

**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 A.E. (Adam) CHIAPPETTA, #14154

and

PROVINCIAL CONSTABLE S. (Sarah) EAST, #13403

UNLAWFUL OR UNNECESSARY EXERCISE OF AUTHORITY

DECISION WITH REASONS

Before:	Superintendent Lisa Taylor Ontario Provincial Police
Counsel for the Prosecution:	Mr. Adrien Iafrate Ministry of the Solicitor General
Counsel for the Defence (P/C Chiappetta):	Ms. Kate Robertson
Counsel for the Defence (P/C East):	Mr. James Girvin Ontario Provincial Police Association
Public Complainant (unrepresented):	J.V.¹
Hearing Dates:	March 9-12, 2021

¹ Initials used to protect the privacy of the public complainant

This decision is parsed into the following parts:

PART I: OVERVIEW;

PART II: THE HEARING;

PART III: ANALYSIS; and,

PART IV: DECISION.

PART I: OVERVIEW

Parties to this Hearing

- P/C Adam Chiappetta was represented by Ms. Kate Robertson;
- P/C Sarah East was represented by Mr. James Girvin;
- Mr. Adrien Iafrate represented the Ontario Provincial Police (OPP);
- The Public Complainant, J.V. (Unrepresented)
 - J.V. understood she had the right to legal representation. A support person chosen by J.V. was in attendance virtually throughout the course of the hearing.
 - The hearing process and J.V.'s role in it was explained to her and she was provided with a copy of the Tribunal Rules. J.V. actively participated throughout the hearing process.

Background

A hearing was to be held in Stratford, Ontario, January 13 -17, 2020. On January 9, 2020 a teleconference occurred amongst all parties wherein J.V. indicated issues pertaining to a personal medical emergency. A request for an adjournment was made and those hearing dates were vacated.

After numerous conference calls, largely discussing ways of how to best accommodate J.V., new hearing dates of March 9-12, 2021 took place. The hearing venue was in London, Ontario where both officers and their counsel were present, the prosecution attended via videoconference and the public complainant and her support person connected with the hearing via a teleconference line given efforts to have J.V. utilize her computer to connect via video failed. Personal protection equipment was used on site and the virtual attendance were all in the interest of precautionary measures against the Covid 19 virus, given the ongoing pandemic.

Allegations of Misconduct (P/C Chiappetta)

Provincial Constable (P/C) Adam Chiappetta #14154 is alleged to have committed unlawful or unnecessary exercise of authority in that he did without good and sufficient cause make an unlawful or unnecessary arrest contrary to section 2(1)(g)(i) of the Code of Conduct contained in the Schedule to Ontario Regulation 268/10, as amended.

Particulars of allegations (amended):

It is alleged that on Sunday, February 25, 2017 P/C Chiappetta used unlawful or unnecessary force in relation to J.V. when he arrested or assisted in the arrest, handcuffing, detainment and transporting of J.V. from her property to the Oxford OPP Detachment.²

Allegations of Misconduct (P/C East)

Provincial Constable (P/C) Sarah East #13403 is alleged to have committed unlawful or unnecessary exercise of authority in that she did without good and sufficient cause make an unlawful or unnecessary arrest contrary to section 2(1)(g)(i) of the Code of Conduct contained in the Schedule to Ontario Regulation 268/10, as amended.

Particulars of allegations (amended):

It is alleged that on Sunday, February 25, 2017 P/C East used unlawful or unnecessary force in relation to J.V. when she arrested or assisted in the arrest, handcuffing, detainment and transporting of J.V. from her property to the Oxford OPP Detachment

Pleas

At the outset of the hearing on March 9, 2021, P/C Chiappetta and P/C East each entered a plea of not guilty to the allegations of misconduct.

Decision

After a full and fair analysis, I find P/C Chiappetta and P/C East not guilty of misconduct, specifically, the unlawful or unnecessary exercise of authority involving J.V.

² There were two separate but identical Notices of Hearing for each officer.

PART II: THE HEARING

Exhibits

The exhibits for this matter are listed in Appendix A.

Witnesses

The Prosecution witnesses included the following:

- J.V. (the Public Complainant)
- D/Sgt Erica Vanroboys (Professional Standards Bureau (PSB) investigator)

The public complainant did not call any witnesses.

There were no defence witnesses called.

Background:

To assist, I will provide an event chronology under the Analysis section (starting on page 22). Ultimately on February 25, 2017, P/C East and P/C Chiappetta attended a property owned by J.V. in respect to a landlord-tenant dispute between J.V. and M.S.. J.V. was arrested for mischief and transported to the detachment before being released without charges. The allegations of misconduct are in respect to this arrest.

Witness: J.V.

J.V. testified (as well as participated) via a teleconference line. Respecting J.V.'s medical conditions and vulnerability, numerous efforts made to support her attendance virtually, through video, were unsuccessful. Although it was less than optimal in terms of assessing credibility, both defence counsel were satisfied for J.V. to testify with an audio link which was the best available option at the time.

Examination in Chief

J.V. outlined her history as owner of a property [hereafter referred to as "the property"] that she had purchased and is at the root of the incident involving the alleged misconduct. She had purchased a secondary property with a historical building that she had hoped to use for a respite and as a foundation for eye research. This was a property legally owned by J.V. and her husband, although she testified he had no interest in the house.

Costs related to construction interrupted J.V.'s plans for a respite however whenever there was a need, she would allow people to stay at the property. She testified she

received a call from a woman, M.S., who J.V. stated referred to herself as U.B. (who was actually mother to M.S.). M.S. was reportedly leaving a women's shelter and needed a place to stay.

In May 2016 J.V. allowed M.S. to stay at the property. J.V. indicated that M.S. did not have access to the entire property, only a room with the use of a common area, a washroom and a small kitchen. In her testimony, J.V. outlined a number of occasions involving police response to calls for service related to this property and M.S.

J.V. testified that she did not collect rent from M.S. but she later learned M.P., a family friend who looked after the property, had received rent money from M.S. J.V. testified that up until July 17, 2016 when she received a call from P/C Kevin Bylsma she never really had any problems with M.S. other than she would leave [the property] for periods of time. P/C Bylsma had a report from M.S. indicating that J.V. was sending men over to the property to try and have sex with M.S.. J.V. testified she was frazzled when she received this call and believed it was a prank. It is clear from J.V.'s testimony, that shortly after this date, in July 2016, she no longer wanted M.S. to stay at the property.

J.V. noted she had concerns about M.S.. J.V. testified that she contacted P/C Michelle Murphy as she (J.V.) had decided to change the locks. J.V. testified she asked P/C Murphy three questions. J.V. testified the first question dealt with the call from P/C Bylsma and P/C Murphy responded that it had been looked after; the second question dealt with M.S. using the name U.B. and the officer told her people use aliases and the third question was in relation to the mental health of M.S. but the officer did not feel there was anything wrong with M.S.

J.V. testified that following that conversation she called her lawyer who described M.S. as a squatter. M.S. had not continued with the assistance program through the shelter and the lawyer suggested that J.V. change the locks and that was done shortly after July 29, 2016.

J.V. testified she never heard from M.S. again until August 5, 2016 when J.V. received a call from P/C East requesting to meet her at the property. J.V. testified that she had some papers with her and she provided the four to five pieces of paper to P/C East. She stated the documents included the designation as a commercial property, information about commercial properties, a doctor's note outlining her [J.V.'s] medical issues and another paper. She was not exactly sure which papers she had at the time. J.V. stated she knew that she had rights and the officer was a civil servant and it was the officer's job to protect her.

J.V. testified P/C East told her she had to let M.S. in and she told P/C East that it would be very dangerous for her to let her back in. J.V. could not recall if she told P/C East why M.S. was dangerous but that she just kept repeating she was dangerous. J.V. testified she felt helpless and told the officer to fine her but the officer told her she had two choices, to let M.S. in, or a locksmith would be called. J.V. felt her property would be damaged based on things she had learned about M.S. J.V. testified that she showed P/C East through the property and as she turned over the key to P/C East in order to allow M.S. access, J.V. said to P/C East that she hoped she had a conscience.

J.V. testified that after August 5, 2016 she took legal steps to have M.S. removed, including going to her lawyer who she told her to file a document stating that it was a commercial building and the *Residential Tenancies Act* did not apply. She testified that she was checking the property daily seeing it deteriorate and she just prayed a lot and hoped M.S. would move on.

J.V. testified she went to the Landlord-Tenant Board who provided her with a copy of the *Act* and a book about the *Commercial Tenancies Act*. She filed for a hearing in September 2016 and tried to serve M.S. with the papers but she noted that M.S. was often not at the property for days at a time.

J.V. testified that she attended the Landlord-Tenant Board in December 2016 but M.S. was not present. J.V. testified she was told M.S. had some mental health issues and was in the hospital. The hearing was to determine if the property was deemed commercial but M.S. was not there and the matter was put off until approximately January 20, 2017. On that date she engaged in a mediation session with M.S. who was represented by a Legal Aid lawyer. An agreement was reached at the time although J.V. testified it was the only way she could get her property back; J.V. testified that M.S. was to move by March 31, 2017, to leave and to pay whatever she was to pay, which M.S. never did.

J.V. testified that in February 2017 the locks were changed after learning from M.P. that a man walking by the property saw the upper windows in the house open and thought there was a fire. J.V. testified that M.P. contacted P/C Tina Anderson in order to go into the property as the doors and windows were all open and everything was turned up to the maximum. J.V. testified it was an assumption that M.S. was trying to burn the place down. J.V. was told by M.P. that the officer went through the property and no food or personal belongings were there. To clarify, J.V. agreed she never spoke to the police officer only M.P. on that occasion.

J.V. testified that on February 25, 2017, she received a call from someone, she cannot recall whom, but they told her to come to the property. She was given a ride with friends and she went in and found her way to the front of the house where M.P. and others were

painting walls. J.V.'s husband was also present. Someone told her "*that woman is back*" and was with a police officer. J.V. testified that as she waited, P/C East came in and she was accompanied by P/C Chiappetta.

When questioned about conversations that she had with P/C East, J.V. testified that she told her that she was not letting her [M.S.] in, "*over [her] dead body.*" J.V. testified that P/C Chiappetta asked her what she had lost and she directed her response to P/C East and advised that she had "*lost everything.*" J.V. could not recall if either P/C East or P/C Chiappetta asked: why she changed the locks or whether M.S. had moved from the property. J.V. testified that she did not provide the officers with a copy of the handwritten agreement. She testified there was little conversation to resolve the issue as J.V. simply kept repeating to the officers that she would not let M.S. in.

J.V. testified she saw M.S. that day, who was with the same man who had been with her on August 5, 2016 when she had last seen M.S.. J.V. testified that P/C East arrested her and P/C Chiappetta escorted her to the police vehicle. They handcuffed her in front at her request. She could not recall who handcuffed her; she had never been arrested before. She hit her leg as she entered the vehicle and commented to the officer that the handcuffs were heavy and he agreed politely.

Once at the detachment J.V. asked to use the phone to make arrangements to have her mother fed, which she did. At approximately 10:30 to 11:00 pm she was released by P/C East who advised her there would be no charges against her. While transporting J.V. home, P/C East was asked by J.V. to take her to the hospital which P/C East did.

J.V. testified that the following day, a group of people came over to console her and tell her it was not worth getting herself into such a state and that it was almost over and P/C East had done her best. J.V. testified that she found out from her husband or from M.P. or his girlfriend or another friend, the following day that P/C East had ensured M.S. had access to only a portion of the property and locks were put on the other doors.

Examination – Public Complainant

J.V. testified that on February 25, 2017 she kept telling P/C East that "*over my dead body*" would she let M.S. in.

Cross Examination – Ms. Robertson (Counsel for P/C Chiappetta)

J.V. agreed that she filed her complaint with the Office of the Independent Police Review Director (OIPRD) via a phone call. She could not recall but would not dispute that she did not name P/C Chiappetta on the intake form related to the complaint she filed on September 8, 2017, having signed it electronically. She spoke with one OIPRD staff member on the phone and also met with D/Sgt Vanroboys on January 10, 2018.

When questioned about her comments to the OIPRD personnel, J.V. would not confirm that she described P/C East as a “*nice lady*” in those calls but she did say she (P/C East) had a very pleasant voice and had asked J.V. to come to the property which she did right away. J.V. was not certain she used the word ‘nice’ but she indicated she respected the officers. She agreed she told D/Sgt Vanroboys that the officers acted in accordance with their oaths and that there had to be a change in the way things were done and in the legislation. She agreed that P/C Chiappetta acted in a polite manner.

