

This judgment relates to an allegation of unnecessary exercise of authority in relation to a young person, whose identity is protected under the *Youth Criminal Justice Act*. Accordingly, the names of the young person and another youth witness have been redacted from the judgment.

PEEL REGIONAL POLICE

POLICE SERVICES ACT R.S.O. 1990, C. p. 15, as amended

IN THE MATTER OF *a hearing held in accordance with section 64(7) of the Police Services Act into allegations of misconduct against Constable Trevor Poyser #1806 of the Peel Regional Police;*

Finding of Superintendent Michael Moore (Hearing Officer)

CHARGE: 1. *UNLAWFUL or UNNECESSARY EXERCISE OF AUTHORITY*

Appearances:

Mr. Joel Dubois
Inspector Tony Roselli
Mr. Peter Brauti
Mr. Marcus Brito
Constable Trevor Poyser #1806

Counsel for the Chief of Police
Co-Counsel for the Chief of Police
Counsel for Constable Poyser
Third Party Complainant
Subject Officer

ALLEGATION

Constable Poyser stands charged with one count of Unlawful or Unnecessary Exercise of Authority in connection with an incident that occurred on January 11th, 2010.

It is alleged that in the afternoon hours of that day, that Constable Poyser was on-duty and working out of the Criminal Investigation Bureau, and present at 21 Division.

Constable Poyser had arranged for [REDACTED], age 13, to attend 21 Division to be interviewed in relation to a dispute that had occurred at [REDACTED] [REDACTED] on the 23rd of December, 2009. [REDACTED] had attended 21 Division in the company of Marcus Brito, who was his Group Home caseworker.

Constable Poyser conducted an interview of [REDACTED] in an interview room at 21 Division. At the completion of the interview, Constable Poyser escorted [REDACTED] to the front lobby of 21 Division where Marcus Brito had been waiting. While in the lobby area of 21 Division Constable Poyser and [REDACTED] became involved in a verbal altercation.

Constable Poyser applied unnecessary force by grabbing and holding [REDACTED] by the collar.

On Tuesday the 13th of September, 2011, at 2 County Court Boulevard, Suite #210A, Brampton, Constable Poyser attended with his counsel, Mr. Peter Brauti and entered a plea of not guilty to one count of Unlawful or Unnecessary Exercise of Authority. A Hearing ensued.

FACTS NOT IN DISPUTE

The following documents were tendered as exhibits by the Prosecutor and/or Defense. These documents are:

- Exhibit #5:** *A copy of a diagram of the lobby area/ground floor of 21 Division.*
- Exhibit #6:** *A second copy of a diagram of the lobby area/ground floor of 21 Division*
- Exhibit #7:** *A third copy of a diagram of the lobby area/ground floor of 21 Division*
- Exhibit #11:** *A fourth copy of a diagram of the lobby area/ground floor of 21 Division*
- Exhibit #12:** *A fifth copy of a diagram of the lobby area/ground floor of 21 Division*

Three witnesses were called by the Prosecution, Mr. Marcus Brito, [REDACTED], [REDACTED], and Constable Bikran Wander. The subject officer, Constable Trevor Poyser, Staff Sergeant Braden Baron, Ms. Kate Ann Wylde, Detective Sergeant Kelly Kippen, and Constable Richard Clarke, were called as witnesses for the defense.

I find from the documents tendered, and the testimony of the witnesses, that the following facts are not in dispute.

On January 11th, 2010, shortly after 1:00 pm, [REDACTED] attended 21 Division, Peel Regional Police, in the company of a Mr. Marcus Brito. [REDACTED] was spoken to by Constable Trevor Poyser in an interview room within 21 Division. After a period of time he returned to the lobby area where Mr. Brito was waiting for him.

An incident then occurred that is now the subject matter of this Tribunal.

