

**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 JOHN (SCOTT) SIRISKA, #12733**

**CHARGE: Discreditable Conduct**

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**DECISION**

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<b>Before:</b>	<b>Superintendent K.M. (Mike) Bickerton Ontario Provincial Police</b>
<b>Counsel for the Prosecution:</b>	<b>Mr. Jason Kirsh Ministry of the Solicitor General</b>
<b>Counsel for the Defence:</b>	<b>Mr. James Girvin Ontario Provincial Police Association</b>
<b>Public Complainants:</b>	<b>Mr. Clifford Sheehan and Ms. Sarah Clarkson</b>
<b>Hearing Date:</b>	<b>March 16-19, 22, 24, 2021</b>
<b>Decision (amended)</b>	<b>April 27, 2021</b>

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

## **PART I: OVERVIEW**

### **Parties to this Hearing**

Parties to this Hearing include:

- Provincial Constable (PC) John (Scott) Siriska, represented by Mr. James Girvin;
- Mr. Kirsh represented the Ontario Provincial Police (OPP);
- The Public Complainants, Mr. Sheehan and Ms. Clarkson
  - Mr. Sheehan and Ms. Clarkson did not have legal representation however indicated they understood they had the right to do so. The hearing process and their role in it, was explained to them and they were provided with a copy of the tribunal rules. They actively participated throughout the hearing process

### **Background**

On March 16, 2021 PC Siriska, represented by his counsel Mr. Girvin, pleaded not guilty to the charge of discreditable conduct. Due to the Covid 19 pandemic the hearing was held in GHQ and via Skype.

### **Allegations of Misconduct**

PC Siriska is alleged to have committed discreditable conduct in that he did use profane, abusive or insulting language or were otherwise uncivil to a member of the public, contrary to Section 2(1)(a) of the Code of Conduct contained in the Schedule to Ontario Reg. 268/10, as amended.

Particulars of the allegation state:

On or about October 20, 2019, PC Siriska was on duty in the capacity of a frontline uniformed officer, assisting with scene security at or near the location of a serious motor vehicle collision. He was positioned in his unmarked police vehicle at Highway (Hwy) 93 just north of Robert Boulevard, in the village of Hillsdale. PC Siriska is alleged to have committed the following misconduct:

- PC Siriska cordoned off the section of roadway normally travelled by motorists, with pylons, and positioned himself 294 metres north of that location.
- PC Siriska felt the pylons were sufficient to mark the closure and stated words to the effect of - *I shouldn't have to babysit an intersection* when speaking with the

Professional Standards Bureau (PSB) investigator. He outlined that he had gone over and above the requirements in the Highway Traffic Act (HTA) to satisfy a road closure in that he placed five pylons, when only three were required.

- PC Siriska did not believe it was necessary to position his police vehicle closer to the location of the closure/pylons. He parked on the east side of the roadway and had a clear sight-line from his location to that of the motorists travelling in and around his closure. He subsequently charged seven motorists with 'Drive on Closed Highway' while at that location.
- PC Siriska did not request the Ministry of Transportation (MTO) to move their closure signage to the location of his pylons as he felt it was sufficient.
- PC Siriska observed a motorcycle stop for approximately 30 seconds on Robert Boulevard, facing east 'contemplating what to do.' He observed the motorcycle travel northbound on Hwy 93 through the pylons marking the closure.
- PC Siriska activated his emergency lights and intercepted the motorcycle approximately 250 metres north of the pylons, ordering the driver to pull over and turn off the bike.
- PC Siriska engaged in discussion with the driver, Mr. Sheehan, as there was some confusion on his part around the road closure. The driver stated that they (he and his passenger, Ms. Clarkson) were lost and didn't know how to get home and that they saw you sitting in the laneway and were driving toward you for directions. PC Siriska replied with words to the effect of - *the road is closed regardless of your interactions, you were not permitted to drive through the road closure.*
- PC Siriska disregarded Mr. Sheehan's explanation for his traveling to the officer's location and proceeding past the road closure and pylons.
- PC Siriska lectured the driver and explained to the PSB investigator that you speak to everyone the same way, '*...like they are a 17 year old boy.*'
- Ms. Clarkson described PC Siriska as immediately aggressive, making such comments as '*what do you think you're doing? You're driving through a road closure*' and when she and Mr. Sheehan both replied that they were trying to approach the cruiser PC Siriska responded with words to the effect of '*no, you weren't, what are you, stupid? There's no way you could see me up here.*' In stating that they were new to the area PC Siriska responded with words to the effect of '*you've got a phone, you should've talked to somebody, figure it out.*'
- Both Mr. Sheehan and Ms. Clarkson allege they were met with extreme aggression and a lack of respect while seeking directions around a closed highway. Mr. Sheehan was upset that he was receiving a ticket and began using profane language toward PC Siriska. By PC Siriska's account, Mr. Sheehan continued on with his barrage and at that point, half way between the cruiser and the motorcycle, PC Siriska stopped, turned around, and said '*fuck, fuck you, that's how you talk to people? Grow up!*', then re-entered the cruiser. Ms. Clarkson claims to have heard you respond to Mr. Sheehan's

comments with words to the effect of '*why don't you go fuck yourself.*'

- PC Siriska's elevated state of anger and coming within inches of Mr. Sheehan's face frightened Ms. Clarkson, as the officer appeared to have trouble regaining his composure. She was fearful his interaction was going to result in a physical confrontation, as was Mr. Sheehan.
- PC Siriska immediately began writing notes on the dash pad to capture what Mr. Sheehan was saying, and as he was about to pull away he said 'have a nice night fuck face!' to which PC Siriska responded with '*grow up, you idiot*', returning to his position north of the pylons.
- PC Siriska described his common practice of interaction to the PSB investigator as straight forward, all business, with 99% of people he stops get a ticket, no warnings, to the point, direct, a person's criminal or driving history having no bearing on his enforcement action; he treats everyone the same.
- Of note, later that evening, a member of the public contacted the OPP to advise that people were confused about the road closure and were getting lost in the residential area of Hillsdale.

PC Siriska knew or reasonably ought to have known his actions in this matter were discreditable.

## **Plea**

At the outset of the hearing on March 16, 2021, PC Siriska entered a plea of not guilty to the count of discreditable conduct.

## **Decision**

After a careful analysis, of the evidence placed before this tribunal, I find there is clear and convincing, evidence that I found was cogent, reliable and weighty in support of a finding of misconduct against PC Siriska in respect to the allegation. I find PC Siriska guilty of discreditable conduct.

My reasons for the decision are as follows:

## **PART II: THE HEARING**

### **Exhibits**

The exhibits for this matter are listed in Appendix A.

## Witnesses

*The following are to be considered overviews or summaries and are not intended to include all that was said.*

The Prosecution witnesses:

- Sergeant Trina Gosse #10595
- Mr. Clark Sheehan
- Ms. Sarah Clarkson
- Staff Sergeant DiSaverio #8613

Defence witness:

- PC Siriska

### **Sergeant (Sgt.) Trina Gosse – *Evidence in Chief***

Sgt. Gosse had over 20 years of policing experience with the OPP and was the primary PSB investigator assigned to this matter. At the time, Sgt. Gosse was on a temporary assignment to PSB and this matter was among her first assignments received on February 10, 2020.

Sgt. Gosse outlined some of her initial investigative steps including starting a chronology, reviewing the Office of the Independent Review Director (OIPRD), requesting documents and information from involved officers and speaking to Staff Sergeant (S/Sgt.) DiSaverio. Sgt. Gosse had communicated with PC Siriska and had requested a copy of his notes and arranged to interview PC Siriska as well as the public complainants.

On March 3, 2020 Sgt. Gosse interviewed the public complainants, Mr. Clifford Sheehan and Ms. Sarah Clarkson at the Barrie OPP detachment. The interviews were recorded<sup>1</sup>. On March 26, 2020 Sgt. Gosse interviewed PC Siriska by telephone as, in the interim, an emergency had been declared in relation to the Covid-19 pandemic. PC Siriska was cautioned at the beginning of the recorded compelled interview.

Sgt. Gosse explained that she reviewed the *Police Services Act (PSA)* Code of Conduct, as well as Police Orders (OPP Policy) sections 2.37<sup>2</sup> related to traffic enforcement and road

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<sup>1</sup> Exhibits 12 and 13: PSB audio recording of Clifford Sheehan and Sarah Clarkson interviews

<sup>2</sup> Exhibit 10: Police Orders, Chapter 2 Excerpt

safety and 6.10<sup>3</sup>, professionalism in the OPP. Sgt. Gosse introduced a map<sup>4</sup> she had produced of the area that had been shared with PC Siriska during his interview.

*Cross Examination by Public Complainant*

Neither public complainant had any questions for Sgt. Gosse.

***Cross Examination by Defence***

The audio interviews of Mr. Sheehan and Ms. Clarkson were played and were authenticated by Sgt. Gosse. The following exhibits were entered through Sgt. Gosse:

Exhibit 12: Audio Interview of Clifford Sheehan

Exhibit 13: Audio Interview of Sarah Clarkson

Exhibit 14: Clifford Sheehan OIPRD Complaint

Exhibit 15: Sarah Clarkson OIPRD Complaint

Exhibit 16: S/Sgt. DiSaverio notes and duty report

Exhibit 17: Copy of Provincial Offence Notice (PON) 3860

Exhibit 18: Copy of Dash Pad note

Exhibit 19: Photograph of county Road 93

Exhibit 20: PSB Report

Sgt. Gosse outlined her responsibility was to gather evidence fairly and impartially and to complete an investigative report to provide a summary of her investigation. Part of Sgt. Gosse's investigation involved researching applicable policy on Police Orders. The last paragraph on page 9 of the investigative report<sup>5</sup> contains the consecution that PC Siriska used profane and insulting language toward Ms. Clarkson and Mr. Sheehan.

Sgt. Gosse had received and reviewed a copy of PC Siriska's duty report and notes prior to his interview. Sgt. Gosse agrees that if further misconduct was discovered during an investigation it could result in further consequences and/or further jeopardy for the involved officer. During his interview PC Siriska denied being in close proximity of Mr. Sheehan, but did acknowledge using profanity when he quoted back what Mr. Sheehan had said to him and to calling Mr. Sheehan an idiot. Mr. Sheehan and Ms. Clarkson described PC Siriska's cruiser

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<sup>3</sup> Exhibit 9: Police Orders, Chapter 6 Excerpt

<sup>4</sup> Exhibit 11: Map of Highway 93

<sup>5</sup> Exhibit 20: PSB Investigative Report

as silver or grey and PC Siriska indicated he had been driving a black car. Sgt. Gosse indicated that PC Siriska felt where he had parked, he was not visible to the public complainants but said he could see them. Sgt. Gosse speculated that if PC Siriska could see the public complainants than they should have been able to see him or his cruiser. Sgt. Gosse was shown exhibit 19, a photo taken by PC Siriska with his cruiser parked where he said it was on the date of the incident. From the photograph, Sgt. Gosse was not able to say that the car in the distance was a police car.

Sgt. Gosse agreed if criminal conduct was discovered an investigation could expand. The OIPRD complaints of Mr. Sheehan and Ms. Clarkson did not include the fact that PC Siriska “ran” at Mr. Sheehan as Mr. Sheehan had indicated in his interview. Sgt. Gosse agreed this could be perceived as assault but she had not turned her mind to this at the time. Sgt. Gosse did not ask Mr. Sheehan or Ms. Clarkson why this information, was not in the OIPRD complaint. Mr. Sheehan’s request to have the ticket dropped was not specifically mentioned in the PSB report because Sgt. Gosse was more interested in the conduct allegation. Mr. Sheehan’s use of the word extortion when speaking to S/Sgt. DiSaverio was not in the PSB report.

Sgt. Gosse learned, during her investigation, through social media and OPP reports that other members of the public were confused about the road closure at County Road (Highway) 93 and Robert Boulevard as late as 7:07pm on October 20, 2019.

Sgt. Gosse agreed that S/Sgt. DiSaverio was attempting to resolve the complaint early on and there was no reference in his notes or duty report that PC Siriska ran at Mr. Sheehan.

There was no redirect by the prosecution or the public complainants.

#### **PC Siriska PSB Interview- March 26, 2020<sup>6</sup>**

- PC Siriska and Sgt. Gosse referred to a “Google Maps” image of Hillsdale.
- PC Siriska corrected a hand written mark Sgt. Gosse had placed on the map as to where he was parked. He indicated his location was further north than what was written on the map. Where he was not captured in the map and was outside of the image at a bend in the road.
- The road closure established by the MTO was across 93 just north of Mill Street.
- PC Siriska laid seven tickets that day.
- PC Siriska was asked why, after the third ticket was laid, he did not change his vehicle position.

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<sup>6</sup> Exhibit 8: PSB Audio Interview of PC Siriska 26Mar2020

- PC Siriska stated the road was properly closed and he went over and above what was required of him. The Highway Traffic Act only required three pylons and he used five pylons. He was doing his work in his vehicle and did not believe he had to “babysit” the intersection.
- Within 10 minutes the first car passed PC Siriska’s roadblock. PC Siriska decided to sit there for a while and see what happens.
- PC Siriska saw hundreds and hundreds of cars turning left then a second motorist went past his roadblock then a third.
- PC Siriska said he was positioned out of sight in a farm laneway doing his notes and other “stuff” and he should not have to “babysit” the intersection. PC Siriska believed some people did not feel the road closure applied to them.
- PC Siriska was asked why he parked so far away and he said he it did not matter where he parked. He could have parked in the middle of the road and people would simply have driven around him.
- PC Siriska had discovered where the MTO blockade was at Mill Street and he decided to set up his secondary roadblock which was needed to effectively protect the scene.
- PC Siriska did not call to request the MTO move their roadblock because it would have taken too long and he did not think it was necessary.
- He could see the driver of a motorcycle sitting at the intersection contemplating what to do.
- The occupants of the motorcycle never waved to him. They sat there for 30 seconds.
- PC Siriska agreed that Mr. Sheehan asked for directions and he did not provide directions or an alternate route.
- The first thing out of Mr. Sheehan’s mouth was that he thought the road was closed between Robert and Mill. PC Siriska said he told Mr. Sheehan if that were the case he would have placed his cones across the south side of Robert.
- Mr. Sheehan offered a second and third excuse and did say he was lost and did not know how to get out of the closed area.
- PC Siriska said there was an open convenience store where Mr. Sheehan could have got directions.
- Ms. Clarkson never said one word to PC Siriska during the interaction.
- When PC Siriska was obtaining Mr. Sheehan’s driver’s licence, Mr. Sheehan told PC Siriska they were lost. Sgt. Gosse pointed out to PC Siriska that it was at this point where PC Siriska was alleged to have said Mr. Sheehan was stupid. PC Siriska said he never called anybody stupid and never called anyone an idiot.
- PC Siriska suggested PSB investigators contact the other drivers who were ticketed and they would say he never called them an idiot. PC Siriska said he could have called one driver who drove over the cones an idiot, but he did not.
- PC Siriska repeated he never called anyone an idiot or stupid he just pointed out the facts.

