anxiety attack, crying and yelling loudly when police knocked on her door and walked in. Ms. Sebalj stated the counsellor was wrong about the police knocking on her door.

Counsel then questioned Ms. Sebalj about comments she made with regard to the incident that were posted on her Facebook account about police busting into her residence and dragging her boyfriend out. Ms. Sebalj does not recall making these comments, stating, "They could have been amended, no privacy." The comments on her Facebook in relation to this incident were subsequently produced and examined by Ms. Sebalj. After examining the documents, she stated the comments are accurate, and were posted by her. She admitted the comment about dragging her boyfriend out was false.

The next witness for the prosecution, Mr. Ryan Bruneau. Testified, he has lived in Timmins for the past twenty-three (23) years, and has been living with Emily Sebalj for the past two years. He testified on September 2nd, 2016 he arrived home to find his girlfriend Ms. Sebalj in the dwelling crying, he stated that she has health issues dealing with depression. He was attempting to calm her down when he heard a big bang and two police officers entered the house. He approached the officers and asked them if they had a warrant to enter. He was advised they didn't need one as they thought someone was dying in the house. One of the officers, Constable Guertin, entered the bedroom where Ms. Sebalj was located. He left the house with the second officer, Constable Minard, to speak to him outside. While outside he heard a noise coming from the bedroom area. He re-entered the house to observe Ms. Sebalj on the bed and Constable Guertin handcuffing her, stating the officer was making things worse for a person with an anxiety problem.

He asked the officer why she was under arrest and received no explanation. The officer along with Ms. Sebalj stepped outside the premises where Constable Minard was situated, at this location the handcuffs were removed.

Under cross-examination by defence counsel, Mr. Bruneau was questioned about the additional information note on page three of Exhibit #4, Tab #1 where he advised the officers he would be able to calm Ms. Sebalj down and there would be no further domestic argument requiring police assistance in this matter. Mr. Bruneau stated he does not remember making these comments.

When questioned about access to this document, the statement of Ms. Sebalj, the officers' statements and the O.I.P.R.D statement of Ms. Sebalj, along with her medicals records. He stated, he may have seen these documents prior to testifying. He agreed with counsel that the statement given by him to the police after the incident was truthful. He recalled the question about neighbours being able to hear Ms. Sebalj screaming, stating, "Emily could have been heard by neighbours, but doubts it."

Counsel then questioned Mr. Bruneau regarding the condition of Ms. Sebalj upon the arrival of the officers at their dwelling. He stated, she was mostly crying and agreed there was screaming and noise coming from the dwelling. When asked if the officers knocked on the door, he responded, "He's not sure if they knocked, didn't hear it."

When questioned about the damage to the main door at the dwelling. He stated the handle was broken, but the door and frame were intact.

Entered at this time **Exhibit #9**, Thumb drive pertaining to Domestic Complaint (T114016582) Sept. 2nd, 2014, Call Placed to 911 Timmins Police Service.

The first witness for the defence, Police Constable Andre Guertin, testified he was on duty September 2nd, 2014 when he responded to a 911 call pertaining to a domestic at [REDACTED], female yelling and screaming.

On arrival he knocked at the door of [REDACTED], there was no response. He then spoke to the complainant on this matter and confirmed [REDACTED] was the right location for the Domestic. Upon returning to this address he could hear a female screaming inside, he checked the door, found it to be unlocked, entered dwelling, observed male now known to him as Ryan Bruneau inside premises. He asked Ryan Bruneau to step outside and speak to his partner Constable Minard.

Constable Guertin then related his dealings with Ms. Emily Sebalj. He observed her in the bedroom clearly irate, arms flailing. He stated at this time he had concerns for her safety given his observations of her present demeanour as she appeared quite distraught. He attempted to get some information from her, but she would not respond to his questions other than asking why he was in the house. Constable Guertin further testified, he tried tactical procedures with her, speaking calmly then raising voice when he was getting no response. During this time, Ms. Sebalj continued to scream. He stated he didn't know what was going on with her as he has had no previous dealings with her and was not aware of her Mental Health issues.

Ms. Sebalj was threatening to put a cell phone in his face, and at this time he made a decision to arrest her for Breach of the Peace for her own safety. That he had concerns for any weapons/and what was going on.