POSITION OF THE PROSECUTION

It is the position of the Prosecution that this is a situation where the charge is “Unnecessary Use of Force” and that this case stands for the proposition that even though an officer is angry by a situation and he or she acts out of emotion, it is not an excuse to use excessive force. The Prosecution contends that the matter became personal for Constable Poyser, the emotional side got the better of him and he reacted by grabbing [REDACTED] by the collar. The Prosecution relies on the compelled interview given by Constable Poyser in which he admits to grabbing the collar and holding the victim, as unreasonable in all of the circumstances. The Prosecution contends that the force used by Constable Poyser is not reasonable and that the onus is on the defense to justify the force used. The Prosecution contends that the defense did not meet that onus.

The Prosecution directed me to the case of *St. Thomas Police Force v. Constable John B. Burgess*. This is a decision that came from the Ontario Police Commission and it identifies the issues and establishes what the Prosecution needs to meet in this case, and that it is the test that needs to be applied in this case. The Prosecution noted that this case, the *Burgess case*, is an older case from 1987, and supplied additional cases that affirm the standard.

The Prosecution further directed me to the case of *Chartier v Greaves*. This is a civil case that identifies what can be called excessive force, and that the onus of proving that the “Justification any use of force lies on him who asserts it.” The Prosecution additionally supplied the *Sergeant Ghadban case*, a Police Service Act case as confirmation that the onus is on Constable Poyser to prove the force used was not excessive and reasonable.

REFERENCED CASES

The Prosecution cited several cases as follows:

- **Constable John B. Burgess v St. Thomas Police Force**, Ontario Police Commission, (March 1, 1989).
- **Constable Paulo Batista v Paul Smith and Ottawa Police Service**, Ontario Civilian Commission on Police Services, (February 22nd, 2007)
- **Diana Berketa v Regional Municipality of Niagara Police Services Board and Constable William Gurney**, Ontario Superior Court of Justice, (October 31 and November 1, 2007).
- **Chartier v Greaves**, Ontario Superior Court of Justice, (February 22nd, 2001).
- **Gallo v Greater Sudbury Police Service Board**, Ontario Superior Court of Justice, (October 23rd, 2006).
- **Sergeant Kal Ghadban #10230 v Ottawa Police Service**, Police Services Act
- **Huard v Romualdi**, Board of Inquiry Police Services Act, (April 30th, 1993).
- **Police Constable Daniel Bargh #1686 v The Ottawa Police Service**, Police Services Act, (November 16th, 2007).
- **Constable Ansel Hill No. 2503 v Metropolitan Toronto Police Force**, The Police Services Act, (January 9th, 1979).
- **Braaten v Perry**, Saskatchewan Court of Queen’s Bench, (June 27th, 1979).
- **Police Constable Cardinal v The Ottawa Police Service**, Police Services Act,
- **Constable Sean Osborne #2850 v The Peel Regional Police**, Police Services Act (September 15th, 2009).
- **Constable Michael Seymour Badge 255 v Kingston Police**, Police Services Act, (July 31st, 2009).
- **Constable Glen Turpin v Durham Regional Police**, Ontario Civilian Commission on Police Services, (January 20th, 2000).
- **Joseph Kerr, Police Constable 1955, Identification Bureau, Metropolitan Toronto Police v W. Thomas McGrenere, Esq., Q.C. Member**, The Ontario Police Commission, (July 9th, 1981).

- **Constable L. Turgeon v Ontario Provincial Police**, Ontario Civilian Commission on Police Services, (November 5th, 1999).

POSITION OF THE DEFENSE

It is the position of the Defense that the excessive force at issue in this case, established by the evidence presented, ranged from a low of 1.5 seconds by Constable Poyser to a high of 5 seconds by Marcus Brito and [REDACTED]. That the Tribunal is now trying to determine if the force allegedly used in this case, is the appropriate amount of force. The Defense asserts that the force used consisted of a single push, or a push and grab, and that the credible evidence supports the duration of 1.5 seconds for this application of force, and not the 5 seconds duration.

REFERENCED CASES

The Defense cited the following case/rule of procedural fairness, *Browne v Dunn*, established in 1893, by the Judicial Council of the British House of Lords.

FINDINGS

THE EVIDENCE

Mr. Marcus Brito: Mr. Brito testified that in January of 2010 he was a “child and youth worker” at [REDACTED], and he would take care of the day to day services for kids that come from troubled backgrounds. It was in this capacity that he was the primary worker for [REDACTED]. He had been in that role for approximately ten to eleven months. He confirmed that [REDACTED] was a ward of the Children’s Aid Society.