- He said a typical conversation with stopped motorists would include him pointing out to them that they could potentially be driving over evidence or there could be a dead person on the highway.
- PC Siriska explained he was not yelling but he talks to people like they are a 17 year old boy. PC Siriska said he explains the facts.
- PC Siriska said that he walked to the rear of Mr. Sheehan's motorcycle to obtain the licence plate number. When Mr. Sheehan realized he was going to get a ticket he "lost his shit" and directed a barrage of profanity toward PC Siriska.
- Half way back to his car, PC Siriska, as the barrage continued said he stopped and said to Mr. Sheehan "Fuck, Fuck you- that's how you talk to people? Grow up" PC Siriska said he was just repeating back what Mr. Sheehan had said to him.
- PC Siriska said that as he neared or was at his car he heard Mr. Sheehan say "have a nice night fuck face." PC Siriska said his car was 10-15 metres away from Mr. Sheehan. PC Siriska said "grow up you idiot" to Mr. Sheehan.
- The only time PC Siriska used the word idiot was as he was leaving and said he could have called them worse. PC Siriska clarified that when he said he did not use the word idiot, he meant he had not used it the way Mr. Sheehan and Ms. Clarkson described.
- PC Siriska denied telling Mr. Sheehan and Ms. Clarkson to use their phones to figure out how to get home.
- PC Siriska said he was never close to Mr. Sheehan except when he obtained his driver's licence and when he gave him the ticket.
- PC Siriska denied running or walking quickly toward Mr. Sheehan.
- PC Siriska described himself as being all business and that was how he came across.
- PC Siriska explained he does not engage in small chat, be a nice guy or entertain people and 99% of the people he stops are going to get a ticket, there are no warnings.
- PC Siriska said it did not matter to him if it was a grandmother running his roadblock, she was getting a ticket.
- PC Siriska referenced a March 19, 2019 incident where a driver "lost his shit" with PC Siriska because he was getting a ticket.
- PC Siriska felt Mr. Sheehan's motivation was to have the ticket dropped.
- He did not think Mr. Sheehan was a biker because he was driving a blue Goldwing.
- In describing Mr. Sheehan, PC Siriska said he was dealing with somebody who had clearly disregarded his road closure.
- PC Siriska stated that he gives lectures to drivers including cops who he stops for speeding. He lectures people like he is talking to his kids. He does not like when officers speed because they are wasting his time.
- PC Siriska gave an example of recently stopping a senior OPP officer and asking for his driver's licence where PC Siriska was "all business".
- PC Siriska repeated he only called Mr. Sheehan an idiot when he (Siriska) was leaving because of the way Mr. Sheehan had been speaking to him.

- PC Siriska gave Mr. Sheehan the ticket and explained option three; the Court option to him and told Mr. Sheehan he would see him in Court.
- PC Siriska said he was about 20 feet away from Mr. Sheehan when PC Siriska said “Fuck, Fuck you, that’s how you talk to people? Grow up”.
- PC Siriska repeated he had two people “lose their shit’ on him on March 19 and only once before had he been spoken to the way Mr. Sheehan did and that was a 20 year old in Angus.
- PC Siriska said Mr. Sheehan and Ms. Clarkson got his car colour wrong because he was driving a black car.
- PC Siriska said Mr. Sheehan was not pulled over and PC Siriska had to place his car in such a way as to block their path.
- PC Siriska felt Mr. Sheehan was untruthful with him about why he went beyond the pylons and the first thing Mr. Sheehan should have asked for was directions.
- PC Siriska knew Mr. Sheehan and Ms. Clarkson were two minutes from their house and felt that they knew that.
- PC Siriska stated Mr. Sheehan and Ms. Clarkson explaining they respected the police and were recipients of an award from the Commissioner of the OPP, never happened.
- PC Siriska said he got in his car and his final comment was “Grow up you idiot” directed at Mr. Sheehan.

### **Mr. Clifford Sheehan - *Evidence in Chief***

Mr. Sheehan was 56 years of age and resides in Elmvale with his wife Sarah Clarkson. They moved to Elmvale in May or June of 2019. Mr. Sheehan owns two business supplying surveying and measuring equipment.

Mr. Sheehan was not very familiar with the Elmvale area in October 2019 having recently moved to the area. On October 20, 2019 it was a nice sunny day and he was going to put his motorcycle away for the season. The weather was nice enough that he and his wife Sarah decided to go for one last ride. They went for a ride and had lunch before returning to their home. They were on a Harley Davidson motorcycle with Mr. Sheehan driving and Ms. Clarkson as the passenger.

On their way home as they reached Hillsdale on highway 93 they came upon a large barricade across the road. The sign at the barricade was marked “emergency” and he saw an OPP cruiser leaving the scene. Mr. Sheehan thought it may have been a gas leak and noticed he had to turn left or right. He followed the car ahead of him and turned left. Mr. Sheehan was not familiar with the area and had no idea where to go. His objective was to get to the other side of Hillsdale. The left turn had taken them into a subdivision and they drove around trying to

find their way as they had never been in that subdivision before. They eventually arrived back at highway 93.

The first barrier he had come upon was a large sawhorse type of sign and he believed it said emergency. Mr. Sheehan knew something had happened and it was serious and that 93 was closed. Mr. Sheehan referred to exhibit 11<sup>7</sup> and indicated the first barricade was at 93 and Mill Street and he had seen an OPP cruiser there, turning and driving away.

They made their way back to 93 and Robert Boulevard and realized they were back at 93. Mr. Sheehan looked left and saw pylons across 93. He spoke to Sarah about what to do as they did not know which side of the problem they were on at this point and were confused. They looked left up 93 and saw what they believed to have been an unmarked police car and thought it was a Dodge Charger. They discussed approaching the officer for assistance and directions and decided to do so. Mr. Sheehan drove through the pylons toward the officer to ask for help stating "if you can't ask an officer for help who can you ask".

Mr. Sheehan explained that they were confused as to what to do as it looked as though the pylons were placed to keep people from going into Hillsdale. The car they saw was clearly visible and they believed it to be a police car. Mr. Sheehan said that they waved to the officer to try to get their attention. They had travelled 30-40 feet when the officer raced down the highway toward them. Mr. Sheehan pulled over. The officer got out of his car and told Mr. Sheehan to shut off his bike and give him his licence.

Mr. Sheehan said that Ms. Clarkson tried to tell PC Siriska that they had seen him and were going to ask for his help. PC Siriska replied with words to the effect "you're lying."

Mr. Sheehan said that they had tried to talk to PC Siriska but he was abrasive. When Mr. Sheehan and Ms. Clarkson told PC Siriska they respected the police and had won an award for lifesaving from OPP Commissioner Hawkes, PC Siriska said he didn't care. When Mr. Sheehan tried to explain he was not sure what the pylons meant PC Siriska asked if they were idiots. PC Siriska took Mr. Sheehan's license and went to his police car. When he returned Mr. Sheehan asked PC Siriska if he was giving him a ticket and PC Siriska asked Mr. Sheehan if he was stupid.

As PC Siriska was walking back to his, cruiser Mr. Sheehan said to PC Siriska words to the effect "hey buddy, fuck you." Mr. Sheehan said that PC Siriska was 30 or 40 feet away at the time and PC Siriska turned around and came at Mr. Sheehan very quickly to a distance of 1-1 ½ feet from Mr. Sheehan's face. Mr. Sheehan described PC Siriska's head moving back and forth as he (Siriska) said words to the effect "why don't you go fuck yourself." This led to an

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<sup>7</sup> Exhibit 11: Map of Hillsdale area

exchange of profanity between Mr. Sheehan and PC Siriska. PC Siriska walked back to his cruiser and Mr. Sheehan gave him “the finger.” Mr. Sheehan indicated he did not raise his voice to PC Siriska until he told him to go fuck himself. He described PC Siriska as being condescending but he was not yelling. Ms. Clarkson did not raise her voice nor swear.

When Mr. Sheehan and PC Siriska were swearing at each other Mr. Sheehan said he stood like a mannequin as the officer had a gun and a taser and he did not want to provoke him. While this occurred Ms. Clarkson was crying. Mr. Sheehan was not proud of using profanity but described it as all he had in his tool bag after being called a liar and stupid. The interaction involving the exchange of profanity ended when PC Siriska walked back to his police car and drove off. Mr. Sheehan speculated that PC Siriska just wanted to give out tickets and did not seem interested in helping people and he never advised Mr. Sheehan how to get around the road closure. Mr. Sheehan explained it was not his intention to ignore the road closure or they would have ignored the first one. He knew the road was blocked but he did not know where.

Mr. Sheehan testified that at one point PC Siriska asked him and Ms. Clarkson words to the effect “if they wanted to see the dead body and wreck his crime scene.”

When Mr. Sheehan and Ms. Clarkson eventually arrived home they wrote down what had happened and contacted the OPP to report the incident. On the following day they met with S/Sgt. DiSaverio. Mr. Sheehan had further telephone conversation and email exchanges with S/Sgt. DiSaverio. Mr. Sheehan was not familiar with the complaint process and, at the time felt that an apology would have been nice. He felt the ticket resulted from entrapment and should be dealt with as well. Mr. Sheehan spoke to his brother in law, a retired police officer, who told him that PC Siriska would only get a slap on the wrist if they accepted an apology at that stage. Mr. Sheehan said that he and Ms. Clarkson discussed it and felt a slap on the wrist was not appropriate for treating them like he did.

They spoke to S/Sgt. DiSaverio about the OIPRD complaint process and they followed through with their complaint because they wanted PC Siriska’s behavior recorded in case it happened again. Regarding the ticket, S/Sgt. DiSaverio explained that there was nothing that could be done about that unless PC Siriska wanted to because asking for the ticket to be withdrawn to resolve a complaint would be like a bribe.

With respect to the notes drafted when Mr. Sheehan and Ms. Clarkson arrived home, Mr. Sheehan advised that they worked on them together, they wrote them as soon as they got home, they were “shook up” and that he was still bothered by being called a liar, an idiot and stupid. Mr. Sheehan explained not every detail was written down on the notes and subsequent OIPRD complaint form captured the broad strokes. Mr. Sheehan believed the complaint form was completed in order to have the matter elevated to the next level and to speak to someone about their concerns.

Mr. Sheehan clarified that when PC Siriska mentioned a dead body Ms. Clarkson was shaken. He explained that the fine and points associated with the ticket were not his concern and that he had received and paid for tickets in the past. He explained that he felt entrapped and wronged by the issuance of the ticket.

### ***Cross Examination***

Defence counsel sought further information on a reference Mr. Sheehan had made to this tribunal being a “kangaroo Court”. Mr. Sheehan explained that there were three people present when this occurred. He knew he and Ms. Clarkson were telling the truth and if they were deemed to be lying then the process was faulty.

Mr. Sheehan agreed that he and PC Siriska were a foot to a foot and a half away from one another when they exchanged profanity. He agreed that they were yelling but said that it was not at the top of their lungs and could have been louder. Mr. Sheehan explained he was here; referring to being in the tribunal, not because he wanted to get the ticket dropped but because he was called a liar, stupid, and an idiot. Mr. Sheehan considered being called names and getting a ticket was one issue. After speaking to S/Sgt. DiSaverio, Mr. Sheehan understood that they were separate issues. Mr. Sheehan explained he was not trying to make a shady deal to get the ticket dropped.

Mr. Sheehan testified he had a number of conversations and exchanged emails with S/Sgt. DiSaverio. Part of the discussions involved resolution discussions and a letter of apology from PC Siriska. Mr. Sheehan explained that he had conversations with family members/friends who were police officers who advised that PC Siriska would only get a “slap on the hand” if an early resolution were sought. Mr. Sheehan explained he felt a slap on the hand was not sufficient and that PC Siriska has to be held accountable.

Mr. Sheehan explained that when he and Ms. Clarkson arrived home following the incident their memories were fresh, but they were upset and their memories were likely better once they collected their thoughts. When Mr. Sheehan spoke to Sgt. Gosse he told the whole story. The four pages of handwritten notes included with the OIPRD complaint were made when they got home and were written by Ms. Clarkson. The notes reflect the main points of the conversation that Mr. Sheehan and Ms. Clarkson had about what had occurred. Mr. Sheehan indicated no one point was more important than another.

*A portion of Mr. Sheehan’s audio interview of March 3, 2020 was played from time stamp 3800.*

In reference to the hand written notes, Mr. Sheehan testified they were a good account of most of the points that they had recalled that night. There were further details that he and Ms.

Clarkson recalled after the notes were written.

Regarding his OIPRD complaint Mr. Sheehan agreed that he signed it and agreed with Mr. Girvin that he recalled further information between the time he wrote the notes and complaint and the time he was interviewed. Mr. Girvin presented an analogy where Mr. Sheehan signs a contract at work and that the signature finalizes the agreement. Mr. Sheehan explained that was not completely accurate as details in business contracts are often amended after signing.

*Defence Counsel then had Mr. Sheehan read from parts of his OIPRD complaint.*

Mr. Sheehan said that he understood the “describe in detail” question on page 4 of his OIPRD complaint was completed to the best of his ability to get the event down on paper. Defence counsel requested a “yes or no” answer to the suggestion that Mr. Sheehan knew he had an obligation to provide details of the event. Mr. Sheehan explained that it was hard to answer yes or no as he and Ms. Clarkson understood that they would be given an opportunity to tell their story to investigators. Mr. Sheehan explained further that what he and Ms. Clarkson wrote down was the “nitty gritty” of what happened but not every detail was included. Mr. Sheehan guessed the interaction with PC Siriska was 10-20 minutes in duration.

Mr. Sheehan agreed he could have included the fact that PC Siriska “ran” at him in his OIPRD complaint. The terms “ran” and “sprinted” were words used by Mr. Sheehan to describe how PC Siriska approached him immediately prior to the exchange of profanity. Mr. Sheehan explained that it was a brisk, fast walk and that PC Siriska moved quickly toward him.

Mr. Sheehan testified he was scared at the time and thought he had explained this to Sgt. Gosse. *A portion of Mr. Sheehan’s interview with Sgt. Gosse was played during which Mr. Sheehan said he thought PC Siriska was going to “hammer” him and that he (Sheehan) did not know if he was scared or not.*

Mr. Sheehan 100% disagreed with Mr. Girvin’s suggestion that he could not describe the actions of PC Siriska because they did not happen and that it was not written in the OIPRD complaint because it did not happen. Defence counsel suggested that if it happened the way it was described Mr. Sheehan would have written it down. Mr. Sheehan disagreed. Mr. Girvin suggested that when Mr. Sheehan signed his complaint certifying its truth, he was untruthful. Mr. Sheehan disagreed.

Regarding the October 21, 2019 email exchange with S/ Sgt. DiSaverio, Mr. Sheehan indicated the times may not have been accurate as they had a computer server problem and he was uncertain if he spoke to S/Sgt. DiSaverio after the emails were exchanged. During the conversations and emails Mr. Sheehan explained that he had expressed two concerns, the ticket and the way he was treated. He agreed he could have told the whole story but did not

think it was the forum. During a phone conversation with S/Sgt. DiSaverio it was explained the ticket and the way Mr. Sheehan was treated are two separate issues. Mr. Sheehan was willing to exchange apologies with PC Siriska at that time. S/Sgt. DiSaverio explained that PC Siriska was the only person who could drop the ticket. After Mr. Sheehan spoke to his brother in law (a former police officer) Mr. Sheehan felt that no apology would suffice and he wanted to have his voice heard. Mr. Sheehan read the notes that he and Ms. Clarkson had made to S/Sgt. DiSaverio but did not know how much of the notes he read. Mr. Sheehan was referred to page 130 of S/Sgt. DiSaverio's notes<sup>8</sup>. Mr. Sheehan disagreed that S/Sgt. DiSaverio never said PC Siriska was the only one who could drop the ticket because it was not in the notes. Mr. Sheehan recalled using the word extortion in his conversation with S/Sgt. DiSaverio over the notion of someone telling PC Siriska to drop the ticket. Mr. Sheehan testified he disagreed with the ticket because he felt the actions of PC Siriska were entrapment. Mr. Sheehan agreed with the suggestion of Mr. Girvin that the proposal of an apology and withdrawal of the charge could be referred to as a deal.

Mr. Sheehan disagreed with a number of suggestions put forth by Mr. Girvin including that he was only interested in getting the ticket dropped. He reiterated that he was scared by PC Siriska's behavior, but may not have realized he was scared at the time it was happening. Mr. Sheehan agreed that drivers should generally know the rules of the road. He did not agree that his OIPRD complaint was necessarily in chronological order.

Mr. Sheehan testified that he came upon five pylons across Highway 93 at Robert Boulevard. He agreed that the pylons indicated the road was blocked but he did not know in which direction. Mr. Sheehan and Ms. Clarkson stopped on Robert Boulevard at 93 and discussed what to do. Mr. Sheehan and Ms. Clarkson saw a grey car parked up Highway 93 and they believed it was a police officer. They decided to drive toward the police officer to seek some assistance as they were confused where to go. Mr. Sheehan said that he and Ms. Clarkson waved to the police officer. Mr. Sheehan agreed with the suggestion that turning left was also the route to his home. Mr. Sheehan indicated he remained uncertain as to where the gas leak or issue related to the road closure was. Mr. Sheehan was unsure if he had his phone with him that day. He explained that it was Sunday and he liked to "turn the world off" but if he had his phone it would have been in the trunk of the motorcycle.