He placed his hands on her arms, told her she was under arrest, and grabbed her left arm, she lay on the bed with her cell phone underneath her. He then placed his knee on her back to control her and complete the handcuffing. Constable Guertin stated, Ms. Sebalj during this time in the bedroom wanted to go to other rooms in the dwelling. Constable Guertin kept her in the bedroom area to keep control of the situation. Constable Minard had entered the room at this time and assisted Constable Guertin in completing the handcuffing.

Ms. Sebalj was then removed out onto the front veranda/porch where Ms. Sebalj calmed down. Constable Guertin spoke with her boyfriend, Ryan Bruneau, inside the dwelling. Bruneau advised him that he and Ms. Sebalj had an argument about a possible separation, that Ms. Sebalj was having

problems with the anniversary of her grandmother's passing in combination with not taking her medications has caused problems for them and their relationship. He stated he would look after her. Shortly thereafter Ms. Sebalj was released as everything had calmed down. While they were leaving the premises Ms. Sebalj came out of the residence complaining he had broken her cell phone.

When asked by counsel how long he attempted to calm her down in the bedroom area, Constable Guertin responded, between five to ten minutes trying to communicate with her, trying to figure out what was going on in the residence.

Under cross-examination by the Service prosecutor, Constable Guertin testified, he is aware of his duties as a police officer, on that day he was responding to a domestic situation as a result of a 911 call. He attended the call with another officer, Police Constable Minard.

When questioned by counsel if he announced the Timmins Police Service were in attendance prior to entering the dwelling. He couldn't recall doing this, knocked on door and stated it was the police then entered. Upon entering, Ryan Bruneau asked about a search warrant. He was advised they didn't need one as they were there on a domestic complaint, he was advised everything was okay there was no domestic. Constable Guertin was not satisfied with this answer as he observed Ms. Sebalj to be in a great deal of distress.

When questioned about **Exhibit #4**, Tab #1, Constable Guertin stated he provided the information contained on the general occurrence report to the Timmins Police clerk.

He also acknowledge providing a statement to Sgt. Richardson of the Timmins Police Service with regard to the incident Exhibit #4, Tab #7.

He agreed with counsel that he contained Ms. Sebalj in the bedroom area initially by standing in the main doorway and not letting her pass through. He was not satisfied with the response's he was getting about everything thing being okay, that there was no domestic. He was waiting for answers from Ms. Sebalj to his questions about the present situation.

Constable Guertin agreed with counsel, Ms. Sebalj never threatened physical harm towards him.

When questioned about handcuffing Ms. Sebalj, he stated he grabbed her by the arm and she fell towards the bed, he placed his knee on the arm to control her. He was then taken to Exhibit #4, Tab #9 the medical report from her attendance at the Timmins and District Hospital containing the diagram of two females, front and back which indicated bruising. He agreed he had used a certain amount of force to place the handcuffs on Ms. Sebalj and that it is possible these injuries occurred during this period. Stating that Ms. Sebalj at this time was not complying with his directions and he was concerned about her actions.

He reiterated, that during his initial contact with Ms. Sebalj in the bedroom he raised his voice several times in an attempt to de-escalate the situation, but with no success. He had safety concerns during this time with her unpredictable behaviour.

Under re-examination by defence counsel, Constable Guertin agreed it is not unusual in Domestic calls of this nature not to get information from the victim. In this case it, was provided to them by her boyfriend Ryan Bruneau. He agreed, once Ms. Sebalj was outside in the company of Constable Minard, there was no more screaming.

The next witness for the defence, Police Constable Jonathan Minard. Testified he is presently a member of the Timmins Police Service. On September 2nd, 2014, he was on duty when he received a radio call to [REDACTED]. He was advised through dispatch that a neighbour at [REDACTED] called in about a domestic that was ongoing at [REDACTED]. The information he received was of a female yelling and screaming, saying she just wanted to die. On arrival at this location along with Police Constable Guertin they knocked on the door and announced their presence, received no answer. They then approached the complainant to [REDACTED], looking for more information. At this location they were advised by the complainant that she heard a female screaming and saying she just wanted to die.