Mr. Brito testified that on January 20th, 2010, he filed a complaint with the Office of the Independent Police Review Director (O.I.P.R.D.) and that complaint subsequently became Exhibit #4 in these proceedings.

Mr. Brito attended 21 Division, Peel Regional Police, on January 11th, 2010, with [REDACTED]. That [REDACTED] was to speak to Constable Poyser about an incident at a previous group home, at a previous time. They were greeted by Constable Poyser and taken to an interview room within 21 Division.

Mr. Brito advised that Constable Poyser asked [REDACTED] to make a statement as to what had occurred at the previous group home and [REDACTED] didn’t say much. This upset Constable Poyser.

Mr. Brito stated that Constable Poyser then had [REDACTED] remove his coat and hat. Constable Poyser then had Mr. Brito leave the interview room with [REDACTED]'s belongings, and return to the front lobby of 21 Division. Mr. Brito waited approximately 20-25 minutes in the front lobby and [REDACTED] and Constable Poyser came out a door and into the lobby area.

Mr. Brito then heard Constable Poyser say something along the lines of, "You know this kid is going to end up in one of two places, either dead or in jail." Brito then heard [REDACTED] say something along the lines of "If you're going to continue to talk crap, I'm going to continue to talk crap too."

Mr. Brito testified that's when "*Officer Poyser went from zero to 100 in a matter of seconds*". Poyser proceeded towards [REDACTED] while he was sitting, grabbed him by the top of his shirt, put his other hand around his neck, pinned him against the wall. Brito stated he told him to take his hands off his kid and that he was taking it too far. Poyser held him up for a little bit and then let him go.

Mr. Brito further stated that while approaching [REDACTED], Constable Poyser pointed to cameras and indicated there were cameras here and there, then grabbed him, pinned him against the wall, and lifted him off the floor.

Mr. Brito testified that Constable Poyser had his right hand on the collar and his left hand on the neck of [REDACTED], and that he lifted him up on his "*tippy toes*" up enough that there was air between the ground and his feet, and his "*tippy toes*" were kind of dangling toward the floor.

Brito then indicated that after this incident, Poyser went back into 21 Division and he and [REDACTED] subsequently left.

Mr. Brito testified that he and [REDACTED] were upset and investigated how to make a complaint about Constable Poyser's actions. They subsequently made a complaint with the O.I.P.R.D.

Mr. Brito indicated that as far as he was able to see, there were no physical injuries that could be seen on [REDACTED].

Mr. Brito advised that when this incident occurred there were three other officers in the lobby area but none of them responded or intervened.

Under cross examination: Mr. Brito testified that it was his experience that [REDACTED] was an honest person. Brito was also aware of the alleged incident that was the reason why [REDACTED] was brought to 21 Division to speak to Constable Poyser. That there was documentation of this incident from his office, and that it was also the reason that [REDACTED] was transferred to his group home. Brito further testified that it would be his expectation that [REDACTED] would be honest and forthright in his interview with Constable Poyser.

Mr. Brito testified that he had some discussion with [REDACTED] about this incident and that someone had been approached by someone else with a knife.

Mr. Brito indicated that the way [REDACTED] communicates, “That if he didn’t want to give someone the truth that he wouldn’t,” but it would still be his expectation that [REDACTED], or anyone for that matter, would be truthful when interviewed by the police.

Mr. Brito indicated that while in his care [REDACTED] had been involved in incidents where verbal threats were made towards other kids in the home. Brito could not acknowledge any acts of physical violence but did acknowledge there was the possibility that there could have been incidents of dishonesty.

Mr. Brito marked on a diagram submitted as an exhibit, where he recalled everyone positioned in the lobby of 21 Division when the incident occurred. Mr. Brito was adamant that this confrontation between [REDACTED] and Constable Poyser, lasted approximately five seconds.

[REDACTED]: [REDACTED] testified that on January 11th, 2010, he was a resident of [REDACTED] and while there Marcus Brito was his “prime.” He attended 21 Division, Peel Regional Police, with Marcus Brito to meet with Constable Poyser.