Mr. Sheehan explained that, in order to get home, he drove back through the subdivision to Mill Street before ending up on a dirt road. It took over 45 minutes for him to get home. Mr. Sheehan was aware that driving through a road closure was against the law, but the pylons were unclear and he did not know if he was on the left or right side of the issue. As soon as he passed the pylons he saw the police car "barreling" toward him aggressively with the lights flashing. Mr. Sheehan indicated that a Harley Davidson motorcycle has a distinctive sound but

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<sup>8</sup> Exhibit 16: S/Sgt DiSaverio notes and duty report

his had a factory exhaust system and was not excessively loud.

Mr. Sheehan agreed that he had referred to PC Siriska as having been extremely aggressive and demanding. PC Siriska spoke in a loud voice when telling Mr. Sheehan to turn off his motorcycle and give him his license. After PC Siriska approached Ms. Clarkson explained they saw him and had waved. PC Siriska told Ms. Clarkson she was lying and that she did not see him. This was not the only time that Ms. Clarkson spoke to PC Siriska. When Ms. Clarkson was referred to as having been mostly a spectator, Mr. Sheehan believed that was referring to the exchange of profanity between himself and PC Siriska. Mr. Sheehan disagreed with a further suggestion made by Mr. Girvin that PC Siriska had said the road was blocked due to a serious accident with serious injuries. Mr. Sheehan stated PC Siriska said there was a dead body.

Mr. Sheehan did not recall PC Siriska ever offering advice about anything; including the ticket options. Mr. Sheehan described PC Siriska as being condescending, sarcastic and aggressive throughout the interaction and, referenced PC Siriska's acknowledgement in his audio interview that he spoke to people like they were "17 year old boys." Mr. Sheehan disagreed with the suggestion that PC Siriska was simply being assertive. Mr. Sheehan explained that he did not question there were pylons on the road, but was unsure which side of the closure he was on and under those circumstances, he should not have received a ticket.

Mr. Sheehan explained that when PC Siriska returned from his cruiser with a ticket in hand he asked PC Siriska if he was getting a ticket. He said PC Siriska responded "what are you stupid." Mr. Sheehan referred to this as the "TSN turning point." Mr. Sheehan described himself as having been "pissed off" that during their interaction with PC Siriska they had been called liars and Mr. Sheehan had been called stupid and an idiot. When PC Siriska was walking back to his cruiser Mr. Sheehan testified he said to the officer "Hey buddy, fuck you." Mr. Sheehan disagreed with the suggestion that he did not write this in his complaint because he did not want to appear that he was provoking the officer. He explained that he told everyone what he had said. Mr. Sheehan said that after he said what he did, PC Siriska approached him quickly and they exchanged "fuck you's" and a number of expletive un-pleasantries from a distance of 1- 1 ½ feet. After the exchange PC Siriska returned to his car and Mr. Sheehan said he gave PC Siriska the finger. He did not mention this in his OIPRD complaint and disagreed he left it out because it would have made him look bad.

Mr. Sheehan testified it was a lie that PC Siriska said "grow up you idiot" only after Mr. Sheehan had sworn at him. When it was suggested that Mr. Sheehan had called PC Siriska "fuck face" Mr. Sheehan responded that he believed it was PC Siriska who called him that. He did not see or hear PC Siriska say anything once he got back into his cruiser. Mr. Sheehan speculated that perhaps PC Siriska had issues with motorcyclists who rode Harley Davidson's.

Mr. Girvin made a number of suggestions to Mr. Sheehan about what had occurred and Mr.

Sheehan disagreed with all of them.

### **Ms. Sarah Clarkson- *Examination in Chief***

Ms. Clarkson was 52 years of age and lived in Elmvale with her common law husband Clifford Sheehan. She was employed as a service consultant in the automotive industry. Ms. Clarkson had move to Elmvale in the late spring early summer of 2019. In October 2019 she remained unfamiliar with the area.

On October 20, 2019 she and Mr. Sheehan went for a motorcycle ride, Mr. Sheehan was the driver, which was to be their last ride of the season. They had a pleasant day and had gone to Orillia for lunch before heading home. As they made their way home they came to Hillsdale. They came to a road block she described as a sawhorse type of sign and saw a police car pulling away. She believed the sign said 'emergency.' Ms. Clarkson initially though the road block was at Highway 93 and Albert Street but when shown a map<sup>9</sup> she said it was at Mill Street. They turned left onto Mill Street and then right onto Robert Boulevard which brought them into a meandering subdivision. Ms. Clarkson said that they now know the roads in the area but they did not know them well at the time.

Ms. Clarkson said that they drove around the subdivision for about 15 minutes trying to find their way out and there were not a lot of people out and about to approach for directions. Eventually they arrived at Highway 93 and Robert Boulevard and they recognized they were at the end of the Town of Hillsdale. When she looked to the right she saw no one and it looked barren. To her left Ms. Clarkson saw five pylons across the road. She was unsure what the pylons were marking. She was not sure if the road block with the sawhorse was the beginning of the road block and the pylons marked the end and said it was confusing and had no idea what they meant.

When she looked to the left she saw an unmarked police car. Ms. Clarkson explained that she worked at an automobile dealership in the service department and her employer services police vehicles; including OPP cruisers hence it was apparent to her that it was a police car. As they were stopped Ms. Clarkson and Mr. Sheehan were discussing what they saw and what to do. Ms. Clarkson said there was nothing going on between the pylons and the police car. Ms. Clarkson said it was her decision, which she shared with Mr. Sheehan, to go through the pylons and approach the officer for directions to get home. They drove past the pylons and were going slow. They had waved at the officer to get their attention. Ms. Clarkson saw the police car coming toward them and the lights were on. Mr. Sheehan had stopped the motorcycle at the shoulder and the police car was across the road in front of them. Ms. Clarkson felt that if the situation on the road was so serious that she would expect to see an

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<sup>9</sup> Exhibit 11: Map of Hillsdale Area

officer at the pylons.

PC Siriska approached them and asked for Mr. Sheehan's driver's license and told him to turn the motorcycle off. Ms. Clarkson immediately felt that PC Siriska was angry and she could not understand why. Ms. Clarkson explained to PC Siriska that she saw him and they were just hoping to seek his help. PC Siriska responded with words to the effect "no you didn't, you're lying." Ms. Clarkson said that PC Siriska would not let her or Mr. Sheehan explain anything and would not allow them to speak. Ms. Clarkson was shocked by the way PC Siriska was acting. As Ms. Clarkson tried to explain why they did what they had done PC Siriska asked if they wanted to drive ahead and run over a dead body and contaminate his crime scene.

Ms. Clarkson testified that she had asked PC Siriska at least three times why he was being so aggressive but he did not seem to hear her and only spoke to Mr. Sheehan. PC Siriska called Mr. Sheehan an idiot for going through the pylons. Ms. Clarkson tried to explain to PC Siriska that her uncle was an OPP Deputy Commissioner and she and Mr. Sheehan had received an award for lifesaving from OPP Commissioner Hawkes and she and Mr. Sheehan were not bad people. PC Siriska said words to the effect "so what" and indicated he did not care.

PC Siriska went to his cruiser and came back with a ticket. Mr. Sheehan asked PC Siriska if he was getting a ticket and PC Siriska said "what, are you stupid." Ms. Clarkson described derogatory remarks being initiated by PC Siriska when he called her a liar and her spouse an idiot and stupid. The profanity was initiated by Mr. Sheehan when he said "hey buddy fuck you." This was followed by PC Siriska saying "why don't you just go and fuck yourself" after he sprinted from the patrol car. Ms. Clarkson said this response from PC Siriska was etched in her brain. This was followed by a horrific exchange of "fuck you and fuck off's" etc. between PC Siriska and Mr. Sheehan. The two men were very close when this happened, about a foot and a half apart. Ms. Clarkson was upset watching two grown men completely losing control and she feared it would become physical. The exchange ended when PC Siriska returned to his car and drove off. As he did, Mr. Sheehan "flipped him the bird."

Regarding the comment made by PC Siriska regarding the dead body, Ms. Clarkson explained she felt the comment was directed at her and she was shaken by the thought that there was a dead body on the road.

After PC Siriska drove off Ms. Clarkson and Mr. Sheehan made their way home, not knowing where they were going they ended up on a dirt road. When they arrived home Ms. Clarkson and Mr. Sheehan discussed the incident and she wrote notes<sup>10</sup> as they recounted the event. They completed their OIPRD complaint forms individually.

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<sup>10</sup> Exhibits 14 and 15, hand written notes attached to OIPRD Complaints

PC Siriska did not give Ms. Clarkson and Mr. Sheehan directions. He told them to use their phones or talk to somebody in the subdivision. Ms. Clarkson explained she does not use her phone while a passenger on the motorcycle as she felt it was unsafe. Her phone was in the luggage carrier behind her.

### ***Cross Examination***

Ms. Clarkson testified that she and Mr. Sheehan had discussed the incident since it happened as it had affected their lives. She explained that when the notes were made she was emotional and her thoughts were racing as it had just happened. To the best of her recollection, following a conversation Mr. Sheehan had with S/Sgt. DiSaverio, she downloaded the OIPRD complaint form. Ms. Clarkson believed the complaint form would prompt an investigation and that someone would be talking to her about it. Ms. Clarkson clarified when she had stated in her interview that she saw an officer helping at road block at Mill Street she was assuming the officer was helping and she did not specifically know what they were doing. Mr. Sheehan did not remember seeing the police car there. When Ms. Clarkson saw it, the officer was driving away. The officer she saw was not directing traffic.

When they turned left onto Robert Boulevard their primary goal was to get home. They drove around the subdivision, lost, for 15 or 20 minutes. Not knowing the street names but referring to a map (exhibit 11), Ms. Clarkson guessed they had driven around Davenport Drive perhaps a couple of times. Ms. Clarkson was shown (via email) exhibit 21, a photograph of an OPP pylon. She did not recall seeing any OPP or silver coloured markings on the pylons that were on Highway 93. When they came to the pylons Ms. Clarkson said that she was not frustrated; she just wanted to get home. When they came to 93 and Robert they recognized where they were and saw the pylons but no officer was present. She saw an unmarked police car to her left. She did not see lights on top of the cruiser and did not know if it had a push bar.

Ms. Clarkson testified that she had worked in the automotive industry since 1987 and it was not an assumption that it was a police car. The car looked like a charcoal or grey Charger. Mr. Girvin suggested the car was a black Ford Taurus. Ms. Clarkson replied it looked similar to a Charger and it was clearly visible and she thought it was a police automobile. Ms. Clarkson explained the decision she made to drive past the pylons was not one they took lightly but their intention was to approach the officer for help and there was no danger between where they were and where the officer was. She believed that Mr. Sheehan waved and Ms. Clarkson was waving toward the officer as they moved through the pylons. They had just got past the pylons when PC Siriska responded and was driving toward them.

Ms. Clarkson explained having described herself as a spectator that day was referring to when the exchange of profanity occurred. She tried to be respectful and was trying to diffuse the situation. Ms. Clarkson testified she spoke to PC Siriska but he did not hear her. When she

tried to explain their intent and that they saw him and were seeking his help, PC Siriska said she was lying. PC Siriska would not allow Ms. Clarkson or Mr. Sheehan to explain themselves and he called Mr. Sheehan an idiot. PC Siriska mentioned the dead body on the road and ruining his crime scene. Ms. Clarkson disagreed with the suggestion that PC Siriska said an injured person rather than a dead body.

As PC Siriska was walking away Ms. Clarkson tried to explain the respect they have for the OPP and that they had received awards. PC Siriska turned around and said he didn't care. This was not in Ms. Clarkson's written notes. Ms. Clarkson described PC Siriska as having an aggressive tone but he was not yelling. PC Siriska had gone to his cruiser and returned with a blue ticket in hand. Mr. Sheehan asked him if he was getting a ticket and PC Siriska said "what are you stupid? Of course you are getting a ticket. You drove on a closed highway. You don't know what a road closure is?" At that time Ms. Clarkson said PC Siriska was at a professional distance. He was not yelling but remained aggressive. Mr. Sheehan was shocked and was trying to discuss the ticket. PC Siriska just started walking back to his car. Ms. Clarkson believed both she and Mr. Sheehan were speaking at the same time. She was talking about the award she had received from the OPP and Mr. Sheehan was trying to discuss the ticket.

Ms. Clarkson disagreed with the suggestion that she only mentioned the award to get PC Siriska to cancel the ticket. PC Siriska was getting into his car when Mr. Sheehan yelled "hey buddy", PC Siriska looked back, and Mr. Sheehan yelled "fuck you" at the top of his lungs. She described the behavior of Mr. Sheehan as being out of character. PC Siriska then got out of his car and moved very quickly toward them, not running and not walking. PC Siriska was very close to Mr. Sheehan when he said "why don't you go fuck yourself." Mr. Sheehan and PC Siriska began the exchange of profanity.

Ms. Clarkson did not have direct contact with the Facebook group who were discussing their involvement with PC Siriska that day, but she believed one person said he was aggressive with them too. Ms. Clarkson disagreed with a number of suggestions put to her by Mr. Girvin.

### **S/Sgt. DiSaverio testimony**

*S/Sgt. DiSaverio was on the witness list for the prosecution but was not called. Defence Counsel raised an issue/concern that S/Sgt. DiSaverio may have provided information favorable to PC Siriska as to whether or not he ran at and was in close proximity to Clifford Sheehan when the exchange of profanity occurred. After some discussion it was agreed that the S/Sgt. would be called as a witness on the narrow issues related to his recollection surrounding what, if anything, he knew or was told in relation to PC Siriska running at and his proximity to Mr. Sheehan. S/Sgt. DiSaverio appeared via Skype. I did not clarify with any certainty whether S/Sgt. DiSaverio was actually considered a defense or prosecution witness.*

S/Sgt. DiSaverio had a telephone conversation with Mr. Sheehan on October 21, 2019 during which Mr. Sheehan read notes he and Ms. Clarkson had made following their interaction on October 20, 2019. S/Sgt. DiSaverio did not recall the details of the notes read to him. The two issues identified were that Mr. Sheehan did not agree with the ticket and the way he was treated by PC Siriska. Interactions took place at a traffic stop when Mr. Sheehan and Ms. Clarkson drove into the proximity of PC Siriska on a closed highway. S/Sgt. DiSaverio recalled the interactions as being unfavorable after PC Siriska issued the ticket and was walking back to his car. This was followed by 10-15 “fuck offs” back and forth between PC Siriska and Mr. Sheehan. S/Sgt. DiSaverio recalled the exchange but not the details and could offer no information regarding the proximity of PC Siriska and Mr. Sheehan.

*The paragraph from page 3 of the handwritten notes of Mr. Sheehan and Ms. Clarkson beginning with “this then led...” was read to S/Sgt. DiSaverio on request of Mr. Girvin.*

S/Sgt. DiSaverio did not specifically recall that passage being read to him but stated it was consistent with his overall understanding of the interaction that occurred between PC Siriska and Mr. Sheehan.

## **Defence Witness**

### **PC Siriska - Evidence in Chief**

PC Siriska had been with the OPP since 2008. He was assigned as the full time Traffic Management Officer (TMO) at the Huronia West detachment. When he was a general law enforcement officer (GLE) he wrote 700 – 1000 traffic tickets per year. As TMO he wrote approximately 1500 tickets per year. PC Siriska related a personal family traffic accident caused by a distracted driver and that distracted driving had become a focus of his enforcement activity. PC Siriska also involved himself in community service and education regarding traffic related issues. PC Siriska experiences motorists using profanity and insults toward him as a result of his enforcement actions.

PC Siriska read his notes from a March 1, 2019<sup>11</sup> incident related to a distracted driving traffic stop he made. The male driver became angry and confrontational and was swearing at PC Siriska as well as calling him names. PC Siriska ended the conversation and as the male drove off he committed another offence. The situation did not escalate and the male apologized to PC Siriska in Court.

On October 20, 2019 PC Siriska was working from 1530- 0200. He was dispatched to Highway 93 just north of Hillsdale to assist with traffic. After arriving at the scene and stopping a motorist beyond the road block in Hillsdale he decided a secondary road closure needed to be set up

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<sup>11</sup> Exhibit 23: Notes of PC Siriska [01Mar2019]

at 93 and Robert Boulevard. He placed pylons across 93 north of Robert and explained only three pylons are required by law but he used five. The pylons were placed three feet apart and were impassible. PC Siriska was satisfied the closure was clear and he drove to the accident scene to help.