Defence counsel referenced exhibit 20, an email from G.W., a support person to J.V., in which he indicated that in his conversations with J.V. she advised she did not care what or if, there was discipline of the officers involved. When questioned by defence counsel about G.W.’s comments that J.V. was only interested in recouping losses from M.S., J.V. responded that it was made clear to her that this process was strictly about the arrest and she assured the tribunal she was clear on why she was there. J.V. stated that she did not have any hatred or ill feelings towards the officers or others as she is not interested in vengeance.

J.V. agreed that February 25, 2017 was the first time that she met P/C Chiappetta. J.V. agreed that she had signed off on the Landlord-Tenant Board agreement approximately four weeks prior to meeting P/C Chiappetta at the call on February 25, 2017. She could not recall discussing the above-noted agreement with P/C Chiappetta. When questioned about others who were present during her conversations with the officers and who may have overheard and had knowledge of the agreement, J.V. agreed her husband and M.P. were there. She was not certain her husband was aware of the agreement although M.P. was. J.V. testified that the agreement was not part of the conversation with the officers.

When questioned about P/C Chiappetta being at the property for approximately one hour before the arrest, J.V. stated that the time span was very little but she did not know the time. She agreed it was probably that time frame but she testified that she kept repeating the same thing. J.V. testified that she thought P/C East understood that she (J.V.) was not going to comply [and let M.S. in]. J.V. stated she told P/C Chiappetta that she had lost so much and he asked her what she meant by that, but she testified that she kept repeating the same thing and her concentration was on P/C East. When questioned about P/C Chiappetta speaking to her independently, J.V. testified she could not remember P/C East *not* being in the room.

J.V. was questioned about a conversation with the officers in respect to the agreement but that she would not make such admissions about the conversation before the tribunal, being aware that was the reason she was arrested. J.V. responded that she voluntarily gave the agreement to the PSB investigators. J.V. testified that she did not know how the conversation about the agreement could come up in conversation with the officers as she

presumed only she and M.P. were aware of the agreement. When questioned about her earlier testimony when she had answered twice in the negative in relation to whether there was an agreement with M.S., J.V. testified that there was no agreement with M.S. and that the agreement came about in January 2017 and she met with D/Sgt Vanroboys the following year. She testified that M.S. did not become her tenant until January 20, 2017.

Defence counsel highlighted J.V.'s testimony about not collecting rent from M.S. stating that she [M.S.] had no money. She was questioned about her recollection of telling D/Sgt Vanroboys that in July 2016 she confirmed M.S. would receive an Ontario Disability Support Program (ODSP) pension as long as she had a place to live. J.V. testified that M.S. was never asked for money but on July 22 or 23 [2016], M.S. gave M.P. an envelope and had him sign for receipts; J.V. testified that, to that day [of the hearing], she had never received any money. She responded to a question about M.P. telling the PSB investigator that J.V.'s husband had authorized M.P. to collect money from M.S. and J.V. testified that she would find that hard to believe as to this day she and her husband are estranged over this issue. When questioned about her husband providing the agreement to the police after her arrest, J.V. testified that her husband would not have a copy of the agreement.

J.V. testified that she was not in the room when there was a conversation between the officers, her husband and M.P. about M.S. being entitled to stay at the property until the end of March [2017]. Defence counsel made repeated attempts to ask whether the reason J.V. kept saying to not let M.S. in, was in response to being aware that she knew M.S. wanted back in. J.V. did not directly answer the question but simply stated that at the time she just knew she could not let M.S. back in as she "*had lost everything*". She testified that she had no rights under the *Charter*; M.S. had all the rights. Defence counsel asked directly whether J.V. was aware that M.S. had returned to the property, the locks had been changed and M.S. wanted back in and that was why she was called to the property, no clear answer was provided in respect to this inquiry.

J.V. testified that as she left with P/C Chiappetta that day she asked M.P. to not let M.S. in, telling him that she would pay his fines. J.V. agreed that in January [2017] she had signed an agreement with M.S. that stated that M.S. had a right to the property until the end of March 2017 but that in February when she was called to the property she made it clear she would not let M.S. in, stating at the time, "*over my dead body*." J.V. did not recall telling P/C Chiappetta that M.S. had no right to the property; she testified that she could not control what an officer writes in their notes when it was outlined that there was no damage observed.

J.V. testified that she feared M.S. and that she was dangerous. J.V. testified that she did not anticipate when she signed the agreement that [M.S.] would be 'hanging out' and

every day she (J.V.) had to “*contemplate how to break the law*”. She testified that she was not thinking about the agreement she had signed [in January] on the day she spoke to the officers but she was thinking about her fear and she was not going to let M.S. in. J.V. testified she dreaded what “*they*” [M.S.] would do at the end and that M.S. had mental health issues.

J.V. was emotional and testified that no one was helping her. When defence counsel asked about her statement to D/Sgt Vanroboys about the officers asking her to make a list of what was missing and that she never did, J.V. responded that she did not recall that. J.V. explained that she was not mentally capable of talking to anyone from the detachment. J.V. testified that M.S. had no belongings but M.P. told her that he had changed the locks and stored M.S.’s belongings. When questioned about this discrepancy, J.V. stated she could not control what others would say, simply that is what she was told.

Cross Examination – Mr. Girvin (Counsel for P/C East)

Defence counsel questioned J.V. about a call she received in July 2016 from P/C Bylsma about a complaint by M.S. regarding a landlord-tenant issue and that she [J.V.] was told she must provide 24 hours’ notice before entering the property. J.V. testified that the officer never mentioned “landlord-tenant” and never made any statement in relation to that. She stated that she did not believe the call was real and she called back on July 29, 2016 and spoke to P/C Murphy. When asked whether P/C Murphy advised her that it was a landlord-tenant issue, J.V. denied that was said. She remembered the officer mentioning the “*Wellness Act*” and that it was a civil matter. She agreed that P/C Murphy never told her to change the locks.

J.V. testified that after that date she called her advisor and told him about the conversation with P/C Murphy who mentioned it was civil and she told her advisor of her decision to change the locks. Defence counsel suggested that on August 5, 2016 when P/C East had attended, J.V. had already taken things into her own hands and did not use the *Residential Tenancies Act*. J.V. testified that she had documentation about commercial tenancy, a doctor’s note and other papers. J.V. testified that on August 5, 2016, P/C East called her and met her at the property. They met outside and she requested for P/C East to walk through the building and she showed her where M.S. stayed. She denied P/C East told her to take pictures and make a list if she was concerned about theft or damage. She gave the key to P/C East and then she left. J.V. denied that P/C East gave her any pamphlet on ‘landlord-tenant’ law. J.V. denied that any of the officers who spoke to her by this time, provided her any information about the “*Landlord Tenant Act*”.

Defence counsel questioned J.V., that after giving the keys to P/C East on August 5, 2016, whether she took any further steps before December 2016 to evict M.S. She agreed

that she acquired forms, gathered information and phone numbers. Defence counsel asked J.V. about her prior comments before the tribunal about the *Charter of Rights* and following the law, J.V. testified that she followed what she presumed was the right thing to do. She disagreed with the statement that three officers told her to follow the law specific to landlord-tenant issues and she ignored that advice.

J.V. confirmed she attended *the* Landlord-Tenant Board and signed the agreement that M.S.'s tenancy would terminate March 31, 2017. She testified that on February 15, 2017 she learned through M.P. that a passerby was concerned and called M.P.. She testified the place almost burned down but defence counsel reminded her there was no fire. Following that incident, J.V. advised that P/C Anderson said that there was no food nor belongings in the place. J.V. agreed she decided to change the locks again and that she broke the agreement citing she was in "*great fear*".

J.V. agreed that it was her opinion that after February 15, 2017, M.S. had abandoned the apartment and so she changed the locks. Defence counsel noted that when M.S. showed up on February 25, 2017, clearly she had not abandoned the property, J.V. was adamant that she believed M.S. was gone and she was afraid to let her back in. In response to defence counsel noting that the agreement was to allow M.S. access until the end of March 2017 and the agreement did not speak about eviction for non-payment of rent, J.V. testified that she only wanted to protect her property when she denied M.S. access. J.V. testified that M.S. breached the agreement on her part when she did not pay [rent] and caused damage.

When asked if she recalled the officers telling her that she was engaged in mischief, J.V. did not recall that being said, only that she was arrested. She testified she did not recall talking about the overdue rent and being told it did not give her the authority to remove M.S. as a tenant. When asked if she remembered the officer advising her that if she did not give M.S. access then she (J.V.) would be arrested for mischief, J.V. testified that she told the officer she was not letting M.S. in and then she (J.V.) was arrested.

When asked whether she understood that if she had let M.S. in, she would not have been arrested, J.V. would not answer the question and only reasserted that she would never let M.S. in. After this comment, defence counsel noted to J.V. that even after she had been arrested, she was directing M.P. to engage in the same conduct, J.V. stated she did "*not see it like that,*" as she was protecting her property. She testified, "*do you, at that point, think that I was worried about being arrested?*" and reiterated that she was in fear of M.S. and for her property. J.V. would not respond to a direct question about understanding that she was arrested because she would not give M.S. access only stating that she was in fear. J.V. stated that she did not believe that she broke the law and that she would rather have "*died on the spot*" than let M.S. in.

Defence counsel questioned J.V. about her statement about having rights, and asked J.V. whether she understood that with rights, come responsibilities. J.V. did not directly answer the question but testified that civil servants have to make decisions for the best interests of everyone and she tried to follow the law up until the point danger came in. When asked whether she recalled telling the officers they would have to shoot her, J.V. testified that “*maybe, yes...I was desperate...*” She testified she stated repeatedly that “*over my dead body*” were they going to allow M.S. into the property. Defence counsel noted that as a business person and citizen she was aware of the law and on February 25, 2017 she was given the choice to follow the law or be arrested, she chose to not follow the law which is why she was arrested; J.V. disagreed with this statement.

Re-examination

None

Witness: D/Sgt Vanroboys

Examination in Chief

D/Sgt Vanroboys, the assigned investigator, commenced her investigation of this public complainant on December 11, 2017. The complaint was in respect to allegations of an unlawful arrest by P/C’s East and Chiappetta in relation to a landlord-tenant dispute.

Exhibit 22 refers to an excerpt from the OPP Field Guide in respect to the *Residential Tenancies Act*³ that outlined the police role in landlord-tenant disputes. D/Sgt Vanroboys explained she received this document from the Provincial Police Academy but officers can access it via a desktop icon and it has recommendations for the officers to follow. She could not recall if this was the exact document she read to the officers during their interviews; in April 2017 the document was removed from the field guide.

D/Sgt Vanroboys introduced evidence in the form of the respondent officers’ duty reports⁴ and transcripts of their compelled interviews. The audio recordings of those interviews were played before the tribunal. Details of those interviews will be discussed within the analysis section. D/Sgt Vanroboys also noted that she reviewed the OIPRD complaint made by J.V., other documents including duty reports from the involved officers.

D/Sgt Vanroboys noted that she contacted *the* Landlord-Tenant Board and was provided information that, a tenant who was locked out could apply for a T2 form, in order to gain access but further explained that a landlord could not legally lock someone out of their apartment; there were fines of up to \$25,000. Further, she was advised that there was

³ Exhibit 22: Prosecution BOD – Tab 2 - *Residential Tenancies Act*

⁴ Exhibit 23: Prosecution BOD - Tab 4 – Duty Report P/C East

Exhibit 24: Prosecution BOD - Tab 5 – Duty Report P/C Chiappetta

case law wherein they [the board] have actually advised the officers to charge the landlord under the *Criminal Code* sec 430(1), Mischief for interfering with the lawful enjoyment of property. D/Sgt Vanroboys noted that she had tried to contact the Landlord-Tenant Board on numerous other occasions, following that discussion, without success.

D/Sgt Vanroboys noted that in respect to the actions of P/C East on August 5, 2016, when she told J.V. that she had to open the door or she would force entry, or call a locksmith at J.V.'s expense, were found to be misconduct. P/C East received informal discipline as a result.

P/C East arrested J.V. for the *Criminal Code* offence of Mischief, section 430(1)(d), the sub-section relied upon by the officers, a copy of the wording was tendered as an exhibit. D/Sgt Vanroboys stated that after her investigation she did not find misconduct by the officers as they objectively had grounds to arrest J.V. There was a document in place that everyone agreed existed which specified M.S. was legally entitled to the property until the end of March 2017, it was February so weather was a factor and M.S. had nowhere else to go. P/C East had told J.V. on a previous occasion that she was not entitled to lock M.S. out.

Examination – Public Complainant

J.V. questioned D/Sgt Vanroboys regarding her interview of J.V. on January 10, 2018 and her impression of J.V. and whether she was intimidating. D/Sgt Vanroboys stated she was not and that they talked for four hours and what they discussed matched the OIPRD complaint. D/Sgt Vanroboys did not recollect a conversation about Post-Traumatic Stress Disorder (PTSD) and when questioned about the N11 form mentioned in the written agreement, D/Sgt Vanroboys recalled receiving that document from someone other than J.V., specifically a support person for J.V.