While at 21 Division he went into an interview room with Constable Poyser, and was unsure how long he was in the interview room with Constable Poyser. After this period of time, he was walked back to the lobby area by Constable Poyser where Marcus Brito had been waiting for him.

[REDACTED] testified that after a brief conversation where he said he had a poor attitude, and he would be six feet under, Constable Poyser choked him with his left hand, and raised his right hand seemingly to strike him. [REDACTED] stopped his right hand from striking him before contact.

[REDACTED] was shown the Public Complaint Form marked as Exhibit #4. He confirmed he had made a complaint with Marcus, that his signature was on the form, but he could not recall how the document was created.

[REDACTED] testified that he did not receive any visible injuries but that his neck was hurting at the time.

[REDACTED] stated that this incident occurred in the lobby of 21 Division and that there were two to three officers behind the desks when the incident occurred.

Under cross examination: [REDACTED] testified that he had lived at a group home on [REDACTED]. While at the [REDACTED] he was involved in a fight with another male named [REDACTED].

██████████ was played a videotape of an interview that occurred on January 11th, 2011, between Constable Trevor Poyser and himself. ██████████ repeatedly indicated he could recall very little of what occurred before, during, or after this altercation on ██████████ or the interview on videotape.

██████████ testified that this incident, when Constable Poyser had his hand on his throat, lasted a little more than two seconds. When questioned further, he stated it was more than two seconds, maybe four or five seconds. He further stated that he was lifted up to stand on his “*tippy toes*” but that his feet never came off of the ground.

Constable Bikram Wander: Constable Wander testified that he has been a member of the Peel Regional Police since August of 2006 and is currently assigned to 21 Division, Uniform Patrol, and that he was so assigned on January 11th, 2010. He was working dayshift from approximately 5:30 a.m. to 5:30 p.m., and he was working at the front desk. He was one of two constables working the front desk, the other being Constable Mike Murray. Also, there were security personnel that he only knew as Kate. There was also a Staff Sergeant working that date and it was Staff Sergeant Braden Baron. Constable Wander testified that his main responsibility was dealing with members of the public that attended the front desk of 21 Division. Also, he had attended court on the 11th from 9:30 a.m. to 1:30 p.m...

He further stated that he knew Constable Poyser from seeing him around the Division, but hadn't personally met him, and saw him in the lobby of 21 Division on the 11th. Constable Wander testified that he saw Constable Poyser coming out from inside C.I.B. with a young male. Both were arguing with each other, and the young male was yelling loud at Constable Poyser. The young male moved towards Constable Poyser and got really close. Constable Poyser moved him back, “just to get him out of his face”.

Constable Wander described the youth as five to six feet from Constable Poyser when he moved towards him and he was “regular walking” when moving towards him.

Constable Wander could only describe this young male as black, but added he was in the company of another male adult.

Constable Wander described the physical contact as a pushing him back, “just like moved him back” and he pushed him in the chest area.

Under cross examination: Constable Wander testified that the youth advanced to one or two feet away from Constable Poyser and that he moved him back with one or two hands, he wasn't sure. Constable Poyser's hand(s) were open and the youth had advanced into what would be called his personal space.

When the defense put a couple of versions of the events to Constable Wander he testified that Constable Poyser did not grab the youth by the throat and did not pin him

against the wall. He also did not agree that Constable Poyser grabbed the youth by the throat and lift him off the ground and his did not appear to have lost control.

Staff Sergeant Braden Baron: (*Staff Sergeant Baron was the first witness called by the Defense*) Staff Sergeant Baron testified that he was working on the 11th of January, 2010, and that he was in charge of the Division at that time. He further testified that he was aware of the allegations against Constable Poyser in a general sense, but he did not have any firsthand knowledge or any notes in relation to the matter. Staff Sergeant Baron described the front area of 21 Division and marked a diagram that was tendered as Exhibit #11.

Staff Sergeant Baron testified that he generally keeps the window closed between his office and the front desk for privacy but would expect to be able to hear if there was yelling and screaming going on.