He noticed a driver had somehow past his roadblock. The driver explained he did not know what the pylons meant. PC Siriska charged the driver. PC Siriska said he had a safety concern so he parked 294 metres up the road. His notes say 200 metres but he later learned it was 294 metres. PC Siriska was backed into a farm laneway near a tree and the shrubbery was high. PC Siriska had a line of sight to the road closure. He gave everyone the opportunity to make the right choice and if they made a u turn that was perfect. If a vehicle did not do that he would pull out and engage the driver. He stopped a driver/pedestrian who lived between the closure and the accident scene and did not give her a ticket. He charged others and PC Siriska estimated the stops took 10 -12 minutes each time. PC Siriska explained that, as a policy, he had to educate drivers and he did this toward the end of the traffic stop. He gave examples of other drivers stopped and some ticketed at the scene.

At 1744hrs PC Siriska said he was doing notes and other stuff when he saw the Sheehan motorcycle come to a stop at Robert Street and 93. The motorcycle sat there not moving for 20 or 30 seconds. The motorcycle then turned left onto 93 and drove between the pylons at approximately 35 to maybe 50 kilometers per hour. PC Siriska said there was no waving by the people on the motorcycle at any time. He pulled out with his lights on but he did not need his siren. Mr. Sheehan pulled his motorcycle to the side of the road and stopped. He asked Mr. Sheehan to shut his motorcycle off because it was a Harley and it was loud. He approached Mr. Sheehan and laid out in simple and clear terms why he stopped them. Mr. Sheehan explained he thought the road was closed between Robert and Mill Street. PC Siriska told Mr. Sheehan, if that was the case, he would not have placed the pylons on the north side of the intersection. PC Siriska said it was as clear as day the road was closed. Mr. Sheehan also explained that this was the only way he knew how to get home. PC Siriska then said he got into education and told Mr. Sheehan that someone could be seriously hurt and he could be driving over a crime scene and critical evidence. Mr. Sheehan did not respond and was civil to this point. Ms. Clarkson did not say anything the entire time.

PC Siriska returned to his cruiser with Mr. Sheehan's driver's license and completed a ticket<sup>12</sup>. He realized he needed the license plate number and returned to the motorcycle to obtain it. Mr. Sheehan told PC Siriska they could see a police car and they were driving to him to get directions. PC Siriska said to Mr. Sheehan that he was driving an unmarked black Ford Taurus, the sun was setting and there was no way they could have seen him. PC Siriska said it was his professional opinion that there was no way they could have seen him and if they did, it

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<sup>12</sup> Exhibit 17- Copy of Provincial Offence Notice

would have been the first “thing out of his mouth”, referring to Mr. Sheehan.

PC Siriska went to the back of the motorcycle to write down the license plate number. He was about 12-15 feet from Mr. Sheehan and Ms. Clarkson. Mr. Sheehan said “you’re not giving me a ticket.” PC Siriska told him he was. Mr. Sheehan said he had never been treated with such disrespect. PC Siriska said “because I am giving you a ticket?” and Mr. Sheehan “loses it.” Mr. Sheehan called him every name in the book and he did not say a single word. Mr. Sheehan went on with cursing and insults and made it clear he wanted PC Siriska’s badge number and that he was going to complain to the Staff Sergeant. PC Siriska told Mr. Sheehan that he would be bringing it up with his Staff Sergeant. It was clear that Mr. Sheehan was not going to pick option one or two on the ticket and PC Siriska told him to choose option three and he would see him in Court.

As PC Siriska was returning to his cruiser Mr. Sheehan was on a rant calling PC Siriska every name in the book. PC Siriska was in total shock. PC Siriska said it was his professional opinion that Mr. Sheehan had provided a number of reasons for doing what he did and he was just trying to get out of the ticket. PC Siriska said he turned toward Mr. Sheehan and said “Fuck you?, is that how you talk to people? Grow up.”

PC Siriska testified that he got in his car and his window was down. He wrote on the dash pad<sup>13</sup> what he had heard Mr. Sheehan say to him. As PC Siriska drove off he heard Mr. Sheehan say “have a nice day fuck face.” PC Siriska replied “grow up you idiot.” This concluded PC Siriska’s traffic stop and he returned to the laneway. PC Siriska did not recall Mr. Sheehan “flipping him the bird.” PC Siriska stopped other motorists after the incident with Mr. Sheehan and Ms. Clarkson.

When PC Siriska completed his duty report he was provided copies of Mr. Sheehan and Ms. Clarkson’s OIPRD complaint forms, PC Siriska denied using the words liars, idiot and stupid except when he said “grow up you idiot.” PC Siriska said the back and forth profanity described by Mr. Sheehan and Ms. Clarkson never happened and that is his 18,000 or so traffic stops in his career he has never used profanity. PC Siriska explained he never denied calling Mr. Sheehan an idiot and could have called him worse. PC Siriska stated that Mr. Sheehan and Ms. Clarkson never mentioned the Commissioner’s award but, had they, he would have told them it had no bearing. In regard to the allegation PC Siriska was smiling and yelling, he explained he may have smiled and he was not going to deny it but he remained professional at all times. PC Siriska denied running at Mr. Sheehan.

PC Siriska concluded by indicating he was prepared to apologize for calling Mr. Sheehan an idiot at the conclusion of the traffic stop and that he was being clear and concise regarding what had transpired. PC Siriska said that calling Mr. Sheehan an idiot was unprofessional

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<sup>13</sup> Exhibit 18: copy of dash pad note

indicating it was in response to all the language that was being used toward him.

### ***Cross Examination - Mr. Kirsh***

PC Siriska agreed the closure at 93 and Mill was marked with a sign and that he set up his pylons at 93 and Robert. PC Siriska said it was not his job to stop people from going through the road closure. He said it was his job to assist with the investigation as best he could. PC Siriska stated he was not charged with closing the highway and that was not the reason he was there but his focus was to assist with the road closure. He marked the closure with five pylons and he did not position himself next to them. He went to the crash scene before positioning himself 294 metres away from the pylons. There was no debris on the road between where he parked and the pylons. PC Siriska said that if he parked down the road or was at the scene of the accident people would still have gone around the pylons. He agreed that had he parked at the pylons people would not have gone around them.

PC Siriska agreed he did not feel he had to “babysit” the road closure. He gave lengthy examples of when, during a blizzard, a road is closed officers will sit at the closure. He explained this resulted in multiple people walking around and across highways and this was a major safety concern. PC Siriska went on to state that if he had parked at the pylons he would potentially have had eight or nine people walking about on the road. PC Siriska explained he was parked out of sight working on his “stuff” and nobody could have seen him there. He agreed he did not want to be interrupted. PC Siriska felt that his roadblock was not confusing based on his interactions with motorists there but cited one other driver who said they were confused.

PC Siriska saw the motorcycle approaching the intersection at 93 and Robert and he saw two people on it. He saw them pause at the intersection then turn left and headed north towards him after driving between the pylons. PC Siriska did not see them wave. PC Siriska said several hundred vehicles had approached the intersection that day and only a few drivers decided that the road closure did not apply to them and went around it. PC Siriska denied that he was angry that people drove around his road closure. PC Siriska explained it made no sense for him to have dealt with other motorists in a normal fashion and then to have had a “bi-polar” moment when he dealt with Mr. Sheehan.

When PC Siriska saw that Mr. Sheehan was not making a U-turn, he pulled out of the laneway, turned his lights on and approached the motorcycle stopping about 20 feet from it. PC Siriska asked Mr. Sheehan to shut off his motorcycle because it was loud. His voice was raised but he was not yelling. PC Siriska suggested other motorists should have been spoken to and the GPS data on his cruiser should have been looked at by PSB to prove he was not speeding or rude with any other driver. PC Siriska said Ms. Clarkson did not speak through the entire traffic stop, she stood by quietly and did not say a word.

Mr. Sheehan told PC Siriska that he thought the road was open and he thought the closure was from Robert to Mill. PC Siriska explained if that were the case he would have put his pylons on the other side of the road. Mr. Sheehan also said that they had seen PC Siriska and had waved to him. PC Siriska denied calling Mr. Sheehan or Ms. Clarkson liars but it was his opinion they could not see him or identify his vehicle as a police vehicle. He explained that Mr. Sheehan and Ms. Clarkson did not have the colour or make of the vehicle right. PC Siriska suggested when he initially approached Mr. Sheehan the first thing out of Mr. Sheehans mouth should have been that they saw the officer's car but what Mr. Sheehan said was he thought the road was open. PC Siriska said he felt Mr. Sheehan was just driving home because he only lived four minutes up the road.

PC Siriska denied calling Ms. Clarkson and Mr. Sheehan stupid or idiots. He said that Ms. Clarkson had said in her complaint that PC Siriska alluded to them being stupid. PC Siriska denied telling them to use their phone to get home as he did not even know they had a phone. He did not provide them with directions as he did not have the opportunity and upon issuing the traffic ticket his traffic stop was complete. If Mr. Sheehan had been calm PC Siriska would have provided directions. He denied ever saying there was a dead body on the road.

Mr. Kirsh suggested Ms. Clarkson was trying to diffuse the situation. PC Siriska said there was nothing to diffuse and that Ms. Clarkson stood by and listened but offered no assistance to calm her husband down. PC Siriska stated he was not angry at any point during the traffic stop. When asked why he told Mr. Sheehan to 'grow up' PC Siriska said it was a teaching point. He did not use the "F" word toward Mr. Sheehan, except when he repeated back what Mr. Sheehan had said, nor had he ever in his 13 years of policing. PC Siriska felt the suggestion he was fabricating facts in relation to his interaction with Mr. Sheehan and Ms. Clarkson was outrageous. He acknowledged he was aware of OPP policy with respect to professionalism, appropriate language and maintaining composure and insisted he did that day. PC Siriska acknowledged that he uttered a comment he should not have.

For clarification and the record I asked what the "big four" were. PC Siriska advised they were impaired driving, distracted driving, speeding, and seat belts. I asked if PC Siriska was dispatched to the scene. He indicated he volunteered to attend. I asked for what intended purpose and PC Siriska indicated to help the officers at the scene with things like laser measurements and turning their lights off. I asked what PC Siriska meant when he said he was doing "his stuff" while parked up the road. PC Siriska said he could not recall specifically and mentioned it could have been emails, Niche RMS (records management system) reports, disclosure, email inquiries.

### ***Re- Direct – Mr. Girvin***

PC Siriska had no order or direction from a supervisor to conduct a secondary road closure or

to monitor the road closure. When PC Siriska mentioned in cross examination a 10 minute interaction with Mr. Sheehan, he was referring to the total time of the traffic stop.

### **Part III: SUBMISSIONS, ANALYSIS AND FINDINGS**

*Note: Highway 93, County Road 93, and Penetanguishine Road are the same road by known different names.*

Submissions- *The following are considered an overview and are not intended to necessarily capture all submissions. Case Law Submissions are considered in detail under a separate heading below.*

#### **Defence Submissions**

- Mr. Girvin referenced the NOH and the section of the code of conduct is general and did not specify the section applicable to the misconduct and it is deficient. I should consider and take a position on the deficiency.
- This matter ought not to be considered a credibility contest and the burden is not on PC Siriska to prove his innocence.
- The *reasonable person test*, with respect to discreditable conduct applies to this matter.
- PC Siriska accepted responsibility for his conduct as early as October 21, 2019
- S/Sgt. DiSaverio corroborated PC Siriska.
- The issue most significant to Mr. Sheehan was the ticket he received and both Mr. Sheehan and Ms. Clarkson showed an interest in the outcome relating to the ticket and wanting it dropped.
- Mr. Sheehan did not refer to the proximity of himself and PC Siriska to S/Sgt. DiSaverio when the exchange of profanity occurred. Mr. Sheehan did not mention PC Siriska running toward him to S/Sgt. DiSaverio.
- When Mr. Sheehan could not get the ticket dropped he was “all in” with the complaint.
- There was contamination of evidence between the parties. Both Mr. Sheehan and Ms. Clarkson told PSB investigators PC Siriska ran at them but testified that he was walking quickly. These details should have been included in their complaint.
- This is not a credibility contest. Referring to the *Schaeffer*<sup>14</sup> case which referenced police note taking and the necessity for contemporaneous, independent, concise notes. Defence suggested it would be erroneous to conclude that similar standards do not apply to a layperson. Notes should make up part of the credibility assessment.
- *R v Clayton*<sup>15</sup> referenced the *Schaeffer* case indicating notes are central to the proper

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<sup>14</sup> Exhibit 26: Defence Authorities – Tab 1 *Schaeffer et al v. Wood et all*, 2011 ONCA 716

<sup>15</sup> Exhibit 26: Tab 2 - *R v Clayton*, 2017 O.J. 1522

administration of justice including in *PSA* matters. The notes of PC Siriska and S/Sgt. DiSaverio are indicative of credibility and reliability.

- *Rv GC*<sup>16</sup> indicated caution be exercised when relying on a witness' demeanour in assessing credibility. Mr. Girvin suggested contradictions in Mr. Sheehan and Ms. Clarkson's evidence and that contamination occurred when they discussed this matter on a regular basis and heard each other's testimony. Mr. Girvin suggested that the assertion by Ms. Clarkson that the OIPRD complaint is to initiate an investigation defies reason and logic because the complaint form does not say that; the form stated "describe in detail." The fact that the public complainants did not mention PC Siriska running into the face of Mr. Sheehan is conspicuous by its absence and a reasonable person would be troubled by this.
- The *Pitts*<sup>17</sup> case addresses matters related to perception, recollection, credibility and reliability. Mr. Sheehan did not see an officer at the initial road block. Ms. Clarkson described an officer directing traffic. Both reference seeing a police vehicle leaving the scene. Neither Mr. Sheehan nor Ms. Clarkson mentioned these points in their audio statements. Ms. Clarkson adopted portions of Mr. Sheehan's evidence in this regard after hearing him testify.
- Contamination occurred when witness hears another witness's evidence. Mr. Sheehan and Ms. Clarkson had several discussions about the incident. Ms. Clarkson testified when they were stopped PC Siriska had approached them at high rate of speed with lights and siren when no siren was used. Ms. Clarkson had a number of smaller inconsistencies when viewed cumulatively bring her credibility into question.
- *Obrien v. George Brown College*<sup>18</sup> addresses credibility and reliability and cites the *Faryna and Chorny* case at paragraph 65 outlining the test for credibility. PC Siriska had made two statements against his own interest in that he used the word idiot and profanity which demonstrated his credibility and reliability.
- *Mulville and Azaryev*<sup>19</sup> matter addressed the objective test also referred to as the *reasonable person test*. Mr. Girvin proposed the admissions of PC Siriska were unprofessional but are not of a serious nature. Even though the comments were unprofessional it can be deemed not of a serious nature. The question to be asked is would a reasonable person find him quoting back profanity to Mr. Sheehan and telling him "grow up you idiot" to be acting discredibly.
- *Campoli*<sup>20</sup> suggested context matters with respect to when profanity is used.
- Mr. Girvin submitted the OIPRD form required the public complainants to describe in detail what had occurred. Both public complainants left out important details.
- A reasonable person would not consider on the preponderance of probabilities that the

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<sup>16</sup> Exhibit 26: Tab 3 - *R v GC*, 2021 O.J. 776

<sup>17</sup> Exhibit 26: Tab 4 - *Pitts and Director of Family Benefits* [1985]

<sup>18</sup> Exhibit 26: Tab 5 - *R v George Brown College*, [2021] O.H.R.T.D. No. 194

<sup>19</sup> Exhibit 26: Tab 6 - *Mulville and Azaryev and York Regional Police*, 2017 CanLii 19496 (ON CPC)

<sup>20</sup> Exhibit 26: Tab 7 - *Campoli and Toronto Police Service*, 2020 ONCPC 11 (CanLii)

public complainants would omit the fact that PC Siriska ran into the face of Mr. Sheehan and there is no basis to believe this happened.