Cross Examination – Ms. Robertson

Ms. Robertson referred to the Field Guide and D/Sgt Vanroboys agreed that the information and checklist provided were guidelines only when violations of the *Residential Tenancies Act* occurred and that “no instructions could comprehensively cover all situations.” D/Sgt Vanroboys confirmed the act had been removed from the OPP Field Guide in April 2017 as it was available on *E-laws*, albeit without the checklist points. D/Sgt Vanroboys agreed with the points in the guide including: “*the landlord cannot seize the property for arrears*” and “*the tenant has the right to stay in unit until an Eviction is ordered from the Board.*”

D/Sgt Vanroboys noted her investigation commenced in December 2017 and she agreed she had a familiarity with both the *Residential Tenancies Act* and the *Criminal Code* offence of mischief. She agreed there are cases involving the former wherein a criminal

investigation may commence. She agreed that there was nothing she found to indicate from any sources of applicable law that a mischief offence cannot stem from a landlord-tenant dispute and there was nothing in the *Criminal Code* to prohibit that section 430 cannot apply to landlords. D/Sgt Vanroboys also agreed there could be overlaps between the *Residential Tenancies Act* and the *Criminal Code* offence of Utter Threats. Further she agreed that the *Residential Tenancies Act* provisions would apply even in circumstances when the tenant was using the premises for illegal purposes and there are provisions to deal with illegal activity. D/Sgt Vanroboys agreed that there would be quite a few types of landlord-tenant disputes that may give rise to a criminal investigative mandate for police officers.

D/Sgt Vanroboys confirmed that in the meeting with J.V. on January 10, 2017, J.V. stated that she was advised to report a list of the missing items to the officers but she never did so. D/Sgt Vanroboys noted she interviewed Sgt Brittan in the course of the misconduct investigation and he agreed that in a call he had suggested to the officers to consider the offence of mischief; at the time he was on-duty, and was receiving updates. He felt that J.V. was treated fairly. In his statement he commented that had he been there he would have considered or taken the same action.

Cross Examination – Mr. Girvin

D/Sgt Vanroboys agreed that J.V. was not interviewed formally as she felt it was too upsetting but she had a four hour long meeting with J.V. after which she took notes on the conversation. She agreed that in terms of the *Residential Tenancies Act*, should a landlord seize anything, even in the case of rent arrears, it could result in criminal charges.

D/Sgt Vanroboys recognized the document related to landlord-tenant calls⁵ that P/C East had referred to in her interview. The duty report of P/C Henderson⁶ who attended with P/C East at the August 2016 call for service noted the following:

Upon [J.V.'s] arrival, PC EAST spoke with her regarding the complaint. PC EAST explained to [J.V.] that she was not allowed to lock her tenant out of the apartment without following the proper procedures set out by the Landlord Tenant [sic] Act. It was at this time PC EAST presented [J.V.] with Landlord Tenant [sic] Act literature, for her to review. [J.V.] was very abrasive towards PC EAST and not willing to simply listen to what PC EAST was trying to explain.

In terms of documented damage, D/Sgt Vanroboys noted that she received photos from M.P. that showed a wooden door that had been nailed shut and had a crack in it, a vent with dog hair around and possibly some debris inside it and there was a third photo

⁵ Exhibit 29: Basics Landlord/Tenant

⁶ Exhibit 30: Duty Report P/C Henderson

received from M.P. that showed a room with furniture in it, where M.S. had resided and it was in relation to a claim about damage related to dog feces down in the vent. D/Sgt Vanroboys agreed she did not follow up on those claims. She agreed that even had there been damage, J.V. would have needed to go through the Landlord-Tenant Board to evict M.S.

Re-examination

D/Sgt Vanroboys, in her interview with Sgt Brittan, stated that she did not recall if he was aware of any information provided by M.P. in relation to believing the property was abandoned nor whether he was aware of the report filed by P/C Anderson.

Submissions

Summary of Prosecution submissions

The prosecution submitted that the arrest was unlawful and unnecessary. It was unlawful as P/C's East and Chiappetta did not have objective, reasonable grounds. The arrest was unnecessary and it is contrary to the role of officers in landlord-tenant disputes. The prosecution outlined the legal test for the misconduct in question was that the arrest must be unlawful or unnecessary. Case law was provided to assist the tribunal in assessing the actions of the officers including *Ardiles v Toronto Police Service*⁷, *Carpenter v MacDonald*⁸, *Fenton v Toronto Police Service*,⁹ *Correa v Toronto Police Service*¹⁰, *Wong and Toronto Police Service*¹¹, and *Wowchuk & Bernst v. Thunder Bay Police Service*¹².

The prosecution provided case law to assist in my analysis. The Divisional Court in *Correa*¹³ affirmed there are two components related to findings of misconduct as alleged:

The Commission correctly stated that the offence with which the applicant was charged has two elements: the arrest must be unlawful or unnecessary, and it must have been made without good and sufficient cause. The applicant submits that he and the other officers had argued that there was good and sufficient cause for the arrest because they acted in good faith in a potentially dangerous and dynamic situation, and the Hearing Officer failed to consider this element of the offence.

The Commission in *Correa* quoted from another decision, *Wowchuk and Thunder Bay Police Service*¹⁴, 2013 CanLII 101391 (ONPC), which stated:

⁷ Exhibit 34: Prosecution BOA Tab 1 – *Ardiles and Toronto Police Service*, [2016] CanLII 2434

⁸ Exhibit 34: Prosecution BOA Tab 2 – *Carpenter v MacDonald*, [1978] 3 A.C.W.S. 145

⁹ Exhibit 34: Prosecution BOA Tab 4 – *Fenton v Toronto Police Service*, [2017] ONCPC 15

¹⁰ Exhibit 34: Prosecution BOA Tab 3 – *Correa v Ontario Civilian Police Commission*, [2020] ONSC 133

¹¹ Exhibit 34: Prosecution BOA Tab 5 - *Wong and Toronto Police Service*, 2015 ONCPC 15

¹² Exhibit 34: Prosecution BOA Tab 6 - *Wowchuk & Bernst v. Thunder Bay Police Service*, 2013 ONCPC 11

¹³ Exhibit 34: Prosecution BOA Tab 3 – *Correa v Ontario Civilian Police Commission*, [2020] ONSC 133, para 40

¹⁴ Exhibit 34: Prosecution BOA Tab 6 - *Wowchuk & Bernst v. Thunder Bay Police Service*, 2013 ONCPC 11, para 78

In the context of the Hearing Officer's specific findings and conclusions on whether there were "reasonable and probable grounds" for the arrest, and in the absence of any other evidence which might have somehow given the Appellants good and sufficient cause to make the unlawful and unnecessary arrest, a separate and more detailed analysis of "good and sufficient cause" was not required.

The prosecution submitted that this was a straight forward analysis in terms of unlawful arrest. The tribunal could rely on the 'plain and ordinary meaning' of unnecessary. The tribunal must determine whether the arrest of J.V. by P/C's East and Chiappetta was justifiable. In terms of articulating what constitutes "good and sufficient cause," the Commission in *Wowchuk* rejected the argument that good faith equated to good and sufficient cause. The prosecution submitted that there was no definitive definition of "good and sufficient cause" in case law but submitted the case most helpful. In *Wowchuk*¹⁵ counsel for the officer argued:

...that the phrase "without good and sufficient cause" imports into the offence an assessment of an officer's intentions and bona fides. Punishment should not follow mistakes made where, at the time, the action was subjectively reasonable. He distinguished between mistakes made in good faith and egregious misconduct or gross negligence. The latter warrants discipline, but the former does not, he submitted.

The Commission rejected this submission citing¹⁶:

We agree with the Respondent's and the OIPRD's submissions that the Appellants' interpretation of "good and sufficient cause" results in far too low a standard. Also, in our view, in the circumstances of this case, that the Appellants were acting "honourably" or "in good faith" at the time they arrested Mr. Burns may be relevant to the issue of penalty.

The prosecution outlined the factual basis from the evidence presented that could lead to a finding of guilt. It was submitted that the defence proposition that exhibit 22 was not available to the officers and the link did not work was not evidence to be considered. The unlawful arrest or unlawful force would flow from the arrest itself. Therefore, if the arrest was unnecessary then it flowed that it would be unlawful. In terms of the transportation of J.V. to Ingersoll, not Oxford, this is not an issue as not everything in the Notice of Hearing (NOH) has to be proven.

¹⁵ Exhibit 34: Prosecution BOA Tab 6 - *Wowchuk & Bernst v. Thunder Bay Police Service*, 2013 ONCPC 11, para 33

¹⁶ Exhibit 34: Prosecution BOA Tab 6 - *Wowchuk & Bernst v. Thunder Bay Police Service*, 2013 ONCPC, para 84

The prosecution outlined the offence of mischief and that the officers required reasonable grounds that all the elements of mischief applied. The arrest was predicated on M.S. having a lawful right to the property and that J.V. was interfering with that right. D/Sgt Vanroboys outlined the information that was known or available to the officers on February 25, 2017.

The prosecution submitted that P/C East reached these grounds despite being provided information that M.S. had abandoned the property. The prosecution highlighted that the issue of abandonment is significant. The prosecution provided a document obtained by D/Sgt Vanroboys in relation to the issue of 'abandonment' including the following:

Section 79 of the Residential Tenancies Act, 2006 (the "RTA") states:

If a landlord believes that a tenant has abandoned a rental unit, the landlord may apply to the Board for an order terminating the tenancy. Although section 79 explains how the landlord may receive an order terminating the tenancy in cases where the tenant has abandoned the unit, it is not mandatory for this type of order to be issued for the landlord to treat the unit as abandoned. However, there is a substantial risk in re-renting the unit without such an order unless it is clear that the tenant has vacated and does not intend to continue the tenancy.

It was submitted that P/C East had interpreted the agreement without actually reading it and she gave no consideration that M.S. may have violated the agreement. It was submitted that in her grounds to arrest, P/C East failed to acknowledge the written agreement. Further, there was no evidence that P/C East advised Sgt Brittan about the occurrence by P/C Anderson as Sgt Brittan's duty report did not indicate he was told about this.

It was submitted that neither officer looked into the possibility of emergency housing for M.S.; they had other options. However, the officers used criminal law power which the prosecution was not disputing that the police can enforce the *Criminal Code* in a landlord tenant issue but in this case it was unnecessary. It was submitted that based on the evidence before the tribunal, there was clear and convincing evidence to support that the arrest on February 25, 2017 was both unlawful and unnecessary.

Summary of Public Complainant Submissions

J.V. reiterated her testimony starting with July 17, 2016 when she received a call from P/C Bylsma inquiring about M.S. whom J.V. knew by another name at that point. There was a reference to J.V. sending men to the property and J.V. was advised not to contact M.S.. J.V. submitted that she was contacted by her lawyer July 18-20, 2016 and she became aware of various negative issues about M.S. and that there was no truth to what

M.S. had said to P/C Bylsma. At that point she contacted P/C Murphy who advised that the previous issue brought forward to P/C Bylsma had been dealt with. J.V. believed that M.S. had mental health issues and J.V. used the “Wellness Act” as explained by her lawyer.

J.V. stated she attended the Landlord-Tenant office and they provided her with exemptions and supplied her with forms and information on the *Commercial Tenancies Act*. On August 5, 2016 she provided P/C East with these papers and stated she feared what “they” [M.S.] would do to her property. J.V. noted it was a civil matter. She highlighted that M.S. intended to damage and remove items from within the residence to gain money.

At the time of the arrest, J.V. submitted that she had reached a point, after P/C Anderson had gone to the property, that she had to protect her property and she would not let M.S. in. She submitted, her actions were not forceful, she stood by the door with the two officers. They arrested her and P/C Chiappetta took her to the ‘cruiser.’ She had to protect her property or what was left of it.

Summary of Defence Counsel – Ms. Robertson

Defence counsel provided a Book of Authorities¹⁷ that dealt with the issues of: *Formation of Grounds for Arrest; Grounds for Arrest for Mischief Arising in landlord-tenant context and Technical Errors and Discretion*. Ms. Robertson submitted that the misconduct has not been made out and that P/C Chiappetta had grounds to arrest J.V. for the *Criminal Code* offence of mischief and the arrest was made in good faith and with due consideration and consultation.