Staff Sergeant Baron testified that it would be his expectation he would be advised of any altercations between an officer and a member of the public. This would be brought to his attention. He further added he shared those expectations with his staff, including the civilian members that work in the front, in particular a Ms. Kate Wylde.

Staff Sergeant Baron advised that on January 11th nothing was reported to him about any kind of significant altercation between Constable Poyser and a member of the public.

Under cross examination: Staff Sergeant Baron confirmed that he generally kept the window closed between his office and the front desk and that he would get up and walk around the Division during the course of his shift. He also confirmed that he would expect to be advised of any officer using force in the lobby of the building.

Under re-examination: Staff Sergeant Baron was giving an example of an officer putting his hands up and saying “hey, move back” he wouldn’t expect that be reported to him.

Ms. Kate Wylde: Ms. Wilde testified that she has been a civilian member of the Peel Regional Police for ten years with the last being a Security Console Operator at 21 Division. She is involved in overseeing what is happening at the front desk, watching prisoners, answering phones, sending CPIC messages, keeping the Staff Sergeant abreast of what’s happening, a little bit of everything.

Ms. Wylde testified that she was working in that role on the 11th of January, 2010.

Ms. Wylde elaborated that she would advise the Staff Sergeant of anything of “significance” that happened at the front desk.

Ms. Wylde advised that she met Constable Poyser maybe six or seven years ago.

Ms. Wylde testified that she initially had no recollection of the incident between Constable Poyser and the other person. She has since thought on it for a very long time, and at some point did remember something. She remembers thinking it was a “non-event”. That there was a teenaged boy on the other side of the counter and that Trevor was there. That Trevor and the teenaged boy exchanged words and he left.

Ms. Wylde did not witness any physical interaction and could not recall the words exchanged.

Ms. Wylde testified that had a physical altercation occurred she would have been aware of it and that would be the type of incident that she would report to the Staff Sergeant.

Under cross examination: Ms. Wylde confirmed that she had been interviewed in January of 2010, and again in April of 2010, and did not recall the incident. She also advised that she had not made any notes on the incident. She could not recall when she had remembered the incident but stated it was long enough ago that she was surprised to be advised to be at the tribunal.

Ms. Wylde stated that she did not call Internal Affairs when she recalled the incident. She did advise a Staff Sergeant Andrews. He suggested she call Jeff Banton on Monday and she did that.

Ms. Wylde advised that she recalled words being exchanged and believed at sometime Trevor said “enough.” This was an average day in terms of being busy, and that she was required to multi-task throughout the day.

Constable Trevor Poyser: Constable Poyser testified he came to Canada from Jamaica in 1975. He is divorced at present and the father of four children that range from 21 to one year old.

He has been a member of the Peel Regional Police for twenty-one years as of November 5th. He has a variety of experience with Peel Regional Police and has a travel business on the side, as well as, doing some financial planning. He has also been involved in coaching basketball for approximately ten years.

Constable Poyser advised that his dealing with [REDACTED] began when he was assigned an investigation. This was either in late December or early January. A report was taken by uniform officers. It required follow-up and was sent back to CIB. Constable Poyser read the report and attempted to locate [REDACTED] who was a witness.

Constable Poyser described the incident on the report that occurred on December 23rd he believed. [REDACTED] had gotten into a fight with another young fellow named [REDACTED] at a group home. Both were residents of this home. [REDACTED] lost the fight

and then contacted someone. This person then attended the home. While at the group home the individual located [REDACTED], and punched and kicked him. He pulled a knife, held it to [REDACTED]'s throat, and threatened him.

Constable Poyser testified that after a number of calls [REDACTED] was to attend 21 Division on the 11th of January, 2010. He was contacted by a Marcus Brito who agreed to bring him to the station some time after 1:00 pm.

Constable Poyser stated that prior to [REDACTED] attending 21 Division he had done some background checks on him. He was aware of contacts with the police and issues at group homes. That he had been involved in acts of violence and had some outstanding criminal charges.

Constable Poyser had received a phone call in CIB that “your appointment is here” and he went to the front lobby to meet them. He walked back to CIB with Mr. Brito and [REDACTED], commenting on [REDACTED]'s attire for court being inappropriate.