The witness stated that both he and Constable Guertin returned to [REDACTED], knocked on door and again received no answer. They entered the premise through an unlocked door. Once inside they observed a male, now known to them as Ryan Bruneau and also heard the female in the house.

He stated he spoke to Mr. Bruneau, and asked him to step outside, which he did, stating that it is normal to separate the individuals in these situations to try and resolve the issue. Outside the house speaking to Mr. Bruneau he could hear the voices of Constable Guertin and the female inside. He was advised by Mr. Bruneau that his girlfriend Emily was under stress, arguing over issues, that the argument was out of hand, although nothing physical. He stated Mr. Bruneau's demeanour was calm, however, he was a bit upset about us entering the house.

While outside he heard a commotion coming from within the house, upon entering, he observed Constable Guertin attempting to handcuff the female, now known to him as Emily Sebalj. Ms. Sebalj at this time was kicking out her legs. After she was handcuffed, he escorted her from the house to the outside porch. Outside, her demeanour changed, she started to calm down. She told him that she was under stress about her grandmother and issues with Ryan Bruneau, asking to take her medications.

He spoke with Ms. Sebalj and explained to her the reason for being arrested and removed from the dwelling. A short time later Constable Guertin came out with Mr. Bruneau. They had a conversation about how to deal with each other.

In his submissions the Service prosecutor argues that the evidence of the complainant Ms. Emily Sebalj was given frankly with no motivation. That there were no threats towards the officers by Ms. Sebalj. He agreed with the evidence of Minard and Guertin that there was screaming and crying at the residence at some point and time. He stated the evidence of Mr. Ryan Bruneau was brief but consistent with the Ms. Sebalj's. Constable Guertin's evidence was inconsistent as to the level of noise/screaming coming from the dwelling, and contradicted the evidence of Constable Minard, who, while outside the dwelling with Mr. Bruneau stated he could only hear voices. He noted that the officers once in the premises are obliged to leave once they determine nothing had occurred.

Counsel agreed that it was an emotional situation at the residence. However, the officer did not have any reasonable grounds that directed his actions towards Ms. Sebalj, even if his presence in the dwelling was lawful, his arrest and use of force was unlawful.

The Service prosecutor at this time entered the following exhibits; **Exhibit #5**, Video of Ms. Sebalj and Constable Guertin at dwelling; **Exhibit #9**, Book of Authorities.

In his submissions, defence counsel argues the prosecution's submissions are flawed, that they fail to appreciate the law and policies around domestic violence. Officers responding to these situations are often confronted with intense situations. The officers responding to the call were not aware of what was taking place, or had taken place inside the premises. Also, the evidence of Constable Guertin that their awareness for officer safety was heightened given the information they had received when being dispatched to the call.

Counsel states, officers had reasonable grounds to enter the premises, due to the potential danger to occupants. Further, given the behaviour of Ms. Sebalj inside the premises, Constable Guertin quite properly effected an arrest of Ms. Sebalj, and placed her in Investigative Detention, in order to control her, and the situation to determine what in fact had taken place. That the force used in order to handcuff her was appropriate.

Defence spoke to the reliability of the prosecution's witnesses. Ms. Sebalj was clearly having an anxiety attack that afternoon and not under control, demonstrated by her highly emotional behaviour. Further the comments of Ms. Sebalj, with regard to the 911 caller, that "she got everything wrong." Counsel stated, the call is important, describes what was going on at that time, and was able to advise officers she heard the name Ryan being mentioned during the domestic dispute. It was clear from the audio, the caller was concerned about this incident and relayed further information to the officers when they called back seeking clarification on the address.

Counsel also spoke to the Facebook postings of Ms. Sebalj with regard to the incident. Her assertion, Mr. Bruneau was dragged out of the house. The evidence of Mr. Bruneau and the officers clearly stating that he left the premises voluntarily with Constable Minard. He further stated the evidence of Ms. Sebalj's partner, Mr. Ryan Bruneau is innocuous, trying to support his partner.

Both counsel spoke to a number of cases dealing with the charges and the evidence placed before the Tribunal in relation to them.

I will not recite these cases in their totality. I have read and considered the cases provided and alluded to by counsel. These cases are for guidance with respect to dispositions pertaining to the allegations before this Tribunal.