- PC Siriska dealt with people before and after his interaction with Mr. Sheehan and Ms. Clarkson and there were no similar concerns raised. There were social media references made to concerns raised, but no evidence was produced indicating people were subjected to similar behavior by PC Siriska. Mr. Girvin suggested this was because the evidence would have contradicted the public complainants.
- The notice of hearing did not indicate PC Siriska improperly placed the pylons and it does not say he could not wait up the road.
- Mr. Girvin suggested that Mr. Sheehan and Ms. Clarkson's assertion that they drove around lost in the subdivision for 15-20 minutes does not equate with the truth as it was only 2 or 2 ½ kilometres of roadway.
- Drivers are expected to know the rules of the road and a reasonable person would have sought their way around the road closure.
- PC Siriska had other interactions with drivers. There may have been the odd person that was confused but 99% were not.
- PC Siriska writing on the dash pad of what Mr. Sheehan had said to him adds to PC Siriska's reliability.
- The NOH contains information in the bullet points that are not misconduct.
- The last bullet on the NOH should not have been included as no relevant evidence was called.
- Mr. Sheehan and Ms. Clarkson were not credible or reliable witnesses.
- The conduct PC Siriska admitted too was not serious.

## Prosecution Submissions

- With respect to Mr. Girvin's concern that the subsection from the code of conduct was incorrect or did not specify a particular subsection prosecution submitted this was not fatal to the case. The specific subsection that would apply is 2(1) (a) (v). The narrative in the NOH and the PSB report make it clear PC Siriska knew what the allegations against him were. In the *Gauthier*<sup>21</sup> decision ONCPC made it clear that if the allegations were clear not identifying a subsection was not harmful to the prosecution.
- The main issue is the credibility of Ms. Clarkson, Mr. Sheehan and PC Siriska.
- PC Siriska admitted using profanity and calling Mr. Sheehan an idiot.
- The test for credibility is in *Faryna and Chorny*<sup>22</sup> is found in Tab 4 of the prosecutions authorities at paragraph 62 and at Tab 4
- The evidence of Mr. Sheehan is credible and reliable. Mr. Sheehan was candid that he was the one who started using profanity and giving PC Siriska the finger and made

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<sup>21</sup> Exhibit 24 *Gauthier and Timmins Police*, 2015 ONCPC 3 (CanLII)

<sup>22</sup> Exhibit 25: Tab 4 - *Faryna v. Chorny*, 1951 Carswell BC 133

statements against his own interest.

- Mr. Sheehan denied his motivation was to have the ticket cancelled and was clear his motivation was to have PC Siriska held accountable for his behavior.
- Ms. Clarkson's evidence was credible and reliable and corroborated the evidence of Mr. Sheehan.
- With respect to the OIPRD complaint forms completed individually by Mr. Sheehan and Ms. Clarkson and the notes they made immediately following the incident Mr. Kirsh suggested:
  - The public complaints acknowledged that they made the notes in the heat of the moment of what had been a traumatic experience.
  - They acknowledged the notes were not made chronologically nor was it their focus when they made the notes.
  - The notes were not intended to be an exact account of what had occurred.
  - The public complainants believed the OIPRD form was intended to initiate an investigation. If the complaint form was to be accepted on its face then why have hearings?
  - Section 6 of the OIPRD form indicates the complaint may be investigated.
- Conversations between the public complainants and S/Sgt. DiSaverio were resolution based and not interviews.
- The defence suggestion that the evidence of the complainants was tainted because they discussed the matter lacked merit. They are a couple who experienced the incident together and it is expected they would have discussed it. Mr. Kirsh suggested it was no different than PC Siriska hearing all the evidence before he testified.
- The facts are undisputed with respect to:
  - The complainants were on their motorcycle
  - The complainants were stopped by PC Siriska
  - Profanity was used by Mr. Sheehan and PC Siriska
- The context and accounts of what occurred differ.
- Ms. Clarkson was unwavering as was Mr. Sheehan that she spoke to PC Siriska.
- The *Schaeffer Wood* decision outlines what police notes are expected to provide i.e. to assist the officer in giving testimony and to refresh their memory. Notes are not, on their own, considered concrete evidence.
- *Jacobs*<sup>23</sup> established the standard of proof in police discipline hearings as being that of clear and convincing evidence.
- *Girard and Delaney*<sup>24</sup> outlines the *test* for discreditable conduct.
- Cited OPP policy regarding professionalism, 6.10.3 as being the most relevant and submitted officers are responsible for maintaining their composure.

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<sup>23</sup> Exhibit 25: Tab 5 - *Jacobs v Ottawa (Police Service)*, [2016] ONCA 345

<sup>24</sup> Exhibit 25: Tab 6 - *Girard v Delaney (Board of Inquiry)*, [1994] BOI95-26, Pg 17-18

- *Campoli*,<sup>25</sup> - profanity can sometimes be understandable but officers in *Campoli* were responding to a gun call. The context is completely different from what is before this tribunal.
- *Saxon*<sup>26</sup>, cited in *Campoli*, and also related to the use of profanity. The decision depicts the application of the expectation of the community and an unfavorable description of the officer's behavior.
- Officers must maintain their composure even when citizens swear at them.
- PC Siriska's own admitted behavior is discreditable. PC Siriska repeating what was said to him does not give him free reign to use profanity.

### Mr. Sheehan Submissions

- Mr. Sheehan is self-employed. He works hard and likes to enjoy life, family and friends when he is not working. It was important to him to initiate this process because he felt wronged, insulted and demeaned.
- Mr. Sheehan re-capped much of the evidence he gave as a witness.
- The enforcement action of PC Siriska was described as a sting operation and could have been avoided if PC Siriska was at the pylons.
- His position on this complaint process was not about the ticket he received, it was about how an OPP officer conducted himself. Officers should be held to a high standard.
- He and Ms. Clarkson were not afforded compassion and fairness and were not treated with professionalism.
- When stopped at the pylons they could not make sense of what they meant.
- He and Ms. Clarkson discussed what to do and saw an unmarked cruiser. They waved to the officer and wanted to seek help.
- PC Siriska told Ms. Clarkson she was lying when she told him they saw him.
- PC Siriska called both he and Ms. Clarkson idiots.
- When they explained to PC Siriska they had received an award from the OPP and they were proud of it he said he did not care.
- PC Siriska said he saw them discussing the situation yet he said they were lying when they told him they had seen him.
- Mr. Sheehan feared for his safety and described the situation as being the scariest of his life.
- Mr. Sheehan was not proud of the way he behaved but he and his wife were insulted.
- It was not easy to make a complaint. Mr. Sheehan had received tickets in the past and never had any sort of altercation with an officer. He grew up to respect the police.
- Why would a couple in their 50's make up a Hollywood script over an 83 dollar ticket?

<sup>25</sup> Exhibit 25: Tab 3 - *Campoli v Toronto Police Service*, [2020] ONCPC 11, Para 21

<sup>26</sup> Exhibit 25: Tab 2 - *Saxon v Amherstburg Police Service*, [2011] ONCPC 2

## Ms. Clarkson submissions

- This was a frightening and traumatic experience but she was proud to be at the hearing because it was the honorable thing to do. She was at the hearing because of the insults, lack of help, and the horrifying use of profanity.
- A body camera would have shown what had occurred.
- Ms. Clarkson was offended by PC Siriska's statements toward mental illness, specifically his bi-polar comments. She felt this showed a warped sense of professionalism as she knew people with mental health challenges and felt PC Siriska was cavalier and disrespectful toward those suffering from mental illness.
- Ms. Clarkson was troubled by the fact that PC Siriska testified that she said nothing on the day in question because she had tried hard to reason with him.
- Ms. Clarkson was hopeful that this process will create a heightened awareness to officers to assist and be kind, professional and Courteous.
- Ms. Clarkson stated she and Mr. Sheehan came forward because of concerns that not only had PC Siriska treated them badly she was afraid he would continue to do so with other people in the future.

## Defence Case Law Submissions

### Schaeffer et al. v. Wood et al, 2011 ONCA 716

This Ontario Court of Appeal decision related to a Special Investigations Unit (SIU) investigation and the underlying case facts are not similar. Both Mr. Girvin and Mr. Kirsh referenced paragraphs 66-70. I excerpted the following:

*Para 67: ...the duty to create independent and contemporaneous notes of events that transpire during a police officer's ordinary duties is fundamental to the professional role of a police officer.*

*Note-taking as "an integral part of a successful investigation and prosecution of an accused" and stated that "the preparation of accurate, detailed and comprehensive notes as soon as possible after an event has been investigated is the duty and responsibility of a competent investigator".*

*Para 68: OPP orders confirm officers' professional obligation to take "concise, comprehensive particulars of each occurrence" during an officer's tour of duty: Ontario Provincial Police Orders, June 2009 Revision, at s. 2.50.3. Police officers are trained that their" notes must contain your independent recollections providing an accurate and complete account of police observations and activities" and that "entries are to be made*

*during or as close to the investigation as possible"*

*Para 69: Reliable independent and contemporaneous police officer notes are central to the integrity of the administration of criminal justice. Police officers' notes provide the basis for laying charges and they provide Crown Attorneys with a record upon which to base decisions regarding the prosecution of the case. Furthermore, in the post-Stinchcombe era of mandatory Crown disclosure, police notes provide the accused and his or her counsel with vital information to inform decisions as to how to plead and how to conduct the defence.*

*Para 70: The police officer's notes are also used to assist the officer in testifying at trial. When used for that purpose, it is vitally important to the reliability and integrity of the officer's evidence that the notes used record the officer's own independent recollection.*

The Court made clear their position on police officer notetaking duties. I do not disagree with the notion that non-police officers i.e. citizens, notetaking can be generally viewed in the same light. I suggest the standards and expectations would not be quite so high as police officers who are trained to take notes and do so daily as part of their regular duties. In this matter, the public complainants returned home and wrote down what they viewed as significant at the time. Both Mr. Sheehan and Ms. Clarkson testified they were emotional at the time. I would not expect an untrained inexperienced person to make flawless notes on what could be their first attempt at doing so.

Defence counsel took issue with information missing from Ms. Clarkson and Mr. Sheehan's notes suggesting I should make adverse findings with respect to their credibility and reliability as a result. Respectfully, I disagree. I know from experience trained experienced police officers do not always include all points that may be viewed as significant in future Court proceedings. The reasons may vary from simply, through human frailty, forgetting to record something in one's notes to not recognizing the significance of an event or observation when the notes are being made. This, in my experience, has not automatically impugned the *viva voce* evidence of the officer even though they are experienced and trained in note taking.

In the matter before me, PC Siriska trained and practiced in note taking, did not include some significant details in his notes. For example, he testified he said "grow up you idiot" to Mr. Sheehan. This statement or exchange does not appear in PC Siriska's notes. I do not consider the missing information from PC Siriska's notes to, on its own, bring his evidence into question. In this case the civilian public complainants wrote what I consider to be fairly comprehensive notes following the event. Many citizens would not have considered writing any notes at all and would have testified completely from memory. I considered if a witness testified without having made notes would or should their evidence then be considered more credible and reliable under similar circumstances. The answer is plainly no. In the matter before me, while

not every detail was reduced to writing by Ms. Clarkson and Mr. Sheehan, I find their notes were contemporaneously made and were relied upon to refresh their memories in testimony. There is no evidence or observations that would lead me to draw an adverse conclusion because not every event was recorded. It is their testimony, aided by their notes, in consideration of all evidence, upon which I will assess any credibility and reliability findings.

R v. Clayton, [2017] O.J. No. 1522

In *Clayton* the Court quotes *Schaeffer v. Wood* at paragraph 20:

*"Reliable, independent and contemporaneous police officer notes are central to the integrity of the administration of criminal justice": Schaeffer v. Woods 2011 ONCA 716.*

R v. G.C., [2021] O.J. No. 776

G.C. was a historical sexual assault criminal Court decision. The underlying facts are clearly not on point. Paragraphs 35-40 offer insights and viewpoints for consideration with respect to credibility and reliability. The Court specifically addressed the need for a cautious approach when considering a witness' demeanor in determining credibility and reliability. I will be mindful of the principles addressed as I consider credibility and reliability in the matter under consideration.

*Pitts and Director of Family Benefits Branch of the Ministry of Community & Social Services, 1985, 51 O.R. 302*

The Divisional Court in *Pitts* at page 15 has identified the following test for which can be applied to making credibility assessments:

- *The appearance and demeanour of the witness, and the manner in which he testified. Did the witness appear and conduct himself as an honest and trustworthy person? It may be that he is nervous or confused in circumstances in which he finds himself in the witness box. Is he a man who has a poor or faulty memory, and may that have some effect on his demeanour on the witness stand, or on the other hand, does he impress the tribunal as a witness who is shifty, evasive and unreliable?*
- *The extent of his opportunity to observe the matter about which he testified. What opportunities of observation did he in fact have? What are his powers of perception?*
- *Has the witness any interest in the outcome of the litigation?*
- *Does the witness exhibit any partisanship, any undue leanings towards the side which called him as a witness? Is he a relative, friend, an associate of any of the parties in*

*this case, and if so, has this created a bias or prejudice in his mind and consequently affected the value of his testimony?*

- *It is always well to bear in mind the probability or improbability of a witness' story and to weigh it accordingly. That is a sound common sense test. Did his evidence make sense? Was it reasonable? Was it probable? Does the witness show a tendency to exaggerate in his testimony?*
- *Was the testimony of the witness contradicted by the evidence of another witness, or witnesses whom the tribunal considered more worthy?*
- *Does the fact that the witness has previously given a statement that is inconsistent with part of his testimony at trial affect the reliability of his evidence?*
- *After weighing these matters and any other matters that the tribunal believes are relevant, it should decide the credibility or truthfulness of the witness and the weight to be given to the evidence of that witness.*

The test will be incorporated in my analyses.

*O'Brien v. George Brown College, [2021] O.H.R.T.D. No. 194*

This decision of the Ontario Human Rights Tribunal offered further analysis with respect to credibility and reliability of witnesses. The decision cited the *Faryna v. Chorny* decision which contains what is commonly known as the *O'Halloran test*. I will apply this test in my analysis.

*Para 65, O' Halloran Test: The credibility of interested witnesses, particularly in cases of conflict of evidence cannot be gauged solely by the test of whether the personal demeanor of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of the witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions (...) Again, a witness may testify to what he sincerely believes to be true, but he may be quite honestly mistaken.*

*Other factors for assessing credibility include the witness's motives, the witness's relationship to the parties, the internal consistency of their evidence, and inconsistencies and contradiction in relation to other witnesses' evidence: Cugliari v. Telefficiency Corporation, 2006 HRTO 7.*

This passage refers to, among other considerations, assessments of credibility can include a

witness' motives.

Mulville and Azaryev and the York Regional Police, 2017 CanLii 19496 (ONCPC)

This decision by the Ontario Civilian Police Commission (ONCPC) addresses, part, the use of profanity. The related conduct was described as:

*The conduct in question involved P.C. Mulville using the words “shit” or “shits” three times while speaking to an unidentified male and also calling this male a “punk”.*

ONCPC found that the hearing officer did not apply the appropriate test in determining whether the use of this language equated to discreditable conduct. ONCPC identified the test as follows:

*The objective test would require that the Hearing Officer place a dispassionate reasonable citizen fully apprised of the same facts and circumstances, aware of the applicable rules and regulations, in the same situation to assess whether the officer's language was discreditable. See: Toy v. Edmonton (City) Police Service, [2014] A.J. No. 1191 at para. 11.*

Further identified in the decision was the fact that a hearing officer but failed to consider the language used in the context of events occurring against the reasonable expectations of the community. ONCPC identified that the hearing officer failed to apply objective tests and arrived at subjective conclusions.

Paragraph 40 of the decision addresses an erroneous subsection under which the officer was charged. Officer Mulville was charged under subsection 2(1)(a)(xi) addressing “acting in a disorderly manner.” He was not charged under subsection 2(1)(a)(v) “using profane, abusive, or insulting language or otherwise being uncivil to a member of the public”.

Toward the end of this hearing Mr. Girvin raised a concern that PC Siriska was charged under section 2(1)(a) but the appropriate subsection was not specified.

*The P.S.A. section 2. (1) Any chief of police or other police officer commits misconduct if he or she engages in, (a) DISCREDITABLE CONDUCT, in that he or she, ...*

The excerpt outlines the Discreditable Conduct section of the *P.S.A. Code of Conduct*. The lettered subsections that follow connote specific behaviours that would fall under the heading of discreditable conduct.