It was submitted that the prosecution theory, rather than outlining the totality of the circumstances, had stressed some isolated factors, shorn of context, to negate the legality of the arrest. Ms. Robertson submitted that the totality of the circumstances must be considered together. It was submitted that there were reasonable and probable grounds to effect an arrest and the officers had consulted with Sgt Brittan. The evidence was that J.V. had ordered the locks changed, and in the presence of the officers would not allow the tenant access despite that there was no dispute that an agreement existed at the time. This is evidence before the tribunal and even J.V. agreed she was refusing to let M.S. back in. There was no evidence to support that J.V. could refuse M.S. access and the issue of abandonment was a prosecution effort to support J.V.’s refusal to allow access. Defence counsel submitted that J.V.’s own testimony was that she knew M.S. wanted back in. Defence counsel submitted that all of the comments and issues that J.V.

¹⁷ Exhibit 35: Defence Book of Authorities

used as excuses to deny access were uncorroborated and denied by J.V. before this tribunal.

A successful agreement had been reached between J.V. and M.S. in January 2017 and both officers were aware that both parties had knowledge of the agreement and casting eyes on the actual paper was not necessary. There were unverified references to damage to property and these are all factors considered by P/C Chiappetta before he made the arrest. Defence counsel disagreed with the prosecution. She highlighted that it was not a duty of the officer to investigate and rule out all innocent and exculpatory facts, what was required was the consideration of the totality of the circumstances. These circumstances formed reasonable and probable grounds that J.V. had committed the offence of mischief and the arrest was made by P/C Chiappetta after consultation with P/C East and Sgt Brittan. J.V. had denied entry and could not be persuaded otherwise after an hour of attempts.

Ms. Robertson highlighted that J.V. knew that M.S. wanted to access the apartment but J.V. stated over and over again that she did not want M.S. in the house. J.V. spoke about M.S. disappearing and how she was never really concerned as it was not unusual. In terms of J.V.'s testimony, defence counsel submitted that it was unreliable and not credible. There were contradictory assertions of J.V.'s memory, and at times, a complete lack of memory, most importantly in the conversations before and during the arrest.

Even in her examination in chief, J.V. denied there was an agreement and it was only when the actual document was shown to her did she acknowledge its existence. It was submitted that J.V. also gave conflicting evidence about the role of her husband. He actually had a leading role as he provided the key, made arrangements to let M.S. into the residence and provided the written agreement to P/C Chiappetta. However J.V. testified that her husband had no role and no knowledge about the agreement. Further, in her evidence, J.V. made repeated reference about there being none of M.S.'s belongings in the residence when the evidence was that M.P. told the officers at the scene that he had moved M.S.'s belongings to another room.

Defence counsel highlighted the unique nature involved wherein the Landlord-Tenant Board had recently played a role and M.S. had been given access to the property. In terms of the issue of non-payment of rent, it does not mean one can evict a person and past rent owed could be dealt with at a later time. The case law supports this and makes it efficient that officers are not to investigate 'proof beyond a reasonable doubt.'

Defence counsel noted the difference in the statement of particulars in the current matter versus the *Carpenter*¹⁸ decision. The idea that M.S. went back into the unit and that criminal law had been used is not *inappropriate*. There is no evidence in respect to P/C Chiappetta that this was a disguised investigation and a motivated arrest. He had indicated a warning was given that there may be an arrest as part of the investigative steps taken. J.V.'s husband had demonstrated the desire to open the door for the tenant to have her regain access and there is no evidence about forcing J.V.

Defence counsel submitted that the central issue in the hearing was whether the officers had reasonable and probable grounds to arrest J.V. for the offence of mischief under the *Criminal Code*. Defence counsel submitted that she understood the prosecution theory was that there were no grounds for arrest. J.V.'s colour of right and her own perception is a relevant factor for the offence of mischief.

Summary of Defence Counsel – Mr. Girvin

Mr. Girvin submitted that while the *Residential Tenancies Act* was important for context in this matter, it was not the operating law at the time of the arrest. There is no dispute that M.S. was entitled to have access to the property. There is no reference in the Notice of Hearing to any issue around the unnecessary exercise of authority and therefore one of the prosecution theories in this respect, can be discarded. P/C East assisted in the arrest of J.V. and it was submitted that P/C East acted professionally, patiently and compassionately in collaboration with P/C Chiappetta and in consultation with her supervisor. It was submitted that P/C East's conduct was the paragon that OPP would desire to have their officers' act.

It was submitted that J.V. felt that the officers' conduct was not proper but the evidence does not support J.V.'s complaint. Defence counsel submitted that J.V.'s evidence was neither reliable nor credible. One such example relates to J.V.'s assertion that at no time prior to February 25, 2017, did any officer bring forward information about the Landlord-Tenant Board. P/C Bylsma, P/C Murphy and P/C Anderson in their respective duty reports made reference to advising J.V. about the landlord-tenant processes. In fact, P/C Henderson reported seeing P/C East refer to the 'Landlord –Tenant' pamphlet (exhibit 29) when she was dealing with J.V. on the first occasion.

It was submitted that there can be no, based on the evidence, that the arrest of J.V. was lawful. Although there has been reference to OPP policy, the starting point is section 42 of the *Police Services Act* that describes the duties of a police officer including to: *laying charges and participate in prosecutions and apprehending criminals, taking them into custody*. OPP policy does not override the *PSA* and the duties of a police officer. OPP

¹⁸ Exhibit 34: Prosecution BOA Tab 2 – *Carpenter v MacDonald*, [1978] 3 A.C.W.S. 145

policy was described as a guide and this does not negate the officers being able to exercise their discretion based on facts and circumstances which is what P/C East did. Both officers patiently and methodically collected evidence in relation to this matter. Defence counsel noted that pursuant to section 16 of the *Statutory Powers Procedure Act*, I could find that J.V. contravened the *Residential Tenancies Act*.

In respect to the subjective basis, it was submitted the officers were responding to a call from a tenant who had been locked out. Even if J.V. and M.P. had acted in good faith and changed the locks after presuming the property had been abandoned, when M.S. attended it was clear this presumption was wrong.

In the broader context, J.V. was displeased with P/C Bylsma and P/C Murphy and she went ahead and changed the locks despite the information provided. Then on August 5, 2016, when J.V. was advised to give the tenant access, she was displeased. On the day of the misconduct, J.V. knew the law as she had initiated processes with the Landlord-Tenant Board. J.V. had attended the Landlord-Tenant Board on January 20, 2017 and an agreement had been reached. J.V. in fact acknowledged it would not be unusual for the tenant to not be around for stretches of time. But within two to three weeks of signing the agreement wherein the tenant acknowledged that she would depart by March, 31, 2017, by February 15, 2017, the locks had been changed again.

Defence counsel submitted that even in J.V.'s own testimony, after being cautioned that her conduct amounted to mischief by the officers, she was advocating that other individuals (M.P.) engage in criminal conduct and block access to the tenant, telling M.P. that she would pay any fines he incurred.

Although there is sympathy for J.V.'s circumstances regarding issues with the tenant, her concerns do not negate her obligations under the *Residential Tenancies Act* or her obligation to comply with the *Criminal Code*. Section 29 of the *Criminal Code* outlines that "ignorance is no excuse...."

It was submitted that although the officers were called about a landlord-tenant dispute, their investigation was focused on the criminality that was transpiring in this matter. It was submitted that the grounds were clear and simplistic. The tenant had a lawful entitlement to the property as was demonstrated by her assertion and her attendance at the property. Further, there was no dispute that J.V. was in charge and she confirmed this in her evidence. This crystalized the reasonable and probable grounds to arrest her. It is clear from P/C East's compelled interview and duty report that the arrest was a last resort in dealing with a person who did not care about the law.

It was submitted that the officers acted in a lawful manner in arresting J.V. They acted in good faith, were professional, patient, compassionate and they consulted a supervisor. They were not acting in a rash manner; they went through the process and came to the determination that the arrest was warranted. Based on the evidence they had, the officers had reasonable and probable grounds subjectively and objectively. There was an agreement in place, M.S. was often absent from the property, she was in attendance seeking entry and her belongings were in the residence. It was submitted that it is up to the landlord to rebut these facts by putting evidence before the tribunal; there was no evidence of abandonment. Section 2(3) of the *Residential Tenancies Act* refers to a property not considered abandoned even if the tenant is in arrears/even if there is no furniture. After the officers acted lawfully in affecting the arrest of J.V. and access was granted to M.S., P/C Chiappetta chose not to move forward with criminal charges. It was submitted that in lieu of a complaint, J.V. should have sent a thank you letter to the Commissioner.

PART III: ANALYSIS

The evidence is uncontested that the following chain of events occurred in terms of J.V.'s contact with the OPP and other agencies. What is contested is the substance of those interactions and the grounds for J.V.'s arrest on February 25, 2017. I will address those issues at odds after outlining the following timeline:

Timeline

In 2013 J.V. purchased a property in Tavistock; the property was legally owned by J.V. and her husband. The property had been a heritage home and J.V. had plans to develop the property for a foundation for eye research.

M.S. was permitted to reside at the property by J.V. but J.V. testified that she never received rent money. However in later testimony, J.V. indicated M.P. had collected rent money from M.S. At least by August 2016, J.V. would have been aware of the rent money being collected when M.S. shared the rent receipts with P/C East.

J.V. testified that on Sunday, July 17, 2016 she received a call from a police officer (P/C Bylsma) who inquired if she knew M.S.; J.V. indicated she did not know that name but a woman, U.B., was living at a room at the property in Tavistock. The officer asked J.V. if she was sending men over to the property in order to have sex with M.S. J.V. testified that she thought it was a prank call. J.V. testified that the officer never mentioned 'landlord-tenant' or made any statement in relation to that term.

On July 29, 2016, J.V. called the police as she did not believe the earlier call was real. She spoke to P/C Murphy. J.V. denied that P/C Murphy told her that it was a 'landlord-

tenant issue', only that it was a civil matter. J.V. agreed that P/C Murphy never told her to change the locks but she did have the locks changed despite this.

On August 5, 2016 P/C East was called to respond to a complaint by M.S. reporting she had been locked out of her rental unit. J.V. attended the property and spoke to P/C East who attempted to mediate between the two but resulted in an ultimatum to J.V. to provide the key to M.S. or entry would be forced. (P/C East received informal discipline resulting from this interaction.)

By December 2016, J.V. had made attempts to engage in the Landlord-Tenant Board process citing that she wished to have the *Commercial Tenancies Act* applied. If this was the case then M.S. would not be able to reside there. J.V. testified that M.S. did not attend at the hearing as she was in the hospital.

On January 20, 2017 when attending the Landlord-Tenant Board, J.V. and M.S. engaged in mediation and signed an agreement indicating M.S. had to pay \$500 monthly and pay all rent in arrears on or before March 31, 2017.

On February 15, 2017, J.V. learned of a call from M.P. to her husband about a man walking by the property who saw the upper windows open. M.P. called police to request they attend while he secured the property. P/C Anderson noted no damage to the property but that M.P. reported that M.S. had vacated the property. After this point, J.V. spoke to her lawyer and subsequently chose to change the locks on the property.

On February 25, 2017 P/C East and P/C Chiappetta responded to a call for service from M.S. who reported she was locked out of the property again. J.V. received a call advising her to attend the property as M.S. had returned. J.V.'s husband and M.P. were in attendance at the property when she arrived with other friends who provided her transportation. J.V. remembered P/C East but she was not familiar with P/C Chiappetta. J.V. refused to allow access to M.S., was blocking access to the entrance and was advising M.P. and her husband to refuse access as well. J.V. was arrested for mischief, transported to the detachment where she was released unconditionally.

Issue of Tenancy

J.V. testified she did not collect rent money but her property manager, M.P., may have. P/C East reported in her interview that when she attended the call in August 2016, she saw rent receipts provided to M.S. by M.P. P/C East advised J.V. that M.P. had provided receipts to M.S. and J.V. indicated he should not have done so. I do not find J.V.'s evidence in this respect credible as, in the course of P/C East's attempts to mediate the dispute in August 2016, having been shown the rent receipts by M.S., it would make sense that she would have referenced this in the discussion with J.V. as she indicated.

Further, if there was no evidence of tenancy or colour of right at this point, P/C East would not have gone to such efforts to mediate and garner access for M.S. if in fact she had no right to the property. I find J.V.'s different accounts of her knowledge of rental income are a way that J.V. sought to understate M.S.'s tenancy.

Further, J.V. testified that no officer at any point in their dealings with her and M.S. in respect to the property mentioned the term 'landlord-tenant'. She denied that P/C East at her attendance in August 2016 explained about 'landlord-tenant' issues and responsibilities. P/C Henderson's duty report specifically referenced that he observed P/C East provide J.V. with a pamphlet about such disputes.