In reaching a decision in this matter. I have taken into account the submissions by defence counsel, Mr. David Butt, and the Service prosecutor, Mr. Nathaniel Marshall. I have studied the exhibits and reviewed my notes with respect to the witnesses who have appeared before this Tribunal.

As I have stated in previous decisions, my duty as a Hearing Officer, while ensuring procedural fairness and ultimately natural justice to both parties, is to listen to the testimony of witnesses, receive and review exhibits and weigh the evidence provided. At the conclusion, I must decide if there is sufficient “weighty and cogent” evidence that leads me to conclude that the evidence is clear and convincing and find the subject officer has committed the misconduct. If I find at the end of the day, the evidence is not clear and convincing, it is my duty to find the officer has not committed misconduct and dismiss the allegation.

I wanted to say at the outset there have been many challenges in expediting this hearing and I want to thank all involved parties for their patience and willingness to work through them to ensure that a fair and complete hearing of evidence was achieved.

Four witnesses testified in this hearing over a number of days and each provided their version of the events as they perceived they occurred. While witnesses are not expected to provide identical versions of the events, in fact, if they are identical then questions of collusion might arise; there should be consistency on the essential aspects.

In the case of *Faryna vs. Chorny*, (1952) 2D.L.R. 354 (B.C.C.A.) *Justice O’Halloran*

Stated:

“If a trial Judge’s finding of credibility is to depend solely on which person he thinks made a better appearance of sincerity in the witness box, we are left with a purely arbitrary finding and justice would then depend upon the best actors in the witness box.

On reflection it becomes axiomatic that the appearance of telling the truth is but one of the elements that enters into the credibility of the evidence of a witness. Opportunities for knowledge, powers of observation, judgment and memory, ability to describe clearly what he has seen and heard, as well as other factors is combined to produce what is called credibility...

A witness by his manner may create a very favourable impression of his truthfulness upon the trial judge, and yet the surrounding circumstances in the case, may point sizably to the conclusion that he is actually telling the truth. I am not referring to the comparatively infrequent cases in which a witness is caught in a clumsy lie.

The trial judge ought to go further and say that the evidence of the witness he believes is in accordance with the preponderance of probabilities in the case, and if in his view is to command confidence, also state his reasons for that conclusion.”

The original complaint received by the Timmins Police Service was from a 911 call to the Service Communications regarding a Domestic dispute. **Exhibit #7.**

Transcribed Domestic Complaint (T114016582)

Sept 2, 2014 Call Placed to 911.

14:41:47

Dispatch (D) – Do you need police, fire or ambulance?

Caller (C) - Police

D – Where do you need police?

C – I think its [REDACTED]

D – In Timmins?

C – Sorry [REDACTED] – there is a domestic, a woman is screaming, she tried to bust in the house

From outside

D – Is that a house or apartment?

C – It's a house, it's set back – she is screaming her head off

D – What's your phone number, including area code?

C – I don't want my identity – I'm a neighbour

D – Are there children involved?

C – No, I don't think so

D – Are you on scene now?

C – I'm at my house and I can hear from hear

D – I have a couple of questions-were there weapons involved or mentioned?

C – Not that I know of – she almost kicked the door in, I think he put her outside, the door sounded like it was almost going to crack right of the house and then he let her back in – no she's been screaming her brains out.

D – How many people are involved? Are there two of them?

C – I think two

D – Where are the people responsible now – inside or outside?

C – Inside

D – I need their descriptions – do you know what they look like?

C – N, she was yelling the name Ryan, I don't know what their name is, I'm not sure

What they look like, they're new neighbours

D – What race are they?

C – Caucasian

D – And how old are they?

C – They're young, in their twenties, police were there before and took her out

D – Do they have access to a vehicle?

C – Yes ████████

D – In the driveway? Has anyone been using alcohol or drugs?

C – I don't know, I have no idea

D – I want you to lock your door and windows an officer will be dispatched, I want you to call back if you have further information

C&D – Bye.

Transcribed Domestic Complaint (T114016582)

Second Call (placed to 911 to original complainant)

(Different Dispatcher).