Mr. Kirsh suggested the applicable subsection would be “v - uses profane, abusive or insulting language or is otherwise uncivil to a member of the public”, and that the particulars of allegations in the NOH clearly outline what was alleged against PC Siriska. Mr. Kirsh submitted *Gauthier* in support of his position. (Analysis below)

I find that, although it may have been more complete for the NOH to have specified the entire subsection, it had no impact on the administration of this hearing or PC Siriska’s ability to fully understand, answer to, and defend the allegations. The language used in the narrative portion of the allegation and bullet points that follow in the particulars on the NOH make it quite clear what the allegations against PC Siriska were. I do not find that PC Siriska was disadvantaged in any way nor was there any degree of unfairness to him by the letter “v” in parenthesis not appearing on the NOH.

*Campoli and Toronto Police Service, 2020 ONCPC 11 (CanLii)*

There are similarities between *Campoli* and the matter before me in that profanity was used by the officer, however, the underlying facts and context are dissimilar. To provide background I have excerpted as follows:

*Para 4 - The essential facts giving rise to the charges are not in dispute. Mr. John had reported that his car was stolen to the Peel Regional Police Service (the PRPS) in April 2013. Two to three months later, he received a letter advising him that the car was found and was being stored at Collision World in Etobicoke. Mr. John testified that he waited until February 4, 2014 to contact the PRPS again, to report the location of his car which was still at Collision World. He was advised to contact the Toronto Police Service (the TPS).*

*Para 5 - Mr. John then placed two calls to 911, the second because he believed the TPS was not responding quickly enough to his first call. In a series of recordings of his conversations with the 911 dispatcher that were played before the Hearing Officer, Mr. John was heard making various comments about how one of the people at the location where his car was may have had a gun as he thought he saw the handle or the butt of a gun in the person’s waistband. Numerous TPS officers were dispatched to the call.*

*Para 6 - The officers who responded, including the appellant, were advised that the car had not been reported stolen and that Mr. John was known to harbour anti-police sentiments. Officer Sarasua testified before the Hearing Officer that he was told that “this male is very aggressive and belligerent towards police, this male made it known that he is happy when a police officer is killed or a member of a police officer’s family is killed.”*

*Para 7 - The appellant testified that because of the urgency of the situation, the conflicting information about whether the vehicle had in fact been stolen and the belligerence of Mr. John at the scene, he felt that he had to gain control of the situation. The appellant said the following to Mr. John: "What's the plate, because that plate doesn't come back as anything. I don't know what the fuck you're talking about". To which Mr. John replied: "You don't know what the fuck I'm talking about?"*

*Para 8 - The Hearing Officer's analysis as to whether this comment amounted to Discreditable Conduct was brief. He disagreed with the appellant's position that the context in which the language was used mattered and that he engaged in a "legitimate use of tactical communication." The Hearing Officer accepted the prosecution's position that "this language was used without justification and it's irrelevant whether or not there was provocation by the complainant.....de-escalation and tactical communication can be accomplished without the use of profanity".*

In their analysis ONCPC wrote:

*Para 18 - The appellant submits that the measure of whether conduct is discreditable is "whether the conduct is likely to damage the reputation and image of the police service. In dealing with the language of s. 2(1)(a)(v) of the Code of Conduct he submits that "It is not simply a question of whether 'profane, abusive or insulting language' was used but rather, whether the conduct of the appellant was 'uncivil' and likely to bring discredit on the police force on an objective standard".*

*Para 19 - The Intervener agrees, submitting: "Stated differently, the test is whether an objective, reasonable individual in the community would consider the language used to be uncivil". The Intervener also agrees with the appellant that the context within which the profanity was used may be considered in deciding whether it amounted to Discreditable Conduct. The Intervener states the following in his factum:*

*...the Director agrees with the submissions of the appellant at paragraph 34 of his factum that the Commission may consider the following factors in determining whether an objective, reasonable person would find the profanity to constitute discreditable conduct: the nature of the call; that Constable Campoli perceived Mr. John to be evasive and there was confusion about whether Mr. John's car had been previously reported stolen; that Constable Campoli had no intent to disparage or demean Mr. John and did not use profanity as part of an insult but rather in an effort to gain control of the conversation; and that the profanity was used once only.*

*Para 21 - Based on the foregoing, we agree that in considering whether the profanity used by the appellant constituted Discreditable Conduct the Hearing Officer ought to*

*have applied an objective test viewed from the perspective of a reasonable person in the community. That would involve some consideration of the context of the situation faced by an officer. By way of an example, if an officer were to encounter a violent situation involving uncontrollable groups of people, some with weapons, the use of polite language may not necessarily be what first comes to his or her mind.*

*Para 22 - It should be remembered that the appellant was one of 10-15 officers responding to what they believed, based on Mr. John's reporting, to be a gun call: a tense, inherently dangerous and often confusing situation. In our view, the use of one expletive in these circumstances would not meet the objective test for Discreditable Conduct.*

I find this decision of assistance in that context and the *reasonable person test* apparently not applied by the hearing officer in *Campoli*. The test plays a significant role in determining whether or not the use of profanity amounts to discreditable conduct. I note that *Campoli* was a serious criminal investigation where guns and threats to officers had been reported. The serious and potentially dangerous circumstances faced by officers in *Campoli* were not present in the matter before me. The matter under consideration before me involved a traffic stop which is not, even to the slightest degree, contextually analogous to the scenario in *Campoli*.

## **Prosecution Case Law/Policy Submissions**

### *Gauthier (Re), 2015 ONCPC 3 (CanLII)*

The underlying case facts in this ONCPC decision are dissimilar to those before this tribunal. This case was submitted by the prosecution in response to defence counsel concerns raised that the subsection specific to the alleged misconduct was not indicated on the NOH. I have addressed this in detail above in *Mulville and Azaryev*.

The following excerpts assisted my analysis and conclusion related to the NOH concerns:

*Para 14 - Defence counsel argued that the information contained in the Notice was not sufficient to permit Chief Gauthier to know the case against him.*

*Para 16 - Defence Counsel submitted that Discreditable Conduct is a "catch all" offence, meant to address many aspects of conduct. It is broad and far reaching, so the Commission should outline the particulars it will be relying on, or else Chief Gauthier will have a disadvantage which is contrary to principles of natural justice.*

ONCPC found:

*Para 22 - In reviewing the Notice in this matter, we find that it not only contains the information required in the SPPA but in addition, it outlines quite clearly the allegation against Chief Gauthier and therefore the case that has to be met.*

*Para 23 - In a recent Commission decision on a very similar motion, requesting more particulars that were provided in the Notice of Hearing, it was held by a panel of the Commission that the Notice of Hearing combined with the Investigative Report provided by the Respondent with sufficient particulars to know the case before him, see Greg Oliver, Member of the Stirling-Rawdon Police Services Board, Decision on Motion (January 15, 2013, OCPC).*

I considered ONCPC's findings of assistance and I am quite satisfied the NOH regarding allegations against PC Siriska contained information required and outlined quite clearly the allegations against him. For reasons stated in the *Mulville and Azaryev* analysis I find the fact that the subsection "v" in the NOH was not stipulated has not adversely affected procedural fairness and natural justice principles.

*Burrows v. Ontario Provincial Police, 2012 ONCPC 13*

*Para 62 - Both counsel agreed that this case turns on the issue of credibility. Only the Appellant and Jennifer Burrows were present during the alleged altercations. It is clear from the Decision that the Hearing Officer was guided by the "O'Halloran test"; indeed on page 17 she quotes from *Faryna v. Chorny (1952) 2 D.L.R. (B.C.C.A.)* in which Justice O'Halloran described the test...*

ONCPC identifies that the *O'Halloran test* remains relevant with respect to determination of credibility and reliability. Additionally, ONCPC makes it clear the *test* must not simply be stated but must be applied accordingly.

*Saxon v. Amherstburg Police Service, 2011 ONCPC 2*

*Saxon* involves an officer being belligerent and using profanity to a town employee. The officer was charged with discreditable conduct and insubordination. The appeal was in relation to the discreditable conduct allegation. The decision revisits the test for discreditable conduct at page 8:

*The most recent application of the test for discreditable conduct in Ontario confirms that the test is "primarily an objective one" and that the conduct must be measured against the "reasonable expectations of the community". The Ontario Civilian Commission on Police Services has articulated the following approach regarding the*

*meaning of “likely” to bring discredit upon the reputation of the police force: The measure used to determine whether conduct has been discreditable is the extent of the potential damage to the reputation and image of the service should the action become public knowledge.*

I will apply this test elsewhere in my decision.

On page 10 ONCPC commented:

*We also agree that whether profanity was used or not, it is not central to the issue at hand. Behaviour, including tone of voice and body language can be sufficient to establish incivility.*

Behaviours and actions establishing the incivility component of discreditable conduct were further defined by ONCPC and will be considered in my decision.

*Campoli and Toronto Police Service, 2020 ONCPC 11 (CanLii)*

See above under defence submissions for analysis.

*Faryna v. Chorny, 1951 CarswellBC 133*

The test identified below, commonly referred to as the *O’Halloran test*, which included the notion that:

*“consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.”*

As I apply this test I must contemplate the perspective of a practical and informed person and what they might consider as reasonable if faced with the same circumstances. The following passages include the notion that caution must be exercised in relying too heavily on the demeanour of a witness. It is also clear that I must provide reasons for any findings with respect to credibility and reliability.

*Para 10 - The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which*

*a practical and informed person would readily recognize as reasonable in that place and in those conditions.*

*Para 11 - The trial judge ought to go further and say that evidence of the witness he believes is in accordance with the preponderance of probabilities in the case and, if his view is to command confidence, also state his reasons for that conclusion. The law does not clothe the trial judge with a divine insight into the hearts and minds of the witnesses. And a Court of appeal must be satisfied that the trial judge's finding of credibility is based not on one element only to the exclusion of others, but is based on all the elements by which it can be tested in the particular case.*

*Jacobs v. Ottawa (Police Service), 2016 ONCA 345*

I am familiar with *Jacobs* being the seminal case in determining the standard of proof in PSA hearings as clear and convincing. The *Jacobs* decision also quoted *Penner*.<sup>27</sup> From training and experience I am aware the Courts did not enter into a detailed analysis defining what clear and convincing evidence means to the lay person. The general notion identified was that it falls somewhere between the standards of the balance of probabilities and beyond a reasonable doubt.

To me clear and convincing means the evidence upon which I arrive at a finding must demonstrate that an allegation is substantially more likely to be true than false; that is to say evidence which is clear, convincing, reliable, and persuasive.

*Girard v. Delaney (Board of Inquiry), 1994 BOI 95-26*

Excerpt from pages 17 and 18:

- I. The test is primarily an objective one.*
- II. The Board must measure the conduct of the officer by the reasonable expectations of the community.*
- III. 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.*

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<sup>27</sup> *Penner v. Niagara Steel (Regional Service Police Board), 2013 SCC 1*

- IV. *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.*
- V. *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.*

The excerpts depict the objective test for discreditable conduct in police disciplinary hearings by which I am informed and guided.

OPP Police Orders Sections 6.10.3, 6.10.1, 2.37.1

OPP Police Orders contain policy and procedures to be followed by and adhered to by all employees.

Accountability

*In carrying out duties and employee is accountable for:*

- *promoting a positive professional image;*
- *servicing with honesty and integrity, in a manner that places public interest above personal interests;*
- *behaving above reproach both on and off duty and not bringing discredit upon the reputation of the OPP;*
- *maintaining their composure in a trying situation, and refraining from using profane, abusive or insulting language;*
- *respecting the dignity of the OPP and its uniform;*
- *treating the public and employees in an impartial manner, in administering a program and service and responding to a problem;*
- *refraining from discrimination and harassment, including an offensive remark or any other action, both in the workplace and during service delivery;*
- *demonstrating courage in confronting others when behaviour, policies or practices are inconsistent with human rights laws and the OPP's espoused ethics, values and policies;*

*The conduct of an employee, both on and off duty, is scrutinized and applied to the OPP as a whole. The more professional the conduct, the higher the public's confidence and co-*

*operation. Similarly, this generates greater personal pride in the employee and the OPP. Positive relationships are essential to our business. Such relationships depend on mutual respect and understanding, appropriate attitudes and behaviours.*

### Professional Traffic Stops

*...the following aspects shall be considered:*

- *officer safety;*
- *Courtesy;*
- *cultural awareness;*
- *language barriers;*
- *search and seizure laws;*
- *other related constitutional/human rights codes issues; and*
- *interpersonal communications skills.*

In addition to what is required and prescribed in the PSA, OPP policy has clear expectations as to the expected conduct and deportment of employees.

### ***Issue: The Enforcement Action of PC Siriska***

Reflection on the enforcement action will offer context for the events that followed PC Siriska's stopping of and interaction with Mr. Sheehan and Ms. Clarkson on October 20, 2019. The perceptions resulting from the enforcement action set the stage for at least part of what followed. The evidence indicates that Mr. Sheehan who was already upset, became even more so when he realized he was getting a ticket from PC Siriska. The evidence indicates that Mr. Sheehan felt the ticket was unfair and PC Siriska was entrapping motorists.

PC Siriska attended the Hillsdale area assisting with scene security and traffic control at a serious motor vehicle collision. Due to the ongoing collision investigation being conducted by other officers Highway 93 was closed for northbound traffic by the MTO in Hillsdale at Mill Street, south of the accident scene as well as somewhere north of the accident scene for southbound traffic. The road needed to be closed to preserve evidence and protect the scene of the collision.

PC Siriska noticed motorists approaching the scene from the south and realized the existing roadblock was not sufficient to protect the scene or otherwise close the highway as people could turn at the existing roadblock and found routes back to 93. He placed five pylons across Highway 93 at Robert Boulevard and testified only three were required to lawfully close the highway. PC Siriska then parked 294 metres north of the pylons in a farm field laneway. He indicated the vegetation was high and felt he/his car was somewhat, if not completely

concealed. He was able to observe the pylons and the intersection but he did not believe that he was visible.

Northbound motorists travelling through Hillsdale would have arrived at the MTO closure at Mill Street which, from the evidence, was clearly signed as was discernible as a road closure. Some motorists who took the same route as Mr. Sheehan and Ms. Clarkson would eventually end up at 93 and Robert. They would have seen five pylons placed across 93 to the north side of Robert. That is all that motorists would see; five pylons across the road, no other signage, and no emergency vehicles in sight. The accident scene was not visible from 93 and Robert.

I realize there is an adage that “ignorance of the law is no excuse” but I speculate without drawing a conclusion that many, otherwise law abiding citizens, would not know what to make of this. This is especially true when you consider that the motorists who arrived at 93 and Robert would have previously abided the signage and closure to the south at Mill Street. I accept that Mr. Sheehan and Ms. Clarkson and possibly others may well have been confused when they arrived at the pylons as to what they meant and what they were supposed to do. The PSB report<sup>28</sup> indicates that Sgt. Gosse reviewed OPP twitter posts from October 20, 2019 related to the road closure. At 7:07pm, well after the incident involving Mr. Sheehan and Ms. Clarkson, at least one member of the public contacted the OPP advising that motorists remained confused about the road closure and were getting lost in the subdivision. According to evidence including PC Siriska’s notes he remained parked at his concealed location at or around that time.

Ms. Clarkson and Mr. Sheehan, corroborated, to a degree, by PC Siriska, stopped for longer than what might be considered usual at the intersection of 93 and Robert. Their evidence is they discussed what to do and where to go because they were confused. They, or at least Ms. Clarkson, said they saw what they believed to be an unmarked police car and decided to approach the officer for assistance. I will address this elsewhere.

At no time did PC Siriska indicate in testimony he parked in the concealed location 294 metres north of the pylons for enforcement purposes. PC Siriska said he parked in that location as he was doing his “police work”, although when asked he could not recall specifically what he was doing and provided a list of what he might have been working on. There is no indication in PC Siriska’s notes as to what he may have been working on. PC Siriska stated that he did not need to nor was he required to park at or near the pylons. PC Siriska said he did not need to “babysit” the intersection. PC Siriska further explained parking at the pylons would not have been safe because motorists would get out of their car and walk around. In his PSB interview PC Siriska said that after the second vehicle passed his pylons and was stopped he decided to remain in his concealed parking spot to “observe and see what happens.” This was

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<sup>28</sup> Exhibit 20: Page 8 - PSB Report

indicative of a conscious decision to try to apprehend motorists rather than improving the efficacy of the road closure.