Constable Poyser took them to an interview room and had [REDACTED] remove some of his clothing for officer safety reasons. The video was off at this time and Constable Poyser obtained some personal information for his report.

Constable Poyser testified that after a brief period of time Mr. Brito was taken to the front desk with the articles of clothing that had been removed. They had a brief conversation on the way to the front desk about [REDACTED]'s attitude, and they appeared to be in agreement.

Constable Poyser stated that the exhibit of the subsequent interview of [REDACTED] was in accordance of his recollection of the interview and as a result he had formed the opinion that he was lying and withholding evidence.

Constable Poyser stated that he was disappointed that [REDACTED] wasn't willing to help, had disrespect for the law, him as a policeman, and had a problem with authority.

Constable Poyser stated that after the interview he walked [REDACTED] back to the front desk, and they had conversation on the way back. The conversation consisted of him telling [REDACTED] his attitude “really sucks”, and that for someone his age there was a good chance he wouldn't live to his 16th birthday. [REDACTED] was about 13-13 and ½ years old at the time.

Constable Poyser testified that back in the late 80's, he was a “Big Brother” with Children's Aid and had a 14 year old youth with a similar bad attitude that he said the same thing to. This youth died before he was 16. He was involved in gang warfare and had the same bad attitude. Constable Poyser stated that he made these statements in an effort to educate him.

Constable Poyser then took [REDACTED] to the front lobby where conversation took place with Marcus Brito. A diagram (*identified as Exhibit A initially, submitted as Exhibit 12*) was tendered where Constable Poyser described the front lobby and where everyone was situated.

Constable Poyser indicated he engaged in a conversation with [REDACTED] where he stated he probably wouldn't live to see his 16th birthday and suddenly [REDACTED] advanced towards him. The Defense had Constable Poyser demonstrate what happened when [REDACTED] advanced.

Constable Poyser testified that he pushed [REDACTED] off him and stepped slightly back. He stated that it was an "officer safety thing," his personal space had been invaded, and he perceived this as a threat.

Constable Poyser stated that he did not strike [REDACTED] with a closed fist or grab him by the throat.

Constable Poyser stated that this occurred after 2:00 pm and that it was in the presence of Station Duty and Security Console personnel. He also believed that there may have been other civilians present and that no one responded to this incident.

Constable Poyser estimated the duration of the contact to be one to one and a half seconds in duration.

Constable Poyser testified that Marcus Brito reacted to the incident by jumping up and asking what he was doing. Shortly after this [REDACTED] and Mr. Brito left the building.

Under cross examination: Constable Poyser was referred to his compelled interview with Internal Affairs officers Brown and Ford on June 22nd, 2010, and the transcripts that had been filed as Exhibit #9. Constable Poyser confirmed he had reviewed the transcript and that he had been truthful when interviewed.

Constable Poyser confirmed his evidence-in-chief as to the nature and duration of his confrontation with [REDACTED]. Under questioning from the Defense Constable Poyser stated he might have grabbed [REDACTED] by the collar.

Constable Poyser further testified that when he interviewed [REDACTED] he considered him not to be a suspect, but that if information was revealed in the interview he could have become a suspect. That prior to [REDACTED] attending the Division he believed [REDACTED] would have information on the person who attended the group home after his fight with [REDACTED].

Constable Poyser was questioned as to a contradiction in his evidence-in-chief and the videotaped interview with [REDACTED]. (*In the video it is shown that Constable Poyser and [REDACTED] are entering the room alone*) Constable Poyser testified that they

would have walked out and re-entered when the video was turned on, and that he had forgotten that when he testified in-chief.

Constable Poyser was shown a copy of Exhibit #10 (*Peel Regional Police General Procedure I-B-102 “Use of Force”*). He acknowledged that “the application of force is for the purpose of controlling the subject or in defense against assault” form a part of this policy.

Constable Poyser also acknowledged that part of the policy that the force should not be applied for malicious reasons and sufficient to control the subject and not excessive.

Constable Poyser reviewed his compelled interview and confirmed his conversation with Marcus Brito in the lobby of 21 Division. Constable Poyser confirmed the contents of the transcripts, as it relates to the answers he had given, were accurate. He indicated he had some difficulty with the context of some of the transcripts but that his answers were accurate.