The pamphlet was provided to D/Sgt Vanroboys by P/C East in her compelled interview. In her testimony, D/Sgt Vanroboys indicated her agreement with the statements in the checklist including: "*the landlord cannot seize the property for arrears*" and "*the tenant has the right to stay in unit until an Eviction is ordered from the Board.*" D/Sgt Vanroboys testified these statements were in line with the relevant legislation. I do not find J.V.'s assertion credible when she stated that no officer mentioned 'landlord-tenant' to her and that P/C East did not share this information with her in a pamphlet. It does not make sense.

Officers routinely deal with complex and emotionally charged 'landlord-tenant' disputes and it would be expected they would direct the parties to attempt to resolve their issues through the *Landlord Tenant Board*. This is important as P/C East was guided by this checklist and these were steps known and taken by the involved officers. Knowing J.V. was provided information at numerous points about the need to engage the Landlord-Tenant Board which she chose to disregard, shows a wanton disregard for the laws in place.

Ultimately, in January 2017 J.V. and M.S. participated in a Landlord-Tenant Board mediation meeting that resulted in a signed agreement between the two. In cross examination, J.V. would not agree that the signed agreement with M.S. dated January 20, 2017 was discussed with P/C's East and Chiappetta, on the day related to the misconduct. She would not agree that M.S.'s presence and desire to enter the property was what had spurred on this investigation in question. In denying that any police officer she was in contact with, ever discussed the Landlord-Tenant Board with her, J.V.'s evidence was that it was a commercial property and she was trying to convince police that M.S. should not have been residing there.

I find the evidence supports that M.S. was J.V.'s tenant. J.V. agreed she allowed M.S. to reside in the property starting in May 2016. J.V. noted she contacted ODSP and learned that the rent would be paid as long as M.S. had a place to stay. M.S. possessed signed

rent receipts that she showed to police. J.V. attended the Landlord-Tenant Board in an effort to evict M.S. and after mediation, a signed agreement resulted.

Issue of Abandonment

Although it was not a document accessed by the officers on the day of the incident, I have considered the document¹⁹ provided by the prosecution that discusses the issue of abandonment in relation to landlord-tenant disputes. I have considered the evidence of J.V. that M.S. abandoned the property on February 15, 2017 when she (or her husband) received a call from M.P. stating the windows were open, the oven and furnace was on and there was steam coming out. This event was the basis for J.V. concluding that M.S. had abandoned the property.

In her evidence, J.V. testified that the place “*almost burned down*” however there was no evidence in support of this assumption. J.V. testified that in a call from P/C Anderson following that incident, P/C Anderson stated there was no food nor belongings in the place. However, even accepting that P/C Anderson had noted these observations, this was not information J.V. gleaned from P/C Anderson but apparently from M.P. There is no objective evidence to support that P/C Anderson advised J.V. that there was no food or belongings in the place. J.V. agreed that after that event, she had decided to change the locks again and break the agreement citing her fear. The evidence was uncontested that M.P. had moved property belonging to M.S. to another area of the rental property. Accompanied by M.S.’s return to the property on February 25, 2017 when she sought to be let in, supports that ‘abandonment’ had not taken place.

While I appreciate the frustrations of J.V. as a property owner/landlord and her strong desire to remove M.S. from the property, there is no objective evidence before this tribunal to support the significant fear she described. Although J.V. was advised to take photos and document any damage there was no such evidence presented to the tribunal. While there were some photos provided to D/Sgt Vanroboys by M.P. this is not definitive evidence of damage. There is no objective evidence before this tribunal to support that M.S. abandoned the property nor of the extensive damage or theft being purported. Having made this finding, it would support that M.S. had a colour of right to the property on February 25, 2017.

The Arrest

Having carefully considered the issues of tenancy and abandonment, I will use those findings and fully explore the tests for misconduct related to unlawful or unnecessary arrest. I find, based on my analysis above, that M.S. did have a right to access the property. I must now consider whether the arrest was unlawful or unnecessary. The

¹⁹ Prosecution Book of Documents – Tab 3 – Landlord & Tenant Board, Interpretation Guideline 4, Abandonment of a Rental Unit

prosecution submitted that if the tribunal makes a finding that the arrest was unlawful or unnecessary then that would constitute misconduct.

The Commission in *Ardiles* confirmed the findings of the hearing officer and made the following comments about the officer's arrest authority and whether it was justified, citing at paragraph 24:

Under S. 495 (1) of the Criminal Code, a police officer may arrest, without warrant, a person who, on reasonable grounds, he or she believes is about to commit an indictable offence. In this case, in our view, the Hearing Officer correctly identified the factors to be considered to establish reasonable and probable grounds for an arrest. He [the hearing officer] commenced his analysis by referencing the case of R. v. Storrey, 1990 CanLII 125 (SCC), [1990] 1 S.C.R. 241. He cited the following quotation:

In summary then, the Criminal Code requires that an arresting officer must subjectively have reasonable and probable grounds on which to base the arrest. Those grounds must, in addition, be justified from an objective point of view. That is to say, a reasonable person placed in the position of the officer must be able to conclude that there were indeed reasonable and probable grounds for the arrest. On the other hand, the police need not demonstrate anything more than reasonable and probable grounds. Specifically, they are not required to establish a prima facie case for conviction before making the arrest [emphasis added].

The Commission has clearly set out the requirements to support a finding of misconduct such as the one before this tribunal including that (1) the arrest was unlawful or unnecessary and (2) good and sufficient cause did not exist. In *Correa*²⁰, the Divisional Court agreed with the Commission who outlined:

...that the offence with which the applicant was charged has two elements: the arrest must be unlawful or unnecessary, and it must have been made without good and sufficient cause. The applicant submits that he and the other officers had argued that there was good and sufficient cause for the arrest because they acted in good faith in a potentially dangerous and dynamic situation, and the Hearing Officer failed to consider this element of the offence.

Every action taken by a police officer, particularly when it involves the detention or arrest of an individual must be reasonable and justifiable. In my analysis I will consider the

²⁰ Exhibit 34: Prosecution BOA Tab 3 – *Correa v Ontario Civilian Police Commission*, [2020] ONSC 133, Para 40

actions of the officers. I will address the subjective grounds of the officers and whether there were objective grounds to justify the arrest of J.V.

Subjective grounds

In order to analyze the subjective grounds, I have reviewed and relied upon the compelled interviews and duty reports of both respondent officers as well as duty reports of other involved officers. The officers did not testify and were not subjected to cross examination, any issues in dispute will be weighed with this in mind.

P/C East

In her PSB interview, P/C East explained the previous incident she attended in August 2016 involving J.V. and M.S. when the latter reported being locked out of the property. She stated that at that time she had spoken to J.V. at length and her intention was to resolve the issue peacefully. She stated that she provided J.V. three options with the hope that she would choose the most reasonable option that being to open the door. P/C East advised the investigators that she gave J.V. the options to open the door, entry would be forced or a locksmith would be called to rekey the lock at her expense. P/C East stated that J.V. told her a number of times, “*you are going to have to arrest me.*” She stated that J.V. was being unlawful at this point by refusing entry to the tenant thereby committing the offence of mischief. P/C East had gone back to speak to M.S. to ask her if she had somewhere else she could go and M.S. stated she did not. P/C East described that she was stuck in the middle as both women were expecting her to help them.

P/C East stated she referred to the card²¹ she regularly carries and inquired of J.V. whether she had posted an eviction notice; J.V. responded that on the advice of her lawyer she had changed the locks and was not going to give M.S. access to the property. P/C East advised J.V. that she had seen the rent receipts provided to M.S. by M.P. J.V. told her that M.P. should not have signed the receipts but P/C East explained that M.S. had paid rent and was legally entitled to access the property. J.V. went on to argue that M.S. did not pay the rent, the ODSP did.

P/C East explained she had no intention to force entry as she would have spoken to her supervisor first but it did not come to that. P/C East stated that she finally convinced J.V. to grant M.S. access and J.V. began to block off areas of the house as she indicated that M.S. was only paying for “*that room.*” P/C East stated she walked through the property with J.V. and nothing appeared damaged. She advised J.V. to take pictures and to go through the Landlord-Tenant Board. J.V. in her testimony denied that P/C East told her to take pictures and she denied that P/C East referenced the Legal Clinic Card about the *Residential Tenancies Act* (exhibit 29). I find it accords with the preponderance of

²¹ Exhibit 29: ‘Basics Landlord/Tenant’ Card from Elgin Oxford Legal Clinic

evidence that P/C East made these references when speaking to J.V. although it is possible J.V. did not listen or perhaps may not recall. P/C East stated that at the August 5, 2016 call, she thought she had done well in negotiating between J.V. and M.S., although neither was happy.

In explaining her actions on the day of the arrest (February 25, 2017), P/C East stated it was a similar situation to the prior incident (August 5, 2016) in that M.S. had been locked out. P/C East stated she was aware of a report filed prior to this incident wherein P/C Anderson attended and noted M.P. went into the property as an emergency situation as the windows were open and M.P. had believed the property was abandoned. The report indicated there was no damage done.

I have outlined the above information as this was known to P/C East when attending to the call on February 25, 2017. P/C East was subject to discipline from her conduct at the incident in August 2016 when she gave J.V. improper options or orders which ultimately resulted in J.V. allowing access back into the property. Regardless of any misconduct involved, this prior incident provided P/C East background on this ongoing dispute and it would appear that subsequent to her instruction to J.V. in that August incident, J.V. did engage the Landlord-Tenant Board as a signed agreement was in place starting in January 2017.

The report written by P/C Anderson dated February 15, 2017 was reviewed by P/C East prior to attending the call on February 25, 2017. The report simply detailed information from M.P. as the landlord stating that he believed his tenant had moved out. He was seeking assistance of police to attend and shut off lights and close windows. P/C Anderson noted there was no damage done which may be attributable to comments of M.P. or the observations of P/C Anderson. The report is not definitive evidence that M.S. had moved out and I find it reasonable P/C East did not deem M.S. as having abandoned the property, given the subsequent call for service as noted below.

On February 25, 2017, P/C East spoke to M.S. who indicated she had been with her mother who had been in the hospital for three weeks. M.S. stated they (she and J.V.) had been to the [Landlord-Tenant] tribunal and she had until March 31, 2017 to vacate the property. Upon arrival, M.P. was inside and J.V. was enroute to the property. M.P. told P/C East that the place had been empty for weeks, there was garbage everywhere and he placed M.S.'s things into another room. J.V. arrived however she would not acknowledge the [Landlord-Tenant Board] tribunal agreement that had been signed which M.P. and J.V.'s husband both confirmed. At some point J.V. did agree that there was an agreement.

P/C East stated that J.V. would not listen to anything that the officers had to say. J.V.'s

husband was trying to talk to J.V. and she was quite rude to him. P/C East stated that during the conversation J.V. brought up the *Commercial Tenancies Act* as a reason why M.S. no longer had a right to be there. P/C East explained that it was getting challenging, and that J.V. “kept over talking us, ‘you are going to have to arrest me, I’m not leaving this house, Constable East you are going to have to take your gun out and shoot me’”.

At some point she left J.V. with P/C Chiappetta hoping he may be able to reason with J.V. She went to speak to M.P. and J.V.’s husband and they were both in agreement to change the locks to give M.S. access. J.V. was refusing to leave the property and refusing to talk to police. It was P/C East’s understanding that J.V. and her husband were the owners and M.P. was the landlord. P/C East explained that in both of the incidents she responded to, she attempted to contact the Landlord-Tenant Board enforcement unit without success.

She and P/C Chiappetta stepped aside and contacted their supervisor and discussed about grounds for mischief as J.V. was not allowing M.S. access, J.V. would not leave and was advising M.P. and her husband not to leave the property either. P/C East and P/C Chiappetta were together as she spoke to the supervisor. They again consulted with each other after the call. They returned to try again to reason with J.V. They explained to J.V. that they had the grounds to arrest her for not allowing M.S. lawful enjoyment of her property. J.V. stated she was not going to change the locks, she was not leaving and she told P/C East to arrest her. At that point P/C Chiappetta arrested J.V., gave her *Rights to Counsel* and escorted her from the property. Respectful of her medical issues, they handcuffed J.V. to the front.

P/C East stayed at the property while P/C Chiappetta transported J.V. to the detachment. She stated that she went through the property again and although she was aware that M.P. had cleaned up, she did not see any visible damage. P/C East stated that the arrest was the last option and it was not something she wanted to do. She spoke with J.V.’s husband about him ensuring that she was not going to come back to the property and continue the mischief and then J.V. could be released. J.V.’s husband followed P/C East to the detachment; P/C East spoke briefly to J.V. advising her that she would be released unconditionally which P/C Chiappetta subsequently did.