During the time PC Siriska was parked he stopped several motorists for driving on a closed highway and charged seven people, Mr. Sheehan being one of them. PC Siriska stated he had safety concerns for the officers at the scene and preservation of evidence had motorists approached. While PC Siriska seemed reluctant to expressly acknowledge that his purpose for parking where he did was related to the enforcement action of stopping people who went around the pylons, it is abundantly clear that this is what he did.

If PC Siriska was primarily focused on his task of closing the highway, protecting evidence, and protecting the officers at the scene he might have considered moving from the position he was parked to a point either closer to or at the pylons, or at least more visible to approaching motorists. He may have requested that MTO move their blockade from Mill Street to Robert. If he did not have any with him, he could have requested the yellow "Police Line Do Not Cross" (or words to that effect) tape which I know most OPP front line cruisers are equipped with or is otherwise readily available. As mentioned above, he told PSB he decided to see what happens and, ultimately, to stop and charge motorists rather than take proactive measures.

When asked why he did not do this, PC Siriska indicated it would not have made any difference suggesting motorists would have driven around his police vehicle. He also indicated it would be unsafe because people would get out of their cars and walk around on the highway. I find these explanations made little sense and bordered on absurd in consideration of the setting. People seeing a police car parked on the highway would have a heightened impression that the road was closed and would have been much less likely to be confused by or to have driven past the pylons. Had they done so, PC Siriska would be in a position to intercept them. I am not sure that parking the cruiser visibly on the highway would cause people to walk about but even if they had; the highway was closed, the weather was good, and hence safety should not be a significant concern.

I would expect after perhaps the second or even the third person went around the pylons, a clear indication there was an issue, it may have occurred to PC Siriska that the method he employed to close the road was not successfully achieving this purpose. PC Siriska, however, remained parked as described and stopped and charged additional motorists.

The context and method employed in the enforcement action influenced what followed. Mr. Sheehan described the enforcement method of PC Siriska as entrapment. Entrapment, in the legal sense, was not addressed in submissions. From past training and experience and, from a lay person's perspective, in criminal matters, I understand entrapment to occur when the police entice a person not already committing an illegal act into carrying out an act the person was unlikely or perhaps unwilling to commit but for the actions of the police. Again, in a criminal

investigation, I understand that the police cannot generally tempt a person to commit an offence by means of inducement, trickery or unfair practices. It is my understanding that the test for unacceptable actions are those that may shock the community.

I am not prepared to nor tasked with determining if PC Siriska's enforcement scheme met the legal definition of entrapment. I do find his decision to continue to conceal his presence in order to engage and take enforcement action against the motoring public, in consideration of what may well have been a confusing or at least unclear set of circumstances regarding the road closure, was overly punitive, arbitrary, unfair, and underhanded. It does not mean that, by the letter of the law, the folks PC Siriska stopped and charged were not committing an offence. It does mean that I find PC Siriska's enforcement scheme was questionable at best.

Mr. Sheehan has testified he was not proud of his behaviour that day. He used insulting and profane language and lost his composure. Notwithstanding PC Siriska's questionable enforcement choice and the way he spoke to Mr. Sheehan and Ms. Clarkson, there is no excuse for Mr. Sheehan's ill-advised reaction. With that said, I certainly understand why he was upset under the circumstances. I suggest members of the communities we serve would come to the same conclusion. Again, there is no excuse for Mr. Sheehan's behaviour but there is certainly an explanation as to why he lost his poise.

**Issue: Credibility and Reliability of Witnesses** (Not all witness's credibility and reliability was at issue)

I consider credibility, from a lay person's perspective, to be when a witness presents that they sincerely believe they are speaking the truth. Reliability relates to the actual accuracy of their testimony. In determining this, I consider a witness's ability to accurately observe, recall and recount the events in issue. A credible witness may give, in some cases, unreliable evidence.

In assessing credibility I turn my mind to and was guided by the established tenets outlined in jurisprudence provided or referenced by the parties in their submissions. I am guided by the principles therein.

The Divisional Court in *Pitts* has identified the following features for me to consider in making credibility assessments:

- *The appearance and demeanour of the witness, and the manner in which he testified. Did the witness appear and conduct himself as an honest and trustworthy person? It may be that he is nervous or confused in circumstances in which he finds himself in the witness box. Is he a man who has a poor or faulty memory, and may that have some effect on his demeanour on the witness stand, or on the other hand, does he impress the tribunal as a witness who is shifty, evasive and unreliable?*

- *The extent of his opportunity to observe the matter about which he testified. What opportunities of observation did he in fact have? What are his powers of perception?*
- *Has the witness any interest in the outcome of the litigation?*
- *Does the witness exhibit any partisanship, any undue leanings towards the side which called him as a witness? Is he a relative, friend, an associate of any of the parties in this case, and if so, has this created a bias or prejudice in his mind and consequently affected the value of his testimony?*
- *It is always well to bear in mind the probability or improbability of a witness' story and to weigh it accordingly. That is a sound common sense test. Did his evidence make sense? Was it reasonable? Was it probable? Does the witness show a tendency to exaggerate in his testimony?*
- *Was the testimony of the witness contradicted by the evidence of another witness, or witnesses whom the tribunal considered more worthy?*
- *Does the fact that the witness has previously given a statement that is inconsistent with part of his testimony at trial affect the reliability of his evidence?*
- *After weighing these matters and any other matters that the tribunal believes are relevant, it should decide the credibility or truthfulness of the witness and the weight to be given to the evidence of that witness.*

I have addressed elsewhere that assessing demeanour, described in the first bullet above, must be done with caution as this line of assessment on its own can be inaccurate and unreliable. The decision suggests filters through which testimony can be viewed before arriving at conclusions.

The matter of *Faryna v. Chorny* identifies the following O'Halloran test:

*The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of a story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.*

As I embark on my analysis I must be clear, not every aspect of what each person said will be weighed with respect to credibility and reliability. I will attempt to focus on issues related to the allegations against PC Siriska. Without a recording of an event it is impossible and unrealistic to suggest or conclude that everything a particular witness said was completely accurate or conversely was completely inaccurate. That is not my purpose nor intent.

I am reminded through submissions and otherwise that this matter should not be addressed or viewed as a credibility contest. PC Siriska's guilt or innocence is assessed through the established standard of proof in *Police Service Act* hearings; clear and convincing evidence on all evidence heard. Guilt or innocence should not be based on credibility findings in isolation. The issue of guilt or innocence and credibility and reliability, while inter-related, need to be addressed individually.

*Jacobs* outlined the clear and convincing evidence but not in great detail. The general notion identified was that it falls somewhere between the standards of the balance of probabilities and beyond a reasonable doubt. As stated elsewhere, to me clear and convincing means the evidence upon which I arrive at a finding must demonstrate that an allegation is substantially more likely to be true than false i.e. that which is clear, convincing, reliable, and persuasive.

The burden of proving the allegations and meeting the standard of clear and convincing evidence is on the prosecution. There is no onus on PC Siriska to prove or disprove anything. My ultimate findings are based on all evidence presented and are not to be arrived upon simply because I prefer one person's version of events over another's.

### **Mr. Sheehan**

Mr. Sheehan was, at times, emotional and remained somewhat exasperated about how he and his wife, Ms. Clarkson were spoken to and treated by PC Siriska. Mr. Sheehan was substantially consistent and forthright with his version of events from the onset of this matter. This included during his evidence in chief and what was aggressive, at times unpleasantly so, cross examination. The previous statements and writings did not include exactly the same details as Mr. Sheehan's testimony. His notes, OIPRD complaint and ultimate evidence before this tribunal are not tantamount to examination in chief or cross examination. In my experience as a hearing officer and previous 15 or 16 years as a criminal investigator and major case manager, it is not uncommon for portions of what a witness has said or written prior to testifying to differ from or include further or less detail than what may have previously been said or written. This includes police witnesses. This, on its own, ought not to be seen as impugning a witness' testimony. This is certainly one of the reasons Courts and tribunals hear *viva voce* evidence.

Mr. Sheehan and Ms. Clarkson returned home following the incident with PC Siriska and made notes of what they considered significant points. They both explained they were emotional at the time. I have addressed the notes elsewhere in this decision. As stated, simply because they did not write down every point that may have been considered significant does not render the notes inaccurate nor their testimony any less credible. In this case I find that untrained

civilians to have made notes was more helpful than detrimental as they were able to use the notes to refresh their memories.

The issue of Mr. Sheehan describing PC Siriska as “running” at him was one example of defence counsel suggesting Mr. Sheehan lacked credibility. As Mr. Sheehan testified before me I do not arrive at this conclusion. As I watched and listened to Mr. Sheehan testify he used this term as a figure of speech not a statement of fact. When asked to explain he said PC Siriska moved quickly and with surprising agility, he walked rather quickly and/or words to that effect. When he used the term “run” I did not interpret Mr. Sheehan to have intended it to be taken literally. The reference to “run” was an exaggeration, but in the context of his testimony as described, it was not done so with a bent on making PC Siriska look worse. It presented as an emphatic somewhat overstated recollection of an actual experience. During her interview of PC Siriska Sgt. Gosse asked about “charging” toward Mr. Sheehan in anger. It seems clear to me that the concept of the way PC Siriska approached Mr. Sheehan and Ms. Clarkson was not first raised in the testimony of Mr. Sheehan or Ms. Clarkson. It had been raised much earlier on in the investigation.

Mr. Sheehan had an interest in the outcome of the investigation as one of the complainants. At no time did I get the impression nor form the opinion that Mr. Sheehan altered his evidence in any way with a bent on a particular outcome. It was apparent that he was upset about the way he and Ms. Clarkson were treated and spoken to and wanted to verbalize his unpleasant experience. Mr. Sheehan has said at various stages of this process he would like the ticket withdrawn. At no time did I get the impression that this was Mr. Sheehan’s primary motivation or that the ticket was the focus of his concerns. Mr. Sheehan wanted the ticket withdrawn as he felt the enforcement action was entrapment. Mr. Sheehan was prepared, at one point to resolve this matter by way of apology but, after consulting with associates who were former police officers, he and Ms. Clarkson decided to set aside a resolution and to make a formal complaint.

At one point Mr. Sheehan, as did Ms. Clarkson, described his experience with PC Siriska as feeling like a “Jane and Finch take down”. I considered this as hyperbole used to describe how they felt at the time. I did not consider the phrase to have been used to persuade me in a particular direction nor did its use impact the essence of their testimony. Nothing in relation to the allegation against PC Siriska turned on this area of testimony. When asked to clarify Mr. Sheehan and Ms. Clarkson explained that they were a couple in their 50’s who respected the police but were made to feel like criminals by PC Siriska. The reference to a particular neighbourhood was, or could be interpreted as an affront to those associated with the neighbourhood. However unfortunate the comment, I did not perceive in any way that this was the intended import i.e. to insult or demean anybody.

Mr. Sheehan expressed an interest in PC Siriska being held accountable and did not want him to get a “slap on the hand” which he understood would have been the result if an informal resolution was reached. As he testified, there was no point where I observed any indication that his desire for PC Siriska to be held accountable could be equated to lack veracity or for his evidence to have been swayed by a penchant to untruthfully recount aspects of his experience. Mr. Sheehan made a number of statements against his own interest. Without hesitation he acknowledged he instigated the use of profanity and was not proud of his behaviour in this regard, that day.

In consideration of Mr. Sheehan’s testimony as it related to other evidence presented I find that, on issues related to the allegations of misconduct, his evidence was reasonable, forthright and consistent. In consideration of the preponderance of probabilities I am confident a practical informed person, in my place, would arrive at the same conclusion.

I find on evidence related to allegations against PC Siriska, Mr. Sheehan was a reliable and credible witness.

### **Ms. Clarkson**

Ms. Clarkson was a co-complainant in this matter and as such, she had an interest in the outcome. Ms. Clarkson’s motivation presented as concern for the way she and her husband were treated and spoken to by PC Siriska. Ms. Clarkson’s concerns extended to other members of the community for who she feared may be subjected to similar behaviour by PC Siriska. Ms. Clarkson had an interest in PC Siriska being held accountable for his behaviour. There were times in Ms. Clarkson’s evidence in chief and cross examination where she became emotional tearful. At no point did I observed any indication that Ms. Clarkson’s desire for PC Siriska to be held accountable could be equated to a lack veracity or for her evidence to have been swayed by a penchant to untruthfully recount aspects of her experience in order to have shone a contrived negative light on the behaviour of PC Siriska.

There were times in her evidence in chief where some of Ms. Clarkson’s answers were wordy and, although initially responsive to questions posed, occasionally her testimony wandered into areas that defence counsel correctly pointed out were not related to the matter at hand. In some cases this could be an indicator that a witness is evading an issue or is reluctant to offer a direct answer. This was not the case with Ms. Clarkson. It was apparent to me that when this occurred it was a result of Ms. Clarkson’s inexperience as a witness, her unfamiliarity with the process, and the prosecutor’s disinclination to interrupt her.

From the onset of her involvement in this incident Ms. Clarkson was substantially consistent

and forthright with her version of events With respect to her notes, OIPRD complaint form, and previous statement similar to Mr. Sheehan, the previous versions are not tantamount to examination in chief or cross examination. It is not uncommon for portions of what a witness has said or written prior to testifying to differ from or include further or less detail than what may have previously been said or written. This includes police witnesses. This, on its own, ought not to be viewed as to impugn a witness' testimony. This is, as stated, one of the reasons Courts and tribunals hear *viva voce* evidence.

One area where it was suggested Ms. Clarkson lacked credibility is whether or not she saw PC Siriska's vehicle. Ms. Clarkson was steadfast from the onset and immediately following the incident, as captured in notes they made, she saw what she believed to be PC Siriska's cruiser parked as described. Mr. Sheehan could not recall at what point he saw PC Siriska's vehicle. Ms. Clarkson was, for several years, and continued to be employed as a service representative for an automobile dealership that serviced police vehicles. I accept that Ms. Clarkson should have been aware of what police cars look like generally.

PC Siriska did not seem to feel that he was visible to motorists who stopped at Robert and 93 but he did state he could see motorists at the intersection. I speculate that if PC Siriska could see the intersection, that it would follow that at least a portion of his car would be visible to motorists at the intersection.

No specific evidence was presented to confirm what make, model and colour cruiser PC Siriska was driving on the day in question. He said he was driving a black Ford Taurus and Mr. Sheehan and Ms. Clarkson believed it to have been a grey Dodge Charger. This issue remains unresolved by specific evidence.

I noted that PC Siriska, in his PSB interview, said that Mr. Sheehan was operating a blue Honda Goldwing motorcycle when it was actually a Harley Davidson. This did not, on its own, render the entirety of PC Siriska's evidence unreliable. Likewise, if Ms. Clarkson was incorrect on the make and model of the car PC Siriska was driving; this alone would not render their evidence unreliable. When defence counsel suggested PC Siriska was not driving a grey Charger but a black Taurus Ms. Clarkson did not argue or try to rationalize. She repeated she believed it was a police car. As stated elsewhere, the descriptors of the car PC Siriska was driving on the day in question were not independently addressed or established by evidence.

Mr. Sheehan and Ms. Clarkson testified they stopped at 93 and Robert and discussed what to do. Ms. Clarkson said she saw the police car and decided to approach the officer for assistance. PC Siriska indicated that Mr. Sheehan and Ms. Clarkson sat there for 30 seconds or so. This seems to conform the discussion that was occurring as was described by Mr. Sheehan and Ms. Clarkson. I found the evidence in this regard was clear, matter of fact, and convincing, that Ms. Clarkson saw what turned out to be PC Siriska's car.

Ms. Clarkson described a number of times she spoke to and tried to engage PC Siriska. She was disappointed that PC Siriska either ignored her or did not hear her. PC Siriska testified Ms. Clarkson never spoke once during the interaction.

As I watched and listened to Ms. Clarkson's testimony her evidence presented as forthright, honest, and a genuine recollection of an experience lived. Although Ms. Clarkson is a co-complainant and has an interest in the outcome from that perspective she never revealed a bent or predisposition toward a particular outcome nor to simply support Mr. Sheehan's version of events. Despite what was also at times an uncomfortably aggressive cross examination, Ms. Clarkson was unwavering with respect to areas of her testimony relevant to the allegations against PC Siriska.