Constable Poyser testified that in addition to removing some of [REDACTED]’s clothing, he conducted a “pat down” outside the interview room in the presence of Mr. Brito. Poyser stated that this was all done for “officer safety” concerns.

Constable Poyser testified that when [REDACTED] was uncooperative and disrespectful in the interview he concluded the interview and took [REDACTED] back to the lobby.

Constable Poyser stated that while walking to the front lobby he started “strupsing” (sucking his teeth), which is also a sign of disrespect.

Constable Poyser testified that he felt it was important for him to make the comments to [REDACTED] that he made (*reference in not living to his 16th birthday*), because he felt it was important to curb the attitudes of young people in his community.

Constable Poyser was shown his statement and directed to where he stated “I grabbed his collar.” Constable Poyser acknowledged that is what he said and that it differed from his evidence-in-chief today. Constable Poyser stated that he was clarifying his answer today.

Constable Poyser testified that when [REDACTED] moved towards him, his hands were up, and that he had not described that in his interview with Internal Affairs.

Constable Poyser stated that [REDACTED] was moving at “regular speed” when he moved towards him. And he was put in a defensive mode. Constable Poyser stated he was not frustrated at this time but was frustrated while in the interview room.

Constable Poyser confirmed, in his compelled interview with Internal Affairs, that he had stated on several occasions that he had “grabbed” [REDACTED]

Constable Poyser confirms that he made references to cameras in the lobby of 21 Division at the time of this incident and he was under the impression that they were recording.

Staff Sergeant Kelly Kippen: Staff Sergeant Kippen testified as to the character of Constable Poyser and gave no direct testimony on the facts in issue of this matter.

Under cross examination: There was no cross examination of this witness.

Constable Richard Clarke: Constable Richard Clarke testified as to the character of Constable Poyser and gave no direct testimony on the facts in issue of this matter.

Under cross examination: There was no cross examination of this witness.

ANALYSIS:

I have carefully reviewed all of the evidence given by the witnesses, and the documentation supplied. I would like to make some comments on the witnesses that appeared before this Tribunal.

Mr. Marcus Brito: Mr. Brito was the first witness called by the Prosecution. He testified that Constable Poyser grabbed [REDACTED] with his right hand on his collar and left hand around his neck and lifted him off the ground. This is inconsistent with the evidence of [REDACTED], Constable Wander, and Constable Poyser. Mr. Brito testified that [REDACTED] was an honest person and he did not know him to be violent. Only under, what I would categorize as vigorous cross examination, would he acknowledge that he had information of acts of dishonesty and violence. He qualified his answer indicating they were not in his interactions with him, or unusual for a person of his age. Mr. Brito presented that he was intent on putting [REDACTED] in a positive light regardless of what the facts may have reflected. Mr. Brito repeatedly questioned the questions that were put to him by the Defense, and the requirement for him to answer them.

While I believe that Mr. Brito did witness something that he personally felt was inappropriate, the manner in which he gave his evidence was not clear and I am not convinced he was always completely forthright. Therefore, the weight afforded his testimony is greatly diminished.

██████████: ██████████ was the second witness called by the Prosecution. ██████████ testified that Constable Poyser reached out with his left hand and “choked” him. While he was doing that, Constable Poyser’s other hand was coming up to hit him and he blocked it. ██████████ testified that he wasn’t lifted off the ground but he was raised up on his “tippy toes.” He described this as having occurred over a period of longer than two seconds, more likely four to five seconds.

██████████ was confronted with conflicting statements, given at various times, regarding this incident. Rather than address these inconsistencies, ██████████ repeatedly responded that he didn’t remember. When questioned about events that occurred before, during, and after the events of January 11th, 2010, at 21 Division, Peel Regional Police, ██████████ repeatedly responded that he could not remember what had occurred or what answers he had given. If ██████████’s evidence is to be believed, he has a strong recollection of what had occurred in the lobby of 21 Division on the 11th of January 2010, but little, to no recollection, of much else.