14:49:41 D – Hello madam

C – Yes

**D – Timmins Police calling, the police are on the way, they're in the area here but [REDACTED]
[REDACTED] is not a valid address**

**C – I'm at [REDACTED] but don't want my identity known, somebody really needs to come,
she is really screaming her brains out**

D _ What colour is their house –

C - White

D – Is it right next to [REDACTED]

C [REDACTED]

D - I 'll let them know.

I will say from the outset that I agree with the submissions of Constable Guertin's counsel, Mr. Butt, that there were areas in the Ms. Sebalj's and Mr. Bruneau's testimony that were either untruthful or intentional attempts to mislead this hearing; the officers on the day of the incident. That being said, my role is also to determine whether based on the evidence presented an unlawful arrest occurred and if it did whether the level of force used was appropriate given the circumstances.

The evidence of Ms. Sebalj, if believed, would suggest there was a somewhat controlled argument between herself and her partner, Mr. Bruneau, inside their dwelling. Ms. Sebalj being upset over her grandmother, she was having an anxiety attack and her boyfriend Ryan was attempting to calm her down. She advised Constable Guertin she was having an anxiety attack, that her anxiety got a lot worse because of Constable Guertin's actions, she also advised him they were not having a domestic dispute and didn't believe people outside the dwelling would be able to hear them. When she was questioned by defence counsel about her prescribed medications. Ms. Sebalj stated, on the day in question she was unable to find them during her anxiety attack and became more distraught because of this.

When questioned about the 911 call to Timmins Police Service about the caller hearing screaming outside her residence. Ms. Sebalj responded, "There were no comments outside the house, always inside the residence, that the caller got a lot wrong, someone trying to make something out that's nothing." It is clear from **Exhibit #7**, that the caller making the 911 call was able to describe the two parties involved, clearly hearing the first name of her partner "Ryan" and was able to give a description of the two parties involved in the domestic dispute.

Ms. Sebalj, when further questioned by defence counsel about Facebook entries she made after the incident about police busting into her residence and dragging her boyfriend out. Initially stated, she does not recall making these comments, stating any comments she made could have been amended, no privacy. A short recess was taken allowing counsel to produce the comments on Facebook. Ms. Sebalj, after reviewing the hard copies **Exhibit #8**, responded. "The comments are accurate, and were posted by her." She admitted the comment about police dragging her boyfriend out was false.

When questioned about comments made on the Triage Nursing record **Exhibit #4**, Tab #9, where she advised the crisis worker she was at home the afternoon of September 2nd, 2014 having an anxiety attack, crying and yelling loudly when police **knocked** on her door and walked in. Ms. Sebalj responded, the counsellor was wrong about police knocking on her door.

I also take note from the evidence of Mr. Ryan Bruneau, Ms. Sebalj's partner. In his evidence in-chief he testified, he was inside the dwelling attempting to calm Ms. Sebalj when he heard a big bang and two

police officers entered his dwelling. After enquiring of the officers if they had a search warrant and being told by them they didn't need one, Mr. Bruneau left the dwelling in the company of Constable Minard. During cross-examination by defence counsel when questioned if the officers knocked on the door prior to entering, he responded, he is not sure if they knocked, he didn't hear it. When questioned about damage to the main door of the residence, he stated the handle was broken, and does not recall any other damage.

Mr. Bruneau agreed with counsel that there was screaming and noise coming from the dwelling, however, he doubts it could have been heard by neighbours.

When questioned by counsel about the additional information he supplied to the officers advising them that he would be able to calm Ms. Sebalj down and that there would be no further domestic arguments requiring police assistance in the matter stated, he does not remember making these comments.

During the evidence in-chief of the complainant Ms. Emily Sebalj and her partner Mr. Ryan Bruneau, they responded in a relaxed manner to the Service prosecutor. However, under cross-examination by defence counsel, Mr. Butt, they were confused or couldn't recall particulars of the events during their interactions with the officers, and appeared to resent questions, which were quite properly put to them. Mr. Bruneau often looking toward Ms. Sebalj prior to responding to questions from counsel.

I closely observed the demeanour of the two officers on the witness stand during their evidence in-chief and cross-examination. Their evidence was given in a thoughtful and straightforward manner. It was clear that both of these officers were responding to a 911 call regarding a Domestic complaint at the residence of Ms. Sebalj and Mr. Bruneau at [REDACTED]. The initial caller to the Timmins Police dispatcher was clearly concerned for the safety of the occupants given what she had heard and observed outside their dwelling.