In the PSB interview, D/Sgt Vanroboys questioned P/C East about having reviewed the Field Guide document about the role of police under the *Residential Tenancies Act*, whether she would have done anything differently. P/C East advised that having read that part she may have tried to find emergency housing for the tenant. P/C East did not recall having seen the document that had been presented to her but she recalled her training from Ontario Police College (OPC) and that officers do not get involved in landlord-tenant disputes. She stressed it was not as easy as that when you are there and both sides want

your help and you are stuck in the middle. She stated that in every other situation she has been able to resolve it amicably.

P/C East showed the PSB investigators a card she carried on her person as reference “Basics Landlord Tenant” which was supplied to detachment members from a legal clinic. On that card, it did not refer to “emergency housing” as an option. She stated that although she understands how an arrest can impact a person, she was saddened to learn how distressing it was to J.V. and for that she was apologetic.

P/C Chiappetta

In his statement to PSB investigators, P/C Chiappetta advised that he responded to the landlord-tenant dispute and upon his arrival P/C East was already speaking with the tenant/complainant, M.S. He had never been to the property before and while enroute he had the Communications Centre check the history and he was told there had been 11 incidents of landlord-tenant disputes [reported to police]. He described that it was February and cold and M.S. [the complainant] had advised that J.V. had changed the locks and was denying her access to the property.

P/C Chiappetta stated when he arrived, he met with J.V., her husband and M.P., whom he believed to be a family friend. He described J.V. as scattered, telling him about all of the problems with M.S. The information about the agreement that allowed M.S. to stay to the end of March came to light, although no one had the document with them. J.V. felt that M.S. had abandoned the property and was concerned about potential damage to the property by M.S. P/C Chiappetta stated he was confused as J.V. had apparently taken the steps through the Landlord-Tenant tribunal that normally would be advised by the police but despite the agreement, J.V. would not let M.S. in.

P/C Chiappetta stated he was not certain if J.V. was confused by bringing up about the *Commercial Tenancies Act* as being applicable, as it did not make sense given they had been to the tribunal and reached an agreement under the *Residential Tenancies Act*. He was not certain whether it was intentional or a lack of knowledge but he noted that J.V. mentioned she had read the acts herself. The officers were trying to convince her that she made this agreement and she needed to honour it. He described J.V. as animated, blocking the doorway to the stairs going up to the apartment and physically grabbing onto the door jambs saying “no, you'll have to -- you'll have to arrest me.” He stated he believed J.V. also said that they would have to shoot her.

P/C Chiappetta stated that the conversation was never about giving J.V. ultimatums. It was more about trying to understand that when there was this agreement that was signed, then why was she not letting M.S. in. He stated although M.P. and J.V. indicated the property had been abandoned they provided no specifics on this. P/C Chiappetta stated

they told him there had been damage to the unit but they would not let him into the unit. He was aware the complaint of damage had already been investigated and the issue being dealt with was a tenant who could not access her apartment. M.S. was a woman without means in a small town in the middle of winter.

P/C Chiappetta indicated that P/C East unsuccessfully attempted to engage the Landlord-Tenant Board enforcement arm and she then called their supervisor. After the call, P/C East explained they would try and continue to work towards a solution but also considered the possibility of mischief as J.V. was interfering with the lawful enjoyment of property for M.S. They spoke to J.V. and her husband for another half hour but J.V. remained in an elevated state and was warned that if she continued there was the possibility of arrest for mischief. J.V. went on about damage to the property but she was blocking access to the apartment, P/C Chiappetta arrested her for mischief. He took particular care about how J.V. was handled. He handcuffed her to the front and they transported her in a vehicle with more room for her during transportation.

P/C Chiappetta described that once at the detachment and after speaking to duty counsel, J.V. calmed down. P/C Chiappetta explained that J.V. was in the cells just long enough for him to speak with her husband and be assured J.V. would not be returning to the property and then she was released unconditionally. He explained his decision to release unconditionally was based on the fact J.V. had calmed down, he felt she had a new appreciation for the situation, he was satisfied the offence would not continue and he felt it was not in the public interest to pursue criminal charges. He explained he had never had a landlord-tenant dispute get to this point before but he had made the arrest in good faith.

P/C Chiappetta acknowledged he had seen a document similar to the one shown by PSB investigators about the *Residential Tenancies Act* in respect to the police role but the decision to proceed criminally was based on the fact that there was already an agreement in place by the Landlord-Tenant Board and everyone verbally agreed that was the case. He was satisfied that M.S. had a legal right to the property until the end of March 2017 and J.V. was interfering with that right. J.V.'s husband turned over a copy of that agreement the following day. The circumstances in terms of weather and time of year were also factors.

P/C Chiappetta also addressed the part of J.V.'s complaint regarding that while she was in the cell area, an officer in the vicinity overheard her, knew Italian and what she had said. P/C Chiappetta stated he was not aware of the call to her husband and he did not speak nor was he aware of anyone on his shift who spoke Italian. Being satisfied that there would be no continuation of the offence, P/C Chiappetta released J.V. unconditionally.

The statements of the officers, although not subject to cross examination, and therefore they cannot be given the same weight as had they given testimony, were helpful in assessing the reasonableness of their actions. The statements made in their compelled interviews were consistent with each other and overall with the testimony of J.V. I will address any inconsistencies with J.V.'s testimony in the course of my analysis. Overall, the statements support the subjective grounds of the officers in respect to J.V.'s arrest.

Objective Grounds

J.V. lodged a complaint about the officers' conduct with the OIPRD but she would not consent to a formal interview with the OIPRD nor the PSB investigators. Despite that she noted concerns for her wellness as a reason for not providing a formal statement, I am not entirely clear on why she would not assent. Having a record of J.V.'s recollection at the time would have been helpful for her to review prior to her testimony and it would be helpful for the tribunal in terms of consistency of the details of the interaction on February 25, 2017. Numerous times throughout her testimony, in respect to critical issues such as conversations about the agreement or being warned about the potential of being arrested for mischief, J.V. indicated she did not recall.

During cross examination, J.V. disputed that P/C Bylsma and P/C Murphy advised her to address issues with her tenant through the Landlord-Tenant Board. Based on the duty reports of those officers, each one addressed this with J.V. as a requirement to deal with M.S. and I find it makes sense the officers would discuss this with J.V. as that would be the issue to be addressed, a landlord-tenant issue. P/C Henderson who was the back-up officer at the initial call P/C East attended in August 2016, also detailed that P/C East shared 'landlord-tenant' literature with J.V. P/C Henderson described that J.V. was abrasive toward P/C East and would not listen to her, requiring P/C East to repeatedly explain to J.V. that she had to address her issues with the tenant through the Landlord-Tenant Board. P/C Henderson described P/C East as calm and professional.

The literature,²² referred to in the duty report/interview of P/C East, had helpful points to assist in landlord-tenant disputes; P/C East clearly relied upon this literature. The document, in bold print cautioned, "*A landlord cannot ever evict a tenant without first obtaining an Order from the Board*" and "*Be careful not to participate in an illegal eviction.*" I am satisfied that J.V. was made aware of her obligations as a landlord by each of the officers involved and how she needed to deal with evicting a tenant. P/C East in particular referenced the card from the legal clinic. I do not find J.V.'s testimony in this respect credible when she stated the officers did not discuss her obligations with her, in respect to 'landlord-tenant' issues.

²² Exhibit 29: 'Basics Landlord/Tenant' Card from Elgin Oxford Legal Clinic

J.V. admitted there was an agreement signed in January 2017 between her and M.S. allowing occupancy until the end of March 2017. Despite this evidence, J.V. would not admit there were discussions with the officers about the agreement; she stated her husband was not aware of it, although M.P. She stated that she never provided the officers a copy. Both officers outlined that there were discussions about the agreement with M.S. and, with M.P. and J.V.'s husband, although the hard copy of the agreement was not produced at the time. Clearly, the agreement existed as J.V.'s husband turned it over to P/C Chiappetta the day following the arrest of J.V. I find the statements of the officers credible and that the agreement was a topic of discussion and a factor in the decision to arrest J.V. for mischief. Out of an abundance of consideration for J.V., given the state that she was in at the time, I accept that although the agreement was discussed, she may not have heard the discussion as she was more concerned about presenting her views.

In her testimony, J.V. stated that P/C Chiappetta had asked her what she had lost and she testified that she directed her comments towards P/C East and stated that she had lost everything. J.V. testified very emotionally about how strongly she felt about her concerns about M.S. damaging her property. I can appreciate her love for the property and her concerns but there was no objective evidence to support a basis for her concerns.

P/C East's duty report and interview referenced that she advised J.V. to document damage and/or theft. D/Sgt Vanroboys, when she met with J.V. regarding her complaint, also encouraged J.V. to document and share information related to any damage. There were numerous statements made by J.V. to the officers and before this tribunal in respect to her concerns that M.S. could damage or steal items on her property but there is nothing documented nor outlined in J.V.'s testimony that provides details of actual damage or theft. M.P. advised the officers during the misconduct incident that he had cleaned up but there were cigarette burns. I have concerns about J.V.'s testimony wherein she described the incident on February 15, 2017 when the windows were reportedly left open, the oven and furnace were on and steam was pouring out. This was information reported to J.V. by M.P. but to state that the property "almost burned down" when there was no fire, appears to be hyperbole.

The report of P/C Murphy was tendered as evidence²³ and in the 'summary' details, normally added by the caller-taker from the communications centre, it cited:

...he [M.P.] believes his tenant has moved out and left all the lights on and windows open. The complainant advises he posted a 24 hour notice on the door. Tenant moved out without advising landlord or paying any rent. No damage done.

²³ Exhibit 32: Duty Report P/C Murphy

While I cannot outright determine that there was no damage to the property, there is no evidence to support this, before the tribunal. The report above noted there was no damage done although I am not clear if that was reported by M.P. or were the observations of P/C Murphy. Notably, the report only cites the lights and windows had been left open, while not ideal in February, it does not indicate the oven and furnace being left on or a concern for fire. J.V. testified she feared M.S. and that these were “dangerous people” but there is no evidence to support that was the case. Regardless, I have no doubt that J.V. was stressed, scared and overwhelmed about how to rid herself of M.S. as a tenant.

J.V. made numerous statements to attending officers, including P/C East and P/C Chiappetta that M.S. had mental health issues, a long history of evictions and was “*dangerous*”. These statements were not supported by any evidence. In July 2016, after the first call from the police (P/C Bylsma), J.V. contacted P/C Murphy approximately one week later to determine the veracity of the first call from P/C Bylsma. In that call with P/C Murphy, J.V. was told that the first call had been dealt with and when J.V. brought up about the *Wellness Act* in respect to M.S., P/C Murphy indicated she did not see anything wrong with M.S.

It was after that call that J.V. contacted her lawyer who suggested she change the locks, which she did. There is no evidence she was instructed to do so by P/C Murphy. It was after the locks were changed in July 2016 that P/C East attended her first call with this dispute on August 5, 2016. I find it reasonable for P/C East, having familiarized herself with the landlord-tenant dispute to date (at that time), would conclude that J.V. was not addressing the issues through the proper channels. It would appear the majority of calls, brought to the attention of this tribunal, were calls for service made by M.S. seeking access when she had been locked out of the property.

J.V. testified that after August 5, 2016 she contacted her lawyer who told her to register the property as commercial and thus a landlord-tenant relationship would not apply. While, I do not find that J.V. was necessarily using the police in a campaign to document issues with M.S. in an effort to rid herself of her as a tenant, as was suggested by defence counsel, I find J.V. was seeking remedies to rid herself of M.S. as a tenant that did not involve the Landlord-Tenant Board. By July 2016 J.V. was aware that M.P. had received rent money from M.S.. J.V. referenced personally calling ODSP in July 2016 who confirmed that M.S. would continue to receive money for rent as long as she had an address. In the August 5, 2016 incident, P/C East stated to PSB investigators that J.V. tried to indicate that M.S. was not the tenant as ODSP paid the rent. I find this information important as in addition to the police reports she reviewed, it was known to P/C East when she attended on the property on the second occasion.

In cross examination, J.V. denied her husband's involvement, including his awareness that M.P. took rent money from M.S. and that he had given the signed agreement to P/C Chiappetta the day following J.V.'s arrest. J.V. testified that she "could never think that he would be involved in that." Despite J.V.'s thoughts on her husband's involvement in these two issues, I find those to be facts.

Both M.P. and J.V.'s husband were present on February 25, 2017 on the day of the misconduct and although there was no testimony from either, I find the evidence supports that both men were cooperative and calm with police and prepared to provide access to M.S. Further, the evidence also supports that J.V.'s husband was a part owner of the property and had knowledge of the rent being paid by M.S.