I am confident that a practical informed person, in my place, could only arrive at the same conclusion. I find on evidence related to allegations against PC Siriska, Ms. Clarkson was a reliable and credible witness.

## **PC Siriska**

I found PC Siriska's evidence to contain inconsistencies, equivocations, and weaknesses on salient points. In some areas PC Siriska's testimony plainly lacked veracity.

PC Siriska offered varying versions of what he said and when he said it to Mr. Sheehan and Ms. Clarkson. Page 1 on exhibit 16, the statement of S/Sgt. DiSaverio, PC Siriska denied using foul language toward Mr. Sheehan and Ms. Clarkson. PC Siriska went on to advise S/Sgt. DiSaverio that he may have said something to Mr. Sheehan, under his breath, on his way back to his cruiser but he would be very surprised if Mr. Sheehan could have heard him. In his own subsequent statements to PSB and testimony before this tribunal PC Siriska said he turned to Mr. Sheehan at one point and said "Fuck, Fuck you, that's how you speak to people? Grow up!" I note PC Siriska typed an exclamation point in his duty report (Exhibit 20) PC Siriska stated Mr. Sheehan continued swearing at him and as he drove away he said "grow up you idiot" to Mr. Sheehan.

The version PC Siriska provided to S/Sgt. DiSaverio was untrue by PC Siriska's own accounts that followed. When PC Siriska testified he swore at Mr. Sheehan as described, i.e. repeating back what Mr. Sheehan had said, I watched and listened closely. I was unconvinced and unpersuaded that PC Siriska's version was genuine. This assertion by PC Siriska did not ring true. As I consider the context, it does not make sense for PC Siriska to have repeated back what Mr. Sheehan had said to him. It did not make sense that PC Siriska would acknowledge doing this but in a manner that suggested a rationalization or justification for his use of profanity. The preponderance of possibilities suggest this is not what had occurred and I consider it a partial admission of what PC Siriska had said but in a false narrative that may have limited PC Siriska's level of accountability.

PC Siriska stated he did not call the MTO to move their sign to a more appropriate location because it would have taken too long. He said that it had, in fact taken the MTO a long time to respond in the first instance. I do not accept this assertion by PC Siriska. PC Siriska indicated he did not know where the MTO closure was when he first responded to the scene. I find it more probable and more likely than not that he did not know how long it took the MTO to respond to this particular scene. When he became involved in the road closure incident, the MTO had been and gone from the scene having erected their signs and blockade. PC Siriska was in the area of the road closure and was stopping motorists over a number of hours yet he stated calling the MTO was not an option in a dismissive manner. As PC Siriska's evidence in this regard unfolded it presented as disingenuous. His testimony appeared and sounded constructed to fit a narrative rather than being completely forthright. I have no way of knowing how long the MTO may have taken to respond and I suggest, neither did PC Siriska.

PC Siriska stated that as he was driving away he said "grow up you idiot" to Mr. Sheehan. He said Mr. Sheehan had put or was putting his motorcycle helmet on. PC Siriska would have me accept that he was driving away in a car which had been parked some 30 or 40 feet away from Mr. Sheehan who had a helmet on and that Mr. Sheehan heard PC Siriska's comment. I do not accept this as accurate and it did not ring true. It is highly improbable and, in consideration of the preponderance of possibilities I reject this explanation from PC Siriska. As he testified I frankly perceived this explanation to be a manufactured prevarication. I found PC Siriska's suggestion that he told Mr. Sheehan to "grow up" as a "teaching point" was incredulous and a nonsensical.

PC Siriska testified he never made any mention of a dead body being on the road. Both Mr. Sheehan and Ms. Clarkson testified and stated previously that PC Siriska said to them, words to the effect, did they want to see or run over the dead body. In his PSB interview at approximately the 30 minute mark, PC Siriska said he "pointed out the facts" and that there may have been a serious collision and may possibly be "a dead person" on the highway etc. These are clearly inconsistent and completely disparate versions of whether he referred to a dead body/dead person or not. Both cannot be true.

At approximately the 28 minute mark of his PSB interview and at times in testimony PC Siriska said he never called anybody and idiot. When it was pointed out by Sgt. Gosse that he had, PC Siriska acknowledged using the word idiot but not in the context that was alleged by Mr. Sheehan and Ms. Clarkson. PC Siriska's statement in this respect struck me as less than forthright and open but not overtly untruthful. PC Siriska had acknowledged he called Mr. Sheehan an idiot and telling him to grow up. It gave me pause to consider why PC Siriska gave the impression he was hedging on what he said and when he said it.

PC Siriska said "hundreds" of drivers abided by his pylons and roadblock. I found this to be an unnecessary exaggeration. I owned property very near Hillsdale and I am quite familiar with the traffic patterns. To suggest hundreds of cars travelled through Hillsdale on an autumn

Sunday late afternoon is, at least an overstatement; at worst, untrue and *may* have been proposed by PC Siriska to indirectly garner support for what I considered to be a questionable enforcement decision. If, in fact, hundreds of drivers abided the pylons it would heighten the significance of the alleged anomalous and illegal actions of Mr. Sheehan and others. In fairness, I do not know how much traffic was in Hillsdale on the date in question but I take a dubious view of PC Siriska's suggestion.

PC Siriska evaded direct and frank responses to inquiries about why he attended the scene. In particular he avoided clearly stating that he attended to protect the scene and tend to the road closure i.e what his purpose for attending was. At times, in response to this line of questioning in cross examination, PC Siriska would offer wordy indirect replies that were difficult to follow and comprehend. PC Siriska claimed his main focus in attending was to directly assist officers with the investigation at the actual scene. This is not supported in evidence. His duty report<sup>29</sup> indicates he attended and was assisting with scene security and traffic control. His duty notes indicate that he was ENR (enroute) to assist with road closure on Penetanguishine Road (Highway 93).” He arrived and recognized the need to close 93 at Robert and placed five cones across the roadway. PC Siriska appears to have attended the scene of the accident for a short time before stopping a motorist in a Civic who had approached the scene after apparently driving around the pylons. The driver told PC Siriska they did not understand what the pylons meant. PC Siriska then noted “due to safety issues” he parked his cruiser 200 metres north of the closure. This distance was later identified as being 294 metres. His notes indicate that for the next four or more hours he principally remained at this location conducting observations and traffic stops. It is clear that PC Siriska's primary responsibility was, as indicated in his duty report and notes, to assist with scene security and traffic control yet he testified that this was not the case. His decision to park and remain concealed suggests the enforcement action became his primary focus rather than to clearly and unambiguously close the road and protect the scene. As stated, nothing particularly turns on the ambiguities in PC Siriska's accounts but I find he was evasive and at least inaccurate in his related testimony.

In testimony, PC Siriska offered conflicting accounts of why he did not park at the pylons, at one point saying it did not matter where he parked - people would have driven around the pylons anyway, then agreeing with the prosecutor's' suggestion that had he been parked at the pylons people would not have gone around them. Nothing turns on these contradictions except to create doubt as to PC Siriska's candour. I speculate, without drawing a conclusion that PC Siriska was evasive because had he parked in a more visible location or at the pylons after the first or second person went around them, further enforcement action would not have been necessary or required.

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<sup>29</sup> Exhibit 22: Notes and duty report of PC Siriska

PC Siriska, at times offered wordy responses and elucidations while testifying. I have already commented on the fact that Ms. Clarkson did this at times and have shared my impressions as to why. PC Siriska is an experienced police officer who, by his own account, has extensive experience as a witness. He explained he testified in Court as many as 2 or 3 times per week and that entire days in Court are set aside for trials related to charges he had laid. I drew no hard and fast conclusion from his, at times, verbose testimony but, given his extensive experience as a witness, it gave me pause to consider if he may have been avoiding or distracting from more direct responses.

As he testified and at other points in the investigation PC Siriska presented as insensitive at times; a point to which he may be unaware. He said he talks to people like they are "17 year old boys" and has spoken to people like he speaks to his own children. This could be interpreted as belittling teenaged boys and off putting to others who are addressed in this manner. He said that he educates and lectures drivers including police officers whom he may have stopped for traffic violations. Educating drivers is acceptable in the form of sharing information to improve understanding. "Lecturing" and telling drivers they are "wasting his time" goes beyond education and can be perceived as demeaning, unnecessary and patronising by some. In testimony PC Siriska used the term "having a bi-polar moment" with a degree of sarcasm and as a figure of speech. This was clearly insensitive and would be considered demeaning and offensive by the people we serve. Indeed, Ms. Clarkson was troubled by this comment and suggested it was disrespectful to those with mental health challenges. I agree. Acknowledging these particular observations could arguably be considered PC Siriska's demeanour, I have not relied upon them heavily with respect to his credibility and reliability. The described behaviours certainly inform plausible context in regard to PC Siriska's choice of words and his means of interacting with people.

These observations suggest that PC Siriska, whether intended or otherwise, can, at times communicate with folks in a manner where disharmony can be a result. In his testimony PC Siriska referred to drivers other than Mr. Sheehan who have "lost their shit" with him in the past. I draw no conclusion from this except to observe that the incident with Mr. Sheehan and Ms. Clarkson is not an isolated incident in PC Siriska's experience. These observations cause me to question how accurate PC Siriska was when he made statements indicating he had never, in his entire career, had people raise concerns about how he communicated with them.

I find the discrepancies, contradictions and gaps in veracity found in PC Siriska's statements lead me to conclude that PC Siriska's evidence, in relation to allegations in the NOH, is inconsistent with the *preponderance of possibilities* that are logically available in consideration of all evidence presented. I was unconvinced PC Siriska's evidence in relation to the allegations against him was completely accurate in some cases and, at points, his assertions lacked credibility. As a result PC Siriska's evidence in relation to allegations against him was unreliable.

## **Issue: Discreditable Conduct**

PC Siriska is alleged to have used profanity and was uncivil to Mr. Sheehan and Ms. Clarkson. The details of the allegations are outlined in the NOH. The test for discreditable conduct as outlined in *Saxon et al* is:

*...the test is “primarily an objective one” and that the conduct must be measured against the “reasonable expectations of the community”. The Ontario Civilian Commission on Police Services has articulated the following approach regarding the meaning of “likely” to bring discredit upon the reputation of the police force: The measure used to determine whether conduct has been discreditable is the extent of the potential damage to the reputation and image of the service should the action become public knowledge.*

And in *Girard v. Delaney*:

*The Board must measure the conduct of the officer by the reasonable expectations of the community.*

*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.*

Some exceptions were identified with respect to an officer’s use of profanity in *Campoli*, addressed in detail above. No such exceptions or mitigating context existed in the circumstances between PC Siriska, Mr. Sheehan and Ms. Clarkson. This was a traffic stop. There were absolutely no tactical considerations comparable to the high risk scenario in *Campoli*.

If I were to have accepted PC Siriska’s version of events in isolation and considered that he told Mr. Sheehan to “grow up” twice, called Mr. Sheehan an idiot once, and only swore at Mr. Sheehan as he repeated what Mr. Sheehan had said to him; PC Siriska would be still guilty of discreditable conduct. PC Siriska’s claim that he was only repeating back to Mr. Sheehan what Mr. Sheehan had said to him, even if believed, would not mitigate culpability for misconduct. That is to say; PC Siriska’s own admissions as to what he said, under the circumstances illustrated in evidence, in my mind, would on their own constitute serious misconduct and result in his being found guilty. I have rejected his version of what he said, when he said it and how he said it as inaccurate and at times untrue which rendered his evidence unreliable. PC Siriska’s version of his conduct presented in a manner I viewed as an attempt to minimize the seriousness of and accountability for his transgressions.

I am confident that a *reasonable person in the community dispassionate and fully apprised of the circumstances* would find it shameful and discreditable for a police officer to speak to a citizen engaged at a traffic stop the way PC Siriska has admitted he did and ultimately for the manner in which I have found him to have conducted himself. The citizens of the communities we serve do not expect to have a police officer who has engaged a driver for a traffic violation to use profanity, call them idiots and tell them to grow up. The Community expects police officers to behave above reproach and to set an example for what is professional and courteous communication and comportment. To be clear, I have found the breadth and gravity of what PC Siriska said to Mr. Sheehan and Ms. Clarkson and how he conducted himself were even more involved, more prolific and more blatant than his version of events suggested.

## Conclusion

Provincial Constable Siriska was alleged to have committed discreditable conduct in that he did use profane, abusive or insulting language or was otherwise uncivil to a member of the public.

I find the evidence was clear and convincing, cogent, reliable and weighty that PC Siriska used profane, abusive, and insulting language toward Mr. Sheehan and Ms. Clarkson. I further find that PC Siriska was unnecessarily unkind and uncivil to both Mr. Sheehan and Ms. Clarkson. Specifically PC Siriska's use of profanity as described, and his use of the words "liar, stupid" and "idiot(s)", telling the complainants to "grow up" and making reference to a "dead body" or "dead person" on the highway are all clearly dishonourable and discreditable. I find, from the perspective of the reasonable person as described above, that PC Siriska's behaviour has brought discredit upon the OPP and would potentially result in further discredit should his behaviour become more widely known. I consider this serious misconduct.

## PART IV: DECISION

After a careful analysis, of the evidence placed before this tribunal, I find there is clear and convincing, evidence that I found was cogent, reliable and weighty in support of a finding of misconduct against PC Siriska in respect to the allegation. I find PC Siriska guilty of discreditable conduct.



Superintendent K.M. (Mike) Bickerton  
OPP Adjudicator

Date electronically delivered: April 27, 2021<sup>30</sup>

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<sup>30</sup> Amended Version; word "not" added to paragraph 1 on page 49 to reflect the intended commentary.

## Appendix “A”

The following exhibits were tendered during the hearing:

- Exhibit 1: Delegation – Adjudicator, Superintendent Taylor
- Exhibit 2: Delegation – Adjudicator, Superintendent Bickerton
- Exhibit 3: Designation – Prosecutor, Inspector Doonan
- Exhibit 4: Designation – Prosecutor, Inspector Young
- Exhibit 5: Designation – Prosecutor, A/Inspector Fournier
- Exhibit 6: Delegation All Officers
- Exhibit 7: Designation – Prosecutor, Mr. Kirsh
- Exhibit 8: Audio interview of PC Siriska
- Exhibit 9: Police Orders excerpt Chapter 6
- Exhibit 10: Police Orders Section 2.37
- Exhibit 11: Map of Highway 93 (Hillsdale area)
- Exhibit 12: PSB interview of Mr. Sheehan
- Exhibit 13: PSB interview of Ms. Clarkson
- Exhibit 14: Mr. Sheehan OIPRD complaint
- Exhibit 15: Ms. Clarkson OIPRD complaint
- Exhibit 16: S/Sgt DiSaverio notes and duty report
- Exhibit 17: Copy of issued PON #3860
- Exhibit 18: Dash pad notes of PC Siriska
- Exhibit 19: Photograph of County Road 93
- Exhibit 20: PSB Report
- Exhibit 21: Photograph of OPP pylon
- Exhibit 22: Notes of PC Siriska and duty report
- Exhibit 23: Notes of PC Siriska [01March2019]
- Exhibit 24: *Gauthier* [2015] ONCPC 3
- Exhibit 25: Prosecution Book of Authorities
  - Tab 1 – *Burrows v Ontario Provincial Police*, [2012] ONCPC 13
  - Tab 2 – *Saxon v Amherstburg Police Service*, [2011] ONCPC 2
  - Tab 3 – *Campoli v Toronto Police Service*, [2020] ONCPC 11
  - Tab 4 – *Faryna v Chorny*, [1951] CarswellBC 133
  - Tab 5 – *Jacobs v Ottawa (Police Service)*, [2016] ONCA 345
  - Tab 6 – *Girard v Delaney (Board of Inquiry)*, [1994] BOI95-26
- Exhibit 26: Defence Book of Authorities
  - Tab 1 – *Schaeffer et al. v. Wood* [2011]
  - Tab 2 – *R v Clayton* [2017]
  - Tab 3 – *R v G* [2021]

- Tab 4 – *Pitts and Director of Family Benefits* [1985]
- Tab 5 – *O'Brien v George Brown College*
- Tab 6 – *Mulville and Azaryev* [2017]
- Tab 7 – *Campoli* [2020]