The officers were open with counsel when under cross-examination and did not attempt to embellish their positions or observations. They provided counsel with reasonable and believable responses to all

questions put to them. I am satisfied that the answers given were reasonable under the circumstances at that time. I found them to be credible witnesses. Their evidence is supported in part by the 911 caller who initially witnessed and heard the confrontation during the Domestic dispute.

Domestic dispute calls present police with highly charged emotional situations which can be dangerous to everyone involved, intervention is, at times, one of the most difficult aspects of policing. It is often frustrating and confusing for police officers to deal with cases of domestic violence. Canadian police services have had to make domestic violence a priority, given the number of calls to police for intervention.

Police officers are entrusted with powers which may gravely affect the liberty of a subject, and they must at all times be ready to act with tact and discretion and on their own initiative and responsibility in all sorts of contingencies. The officers' conduct must be analyzed as a whole, in context, having regard to all the sources defining acceptable conduct. We require as a routine part of their duties that police officers enter dwellings and use force. Police officers seldom have the luxury or relaxed contemplation when determining whether an emergency is unfolding behind closed doors or what degree of force is necessary to subdue an aggravated subject. Therefore, some element of common sense is required in assessing the conduct of police officers. Police officers on occasion have to make quick decisions without the ability to resort to legal advice.

I accept the evidence of Police Constable Guertin that they were responding to a domestic dispute and upon arriving at [REDACTED] they knocked on the door and received no response. As a result, they left and spoke to the 911 caller to confirm they had the right address. Upon returning to [REDACTED], they could hear a female screaming inside the dwelling and entered the dwelling through an open door. **Exhibit # 5**, video from cell phone of Ms. Sebalj clearly shows a female in a great deal of distress. He then attempted to calm Ms. Sebalj using a number of procedures, however he was unsuccessful. Unable to determine what had taken place and concerned for her safety along with his own, arrested and handcuffed her on a charge of Breach of Peace. During the handcuffing process Ms. Sebalj continued to struggle with Constable Guertin, as a result, Constable Minard, upon hearing the commotion while outside talking to Mr. Bruneau, came back into the dwelling and assisted him.

Breach of Peace

Section 30 of the Canadian *Criminal Code* establishes an authority to arrest a person who commits “Breach of the Peace.” Breach of the Peace is not a criminal offence under this section, and arresting a person for it is simply a problem – solving procedure. Given the evidence placed before this Tribunal, from the initial observations of the 911 caller, and the observations/interactions of the officers with Ms. Sebalj, the grounds were clearly established for Constable Guertin to arrest and control Ms. Sebalj for the purpose of preventing the continuance or renewal of the Breach of Peace, and for her own safety along with the safety of the attending officers.

Use of Force

The evidence in relation to the use of force does not lead me to believe that Constable Guertin used force beyond what was necessary to gain control of Ms. Emily Sebalj, so the situation could be calmed down allowing the officers to speak to both parties in an attempt to comprehend what had taken place and to determine if further intervention is warranted. It is my finding that the force utilized was reasonable given the circumstances, the condition of Ms. Sebalj along with the information the officers received from the 911 caller. I also noted that once the situation calmed down the handcuffs were removed allowing all parties to have a more courteous conversation on the outside of the dwelling.

The burden of proof necessary in a *Police Services Act* charge has been defined in *Carmichael* which states I must have “clear and convincing” evidence and further described as “weighty cogent and reliable evidence”. In determining a decision, I must be cognizant of the interpretation of the burden of proof of clear and convincing evidence as well as ensuring that I consider the whole of the evidence received, and be satisfied that the elements of the allegation have been proved to the clear and convincing standard. I have assessed the evidence including **Exhibit #5**, in relation to the force used and

have no basis to believe the force applied was excessive to gain control, therefore the threshold for me to find guilt is absent.

Based on my findings I find Police Constable Andre Guertin Badge Number #180 not guilty on both counts of the charges against him.

Terence Kelly.

Terence Kelly

Deputy Chief (retired)

York Regional Police

Hearing Officer.