In cross examination, J.V. appeared to be unaware her husband had provided the agreement to the police, the day following her arrest. I find J.V. minimized her husband's involvement as there was a clear disagreement about the property, the tenant and police involvement. In her testimony, J.V. stated that she and her husband were estranged over the issue. Although, J.V. refuted being aware of conversations with the officers about the agreement, on the day of the misconduct, it makes sense this conversation took place. Perhaps J.V. did not hear the conversation as she was described as interrupting and not listening. I find this is more likely the case than that she was attempting to mislead the tribunal. This is significant as the agreement was an important part of the officers' assessment of M.S.'s lawful right to the property and ultimately the basis for forming grounds for arrest for mischief.

J.V. testified that there was no written agreement with M.S. and that she "*was just helping her.*" I find the testimony of J.V. to be less than frank and fulsome in this respect. In her examination in chief, J.V. was asked about M.P. and she described him as a family friend who helped with renovations. When she was asked whether rent money was provided by M.S., J.V. stated she was not aware of it at the time but she did find out from another officer that M.S. had given M.P. some money [for rent] in July [2016]. She clarified that she was not given any rent money herself. J.V. explained in her testimony that she became a landlord and M.S. became a tenant on January 20, 2017 when the agreement was signed. Although J.V. did not agree that she contravened the *Residential Tenancies Act* through her actions of changing the locks and denying access to M.S., the evidence supports this was the case.

J.V.'s complaint about the officers included an issue of an officer overhearing and understanding her speaking Italian to her husband, advising not to come and get her. Through his duty report statement and compelled interview, P/C Chiappetta indicated he did not speak Italian nor was he aware of any officers at his detachment who did. Although this portion of the complaint was referred to in her testimony, it does not form part of the allegations in the Notice of Hearing. Further, there is no clear reasoning to show what this

had to do with the misconduct as alleged.

Objectively, P/C East came into this incident with past knowledge of the relationship between J.V. and M.S. At the call for service on February 25, 2017, both officers learned there had been an agreement reached approximately one month prior, allowing M.S. to remain at the property until the end of March 2017. This would support the understanding that efforts had been made and a settlement reached under the *Residential Tenancies Act* following P/C East's previous attendance and discussion with J.V. as to how she needed to address the issue of eviction. J.V.'s arguments that the *Commercial Tenancies Act* applied and that M.S. had abandoned the property, do not make sense given the existence of the agreement and the fact that M.S. was in attendance, wanting access and her personal items were still at the property, although M.P. had moved these items sometime after February 15, 2017 (the call attended by P/C Anderson). J.V. testified that in December 2016 she had been aware that M.S. would frequently be away from the property.

*Ardiles*²⁴ referred to Court of Appeal decision in *R. v. Brown*, in which the Hearing Officer appears to have considered the relevant issues and what has to be proven to justify an arrest. The Court in that case stated:

There must be something in the conduct observed by the officer, placed in the context of the rest of the circumstances that lends some objective justification or verification to the officer's belief. Section 495 of the Criminal Code and, more importantly, s. 9 of the Charter demand that the belief be "reasonable", meaning that a reasonable person standing in the shoes of the police officer be able to see the grounds for the arrest. Without this objective component, the scope of the police power to arrest would be defined entirely by the police officer's perception of the relevant circumstances. The individual's constitutional right to be left alone by the state cannot depend exclusively on the officer's subjective perception of events regardless of how accurate that perception might be. The issue is not the correctness of the officer's belief, but the need to impose discernable objectively measurable limits on police powers.

The words of the court in *Brown* provide guidance that the officer's perceptions are only one part of the equation when considering whether an arrest was justified. An arrest must also be objectively justifiable given all of the circumstances. I find an average person would consider the actions of the officers on February 25, 2017 as empathetic and patient. They had attempted to reason with both sides. M.S. provided a reasonable explanation as to where she had been, she had not abandoned the property and indicated she did

²⁴ Exhibit 34: Prosecution BOA - Tab 1 – *Ardiles and Toronto Police Service*, [2016] CanLII 2434 (ON CPC), Para 26

not have somewhere else to go. The officers were at the scene for approximately one hour before the arrest and had consulted with Sgt Brittan partway through the interaction as their efforts to resolve the matter had not been successful. Sgt Brittan advised P/C East that mischief under the *Criminal Code* could be applied to the circumstances and could be considered.

Both officers reported they had been at numerous landlord-tenant disputes none of which had evolved into a criminal arrest. J.V. denied that the officers talked to her a great deal, particularly P/C Chiappetta. J.V. she stated that she directed her comments to P/C East whom she believed to be in charge. I do not find J.V.'s testimony that the officers talked to her very little and that the agreement was not discussed, credible, although that may have been J.V.'s perception. I find the officers took appropriate and measured steps to come to a resolution, one which was agreeable to the co-owner, J.V.'s husband and to M.P. but not to J.V. The officers' actions were reasonable and justifiable and could not be characterized as rash or without thought.

Given my previous analysis, I find M.S. had a lawful right to the property. The officers described J.V. as angry, belligerent, refusing to listen and would not acknowledge the signed agreement although M.P., J.V.'s husband and M.S. all reported the same details about the agreement and despite not obtaining a copy until the following day from J.V.'s husband. J.V.'s actions of blocking the property, refusing entry would objectively be considered interfering, obstructing or interrupting M.S.'s lawful use of the property. I find the officers had reasonable grounds to arrest J.V. for mischief.

*Wong v Toronto Police Service*²⁵ stressed the importance of the 'objective prong' of an analysis in respect to the reasonable and probable grounds for arrest in order to guard against arbitrary arrests. *Wong* additionally addressed²⁶:

The second element – whether there was good and sufficient cause – requires a more nuanced analysis. The lack of objective grounds for the arrest is relevant but it is not necessarily determinative. It requires an analysis of other factors including the officer's subjective belief. To be clear – and this addressed again in the next ground of appeal – acting in good faith does not necessarily satisfy the requirement of good and sufficient cause required by section 2(1)(g)(i) of the Code of Conduct: Wowchuk and Bernst v. Thunder Bay Service, (October 2, 2013 OCPC). It is merely one of the considerations, and each case must be examined on its own merits.

I keep in mind the prosecution submission that if I find the arrest was unnecessary that it

²⁵ Exhibit 34: Prosecution BOA Tab 5 - *Wong and Toronto Police Service*, 2015 ONCPC 15, para 22

²⁶ Exhibit 34: Prosecution BOA Tab 5 - *Wong and Toronto Police Service*, 2015 ONCPC 15, para 27

flows that it would be unlawful. I find the officers had the reasonable and probable grounds to arrest J.V. for mischief. I am satisfied the evidence supports that they made the arrest in good faith but I am mindful that good faith does not always equate with ‘good and sufficient cause.’ I must consider whether their actions were reasonable and justifiable and whether the arrest was unnecessary.

I am assisted in my analysis by *Fenton*²⁷ wherein the Commission outlined:

The second issue raised by the appellant is whether the Hearing Officer erred in failing to consider if the appellant’s conduct, if unlawful, was nonetheless excusable based on good and sufficient cause.

The Commission has previously decided that there are two components to the offence under section 2(1)(g)(i) of the Code. The arrest must be unlawful or unnecessary and it must be without good and sufficient cause: Wong and Toronto Police Service, 2015 ONCPC 15 (CanLII).

The Hearing Officer set out the above section of the Code but did not make a specific finding as to whether the appellant had good and sufficient cause for the arrests. However, in Wowchuk and Thunder Bay Police Service, 2013 CanLII 101391 (ON CPC), the Commission held that depending on the totality of the evidence a separate analysis whether an officer had good and sufficient cause is not required.

Although it is not binding, I find the tribunal’s analysis in *Allen v Alberta Law Enforcement Review Board* helpful including:²⁸

It cannot be the case that a Charter breach is ipso facto a disciplinary offence, because it would mean that mere errors in judgment or carelessness would inevitably rise to the level of discreditable conduct. While police discipline may not require a full level of mens rea, and negligence may in some instances amount to a disciplinary offence, there must be some meaningful level of moral culpability in order to warrant disciplinary penalties. As noted in Rampersaud v. Ford, January 26, 1994 (Board of Inquiry under the Ontario Police Act) police work would become impossible if police officers were, regardless of the circumstances, subjected to disciplinary proceedings every time a judge found a Charter breach.

Therefore, some element of common sense is required in assessing the conduct

²⁷ Exhibit 34: Pros BOA - Tab 4 – *Fenton v Toronto Police Service*, [2017] ONCPC 15, paras 103, 104, 105

²⁸ Exhibit 35: Defence BOA - Tab 10 - *Allen v Alberta (Law Enforcement Review Board)*, [2013] ABCA 187, paras 33, 35,36

of police officers...This is partly captured by the concept that "deference" is owed to the "expertise" of the presiding officer, the chief of police, and the Board. The "parameters set by prevailing court decisions" tend to be somewhat abstract and theoretical. They are generally set in hindsight in the context of a known factual situation. How those abstract "parameters" apply to particular situations encountered by police officers is not always obvious, even to judges. The very word "parameters" implies that there is a range of examples, with some lack of clarity at the margins.

Allen which dealt with a *Charter* breach is helpful to highlight the importance of analyzing a matter of alleged misconduct without the assistance of hindsight.

One must also be sensitive to the fact that police officers often have to make quick decisions without the ability to resort to legal advice or legal research: R. v. Golub (1997)

Officers are required to make decisions in fluid situations. The officers attempted to resolve the issue with the parties, attempted to obtain assistance from the Landlord-Tenant Board enforcement unit.

J.V. did not acknowledge a discussion with P/C East and P/C Chiappetta about the Landlord-Tenant Board agreement with M.S., allowing her access until the end of March 2017. Regardless of acknowledging the discussion at the time, J.V. conceded in her testimony that the agreement existed. Despite this, citing fear of M.S., without clear supporting evidence, J.V. refused to grant access to M.S.. J.V. was angry and emotional and, even upon her arrest for mischief, she encouraged M.P. to continue on with obstructing access to M.S.

J.V. also cited damage and theft of her personal items and property but there is no evidence to support this. She refuted that she was told by police officers including P/C East in August 2016 to document any damage but in her interview with D/Sgt Vanroboys, J.V. stated she told D/Sgt Vanroboys that she did not make a list as she could not imagine giving it to police.

In cross examination when questioned about her authority to change the locks, J.V. agreed she broke the agreement with M.S. but that she did so to protect her property, because M.S. was dangerous, had caused damage to the property and M.S. had not paid her rent. Although J.V. may have well founded fears there is no evidence before this tribunal to support these assertions. Given the agreement made, I find J.V. contravened her responsibilities under the *Residential Tenancies Act*.

In the course of my analysis I have considered the Commission's comments in *Wowchuk and Thunder Bay Police Service*. It was argued in *Wowchuk*²⁹ (para 33) that:

...the phrase "without good and sufficient cause" imports into the offence an assessment of an officer's intentions and bona fides. Punishment should not follow mistakes made where, at the time, the action was subjectively reasonable. He distinguished between mistakes made in good faith and egregious misconduct or gross negligence. The latter warrants discipline, but the former does not, he submitted.

Each case must be considered on its own merits. Unlike the circumstances in *Wowchuck*, there is no evidence of arbitrariness or a 'rush to make a decision' in the current matter. I find *Bennett v Peterborough Lakefield Police Services Board*³⁰ the Commission outlined "the most often relied upon and quoted legal test for misconduct" as articulated *Girard v. Delaney*, (1995) 2 P.L.R. 337, at p. 349, where the Ontario Board of Inquiry held:

1. *The test is primarily an objective one.*
2. *The Board must measure the conduct of the officer by the reasonable expectations of the community.*
3. *In determining the reasonable expectations of the community, the Board may use its own judgment, in the absence of evidence as to what the reasonable expectations are. The Board must place itself in the position of the reasonable person in the community, dispassionate and fully apprised of the circumstances of the case.*
4. *In applying this standard, the Board should consider not only the immediate facts surrounding the case but also any appropriate rules and regulations in force at that time.*
5. *Because of the objective nature of the test, the subjective element of good faith (referred to in the Shockness case) is an appropriate consideration where the officer is required by the circumstances to exercise his discretion.*

Further in *Bennett*³¹ the Commission cited:

In the case of Gillespie v P.C. Shockness (October 4, 1994, Board of Inquiry), referred to in the test above, the Ontario Board of Inquiry held that a subjective finding of good faith on the part of the officer could defend against a technical breach of the law.

²⁹ Exhibit 34: Prosecution BOA Tab 6 - *Wowchuk & Bernst v. Thunder Bay Police Service*, 2013 ONCPC 11, para 33

³⁰ Exhibit 35: Defence BOA - Tab 13 – *Bennett (Re)*, [2014] ONCPC 2504, para 64

³¹ Exhibit 35: Defence BOA - Tab 13 – *Bennett (Re)*, [2014] ONCPC 2504, para 65

In *Ardiles*³² the Commission cited:

With respect to the elements of the offence, the OIPRD submitted that not every unlawful arrest necessarily amounts to misconduct but good faith alone does not satisfy the requirements of “good and sufficient cause”. The OIPRD submitted that “sufficient cause” on its plain meaning imports a requirement for an objective analysis.

Good and sufficient cause

The Commission in *Bennet* and *Ardiles* provide me guidance on the legal test for misconduct and the consideration of “good and sufficient cause.” Distinct from the circumstances in *Carpenter*, I do not find the officers acted with undue haste or without due consideration for the full circumstances. The evidence supports that there had been an agreement between J.V. and M.S. allowing her to occupy the property until March 31, 2017. The existence of this document was not disputed by J.V., only that it was not part of the discussions at the time of the incident. Given it existed, it would not make sense that M.S. would not advise the officers of that fact. I am satisfied with the credibility of the officers’ statements when they mention that M.P. and J.V.’s husband confirmed the agreement. The fact that the latter turned a copy of the agreement over to the police voluntarily the following day supports this. J.V.’s evidence was that the agreement was not discussed with her at the time. However, the evidence supports that J.V. was not listening to anyone else at the time, only repeatedly stating that she would not let M.S. back in, under any circumstances.

Again as a distinction from *Carpenter*, I do not find the officers simply listened to one side. The officers noted they provided J.V. and M.P. the opportunity to provide evidence in the form of documentation of damage or theft. J.V. in her interview with D/Sgt Vanroboys admitted she did not provide this evidence at any point, even following the arrest. P/C East had prior involvement with J.V. and M.S. and the situation. Given the new knowledge that the two had actually attended at the Landlord-Tenant Board and reached an agreement, this fact would support the finding that M.S. was legally entitled to access the property. I find the agreement was an important factor in considering the arrest for the offence of mischief and not an excuse to support an unlawful arrest as was indicated in the course of the hearing.

Despite the signed agreement, the locks were changed after February 15, 2017. I do not find that this necessarily reflects bad faith on the part of J.V.. M.P. related circumstances to J.V. that may have led her to believe that M.S. had abandoned the apartment but she could have filed an application in respect to this at the board. Regardless, when M.S. attended and sought entry then the issue of abandonment became moot.

³² Exhibit 34: Prosecution BOA - Tab 1 – *Ardiles and Toronto Police Service*, [2016] CanLII 2434 (ON CPC), para 14

While I sympathize with J.V. and her frustration with M.S. as a tenant, I find a reasonable person looking at of the circumstances would find J.V. was going to great lengths, but not through the legal course required to remove M.S. as a tenant. J.V.'s testimony included reference to damage and thefts in relation to the property but there was no such evidence to support this. This was despite J.V. being advised to document damage and theft by police officers on more than one occasion. D/Sgt Vanroboys noted she was provided some photos by M.P. that were purported to show the apartment habituated by M.S. with dog feces down the floor vents however there was no conclusive evidence.

I do not find the officers acted maliciously or without care for the rights of J.V. As the Commission in *Bennett*³³ noted:

Finally, credibility assessments are not an exact science. In R. v Gagnon 2006 SSC 17 (CanLII), the Supreme Court of Canada stated that:

It is very difficult...to articulate with precision the complex intermingling of impressions that emerge after watching and listening the witnesses and attempting to reconcile the various versions of events.

The discussion about credibility assessments applies not only to the witnesses and the evidence before the tribunal but also to the officers at the scene as they tried to assess the full circumstances before them. While some others may have taken other approaches including to make further inquiries of M.S. to determine if she could find another place to stay or to secure emergency housing of some sort for her, this does not mean that P/C's East and Chiappetta committed misconduct because of the arrest of J.V. The circumstances were such that there was an agreement in place, J.V. was contravening despite that the *Residential Tenancies Act* outlines that, "*the landlord cannot seize the property for arrears*" and "*the tenant has the right to stay in unit until an Eviction is ordered from the Board.*" These were factors outlined on P/C East's 'checklist card' which guided her actions.

Reviewing the events of February 25, 2017 from the perspective of a reasonable member of the community, full apprised of the circumstances, I find the officers acted with good and sufficient cause and that their actions were reasonable and justifiable. Given the evidence that J.V. researched the *Residential Tenancies Act* as well as the *Commercial Tenancies Act* and received the advice proffered by various police officers beginning in July 2016, J.V. should have been aware of her authorities.

³³ Exhibit 35: Defence BOA - Tab 13 – *Bennett (Re)*, [2014] ONCPC 2504, para 77

The circumstances on February 25, 2017 were fluid and highly emotional with J.V. barring access, stating she would rather die than allow access and for the officers to shoot her. Despite any awareness, I am satisfied that the officers made it clear to J.V. that if she did not permit access to M.S. she was committing mischief and could be arrested. The officers unsuccessfully attempted to reach the Landlord-Tenant Board and consulted with a supervisor where the possibility of the offence of mischief was discussed. J.V.'s evidence was less than reliable and objective as she refuted being apprised of the landlord-tenant dispute processes by any of the officers; she denied any discussion on February 25, 2017 about the agreement with M.S. allowing her access until March 31, 2017; she denied being warned about the offence of mischief and possible arrest. The officers were patient and spent approximately an hour trying to resolve the issue which, through J.V.'s own testimony, there was no possibility she would have assented to access.

J.V. testified that police officers are to make decisions "*in the best interests of everyone.*" While that is true, it is not always a clear path to determine this. J.V., through her own testimony, agreed that she was aware that P/C East took steps to protect J.V.'s property after her arrest. She told the OIPRD investigators and D/Sgt Vanroyboys that the officers acted in accordance with their oaths. J.V. could not dispute the time frame of approximately one hour as the officers attempted to resolve the matter. However it was clear that J.V. could not be convinced to allow access. This involved a woman (M.S.) whom J.V. described as having mental health issues and in my mind would be considered vulnerable. After having left for some time to stay with her mother, M.S. attended the property that she rented seeking to gain access. It was in February and weather is a significant factor given the climate we live in. Given my full analysis, I do not find that the arrest was unnecessary.

Although one can have sympathy for the plight of J.V., as a landlord, wishing to be rid of a tenant, the fact of the matter is, she became a landlord when M.P. received the first rent money from M.S. not on January 20, 2017, as J.V. asserted. As such the relationship was governed by the *Residential Tenancies Act*. J.V.'s explanations that ODSP was the tenant or that the *Commercial Tenancies Act* applied were not supported by evidence nor were her claims of damage, theft and significant personal fear. Further, I can understand J.V.'s comments to D/Sgt Vanroyboys that there needed to be changes made [to the legislation in respect to landlord-tenant issues], as, from the perspective of a landlord or owner of the property, it may appear weighted in favour of the tenant.

The evidence was uncontested that J.V. was treated professionally and courteously by the officers. She was handcuffed to the front in consideration of her medical condition. She received and exercised her rights to counsel before being released unconditionally

by P/C Chiappetta when he was satisfied there would be no continuation of the offence of mischief.

In *Ardiles* para 18: the Commission reiterated that *PSA* disciplinary allegations must:

be proven on clear and convincing evidence. In a disciplinary matter the burden or onus of proof is upon the prosecution. In order to satisfy this requirement, the prosecutor must adduce sufficient evidence that is weighty, cogent and reliable upon which a Hearing Officer, acting with care and caution, can come to a fair and reasonable conclusion that the police officer is guilty of misconduct.

I find there is no evidence to support misconduct on the part of P/C East or P/C Chiappetta.

PART IV: DECISION

Decision

After a careful analysis, based on the evidence before the tribunal, I do not find there is clear and convincing evidence to support a finding of misconduct against P/C Chiappetta nor P/C East in respect to the allegation. I find them not guilty of unlawful or unnecessary exercise of authority.

2021-08-09

X 

Signed by: Lisa Taylor LS (M)
Lisa Taylor
Superintendent
OPP Adjudicator

Date electronically delivered: August 9, 2021

Appendix A

- Exhibit 1: Delegation – Adjudicator Superintendent Taylor
- Exhibit 2: Designation – Prosecutor Inspector Young
- Exhibit 3: Delegation All Officers
- Exhibit 4: Designation – Prosecutor Inspector Doonan
- Exhibit 5: Designation – Prosecutor Inspector Tovell
- Exhibit 6: Delegation – Adjudicator Superintendent Bickerton
- Exhibit 7: Delegation – Adjudicator Superintendent Taylor
- Exhibit 8: Delegation – Adjudicator Superintendent Bickerton
- Exhibit 9: Designation – Prosecutor Inspector Doonan
- Exhibit 10: Designation – Prosecutor Inspector Young
- Exhibit 11: Designation – Prosecutor A/Inspector LePage
- Exhibit 12: Delegation All Officers
- Exhibit 13: Delegation – Adjudicator Superintendent Taylor (Comm. Carrique)
- Exhibit 14: Delegation – Adjudicator Superintendent Bickerton
- Exhibit 15: Designation – Prosecutor Inspector Young
- Exhibit 16: Designation – Prosecutor Inspector Doonan
- Exhibit 17: Designation – Prosecutor A/Inspector LePage
- Exhibit 18: Delegation All Officers
- Exhibit 19: Designation – Prosecutor Mr. Iafrate
- Exhibit 20: Email Ms. Danes and Mr. Warren [4Dec2020]
- Exhibit 21: Prosecution Book of Documents – Tab 1 - Handwritten Landlord / Tenant Agreement
- Exhibit 22: Prosecution Book of Documents – Tab 2 - *Residential Tenancies Act*
- Exhibit 23: Prosecution Book of Documents – Tab 4 - Duty Report P/C East
- Exhibit 24: Prosecution Book of Documents – Tab 5 - Duty Report P/C Chiappetta
- Exhibit 25: PSB Audio Interview – P/C East [12Feb2018]
- Exhibit 26: Prosecution Book of Documents - Tab 6 - Transcript of P/C East PSB Interview
- Exhibit 27: PSB Audio Interview – P/C Chiappetta [8Feb2018]
- Exhibit 28: Prosecution Book of Documents – Tab 7 - Transcript of P/C Chiappetta PSB Interview
- Exhibit 29: ‘Basics Landlord/Tenant’ Card from Elgin Oxford Legal Clinic
- Exhibit 30: Duty Report P/C Henderson
- Exhibit 31: Duty Report P/C Bylsma
- Exhibit 32: Duty Report P/C Murphy
- Exhibit 33: Duty Report Sgt Brittan

- Exhibit 34: Prosecution Book of Authorities
 - Tab 1 – *Ardiles and Toronto Police Service*, [2016] CanLII 2434 (ON CPC)
 - Tab 2 – *Carpenter v MacDonald*, [1978] 3 A.C.W.S. 145
 - Tab 3 – *Correa v Ontario Civilian Police Commission*, [2020] ONSC 133
 - Tab 4 – *Fenton v Toronto Police Service*, [2017] ONCPC 15
 - Tab 5 – *Wong and Toronto Police Service*, [2015] ONCPC 15
 - Tab 6 – *Wowchuck and Bernst v Thunder Bay Police Service*, [2013] ONCPC 11
 - Tab 7 – Ontario Provincial Police Orders, Field Guide, *Residential Tenancies Act*
 - Tab 8 – Excerpt of s 430(1) of the *Criminal Code*
- Exhibit 35: Defence Book of Authorities
 - Tab 1 – *Criminal Code*, RSC 1985, c C-46, Section 429 and 430
 - Tab 2 – *R v Leppanen*, [2015] OJ No 2323 (SCJ)
 - Tab 3 – *R v Johnson*, [2019] OJ No 1600
 - Tab 4 – *No1 Lawn & Yard Care Inc v Weyburn Trailer Court Ltd.*, [2006]
 - Tab 5 – *R v Currie*, [1993] OJ No 3238
 - Tab 6 – *R v Gabrielli and Little*, [1985] NBJ No 208
 - Tab 7 – *R Maddeaux*, [2007] OJ No 1184
 - Tab 8 – *R v Phoenix*, [1991] BCJ No 4013
 - Tab 9 – File No CET-76322-18, [2018] LNONLTB 4318
 - Tab 10 – *Allen v Alberta (Law Enforcement Review Board)*, [2013] ABCA 187
 - Tab 11 – *Girard v Delaney*, [1985], 2 PLR 337
 - Tab 12 – *Rose, Arcand, Liburd, Correa, Fuller v Toronto Police Service and Adam MacIsaac and OIPRD*, [2018] ONCPC 2
 - Tab 13 – *Bennett (Re)*, [2014] ONCPC 2504
 - Tab 14 – *Scott v British Columbia (The Police Complaint Commissioner)*, [2016] BCSC 1970
- Exhibit 36: File No TEL-76561-17, Ontario Landlord and Tenant Board