I find that ██████████ did not testify in a truthful manner throughout his evidence, and therefore I cannot rely on any of his testimony. He was not clear in his evidence and I am not convinced by his evidence. I assign little weight to the testimony of ██████████.

Constable Bikram Wander: Constable Wander was the last witness called by the Prosecution and testified that on the 11th of January, 2010, he was working “Station Duty” at 21 Division, Peel Regional Police, when the incident involving Constable Poyser and ██████████ occurred. He described being alerted to the incident by the arguing between Constable Poyser and ██████████. Constable Poyser appeared “upset” by the yelling. Constable Wander testified that ██████████ started approaching Constable Poyser and when he got to within approximately two feet, Constable Poyser “just moved him back.”

Constable Wander testified that he had observed Constable Poyser and ██████████ for approximately 15-20 seconds in total and that the physical contact was in the chest area of ██████████.

Constable Wander described the tone of ██████████ as angry or mad. He described the tone of Constable Poyser as unhappy and agreed with the Defense’s suggestion that he didn’t appear to have lost control.

Constable Wander gave his evidence in a clear manner and I am convinced he was truthful. I accept the evidence given by Constable Wander and rely upon it in forming my decision.

Staff Sergeant Braden Baron: Staff Sergeant Baron was the first witness called by the Defense. Staff Sergeant Baron testified that he was working, and the officer-in-charge of 21 Division at the time of the incident. He further indicated he had no first hand knowledge of the interactions between Constable Poyser and [REDACTED], and no notes in relation to this matter. Staff Sergeant Baron testified that he has given instructions to his staff that they are to report any significant incidents to him that occur while working. He would expect that any incidents of a “physical altercation” would be reported to him, and none were reported on the 11th of January, 2010. He also described the layout of 21 Division, and the front reception area specifically.

Staff Sergeant Baron testified in a candid, forthright manner, however he had little evidence to offer that would assist me in making any findings.

Ms. Kate Wylde: Ms. Wylde is a civilian employee with the Peel Regional Police, and was working in the front reception area of 21 Division on the 11th of January, 2010. Ms. Wylde stated that her duties include keeping the officers and Staff Sergeant aware of significant incidents occurring within the Division. Ms. Wylde testified that initially she had no recollection of the incident between Constable Poyser and [REDACTED]. She had indicated this when interviewed and had given a statement to that effect. She testified after a long period of time and “beating myself up” over failing to remember the incident, she had some recollection. She described the incident as a “non-event” and did not recall any physical contact, and there had been a verbal exchange.

I found Ms. Wylde to be clear and credible in her testimony, however she readily admitted to not remembering much and not remembering “specifics” so I find little in her testimony that is of assistance to me.

I will comment that I do have extensive personal knowledge of Station Duty and Security Console Operators’ duties, and note that any incident of significant physical contact that were to occur in the front area of a Police Division, would be reacted to and noted by any civilian and/or police personnel.

The Defense elicited evidence from Ms. Wylde as to the character of Constable Poyser. The Prosecution voiced objection to this evidence, by way of a motion, and the evidence of witnesses called later, Detective Sergeant Kelly Kippen and Constable Richard Clarke. The Prosecution cited several cases in support of his motion. It was my ruling to hear the evidence, but to comment on what if any weight would be attached to it. The character evidence given by Ms. Wylde had no bearing on the matter before this Tribunal and I have given it no weight in my deliberations. The evidence given by Detective Sergeant Kelly Kippen and Constable Richard Clarke was entirely evidence of good character and I did not rely upon, it or give it any weight, in my deliberations.

Constable Trevor Poyser: Constable Poyser is the accused in this matter. He testified before this Tribunal and a transcript of his compelled interview to Detectives Ford and Brown on the 22nd of June, 2010, was accepted as Exhibit #9. Constable Poyser gave evidence of his work experiences and circumstances leading up to the altercation that occurred in the lobby of 21 Division on January 11th, 2010. In his evidence before this Tribunal Constable Poyser stated that when [REDACTED] advanced towards him, he pushed him back with his left hand outstretched, and cocked his right hand with a closed fist about chest high. He advised this was done for officer safety and to give himself some space. When questioned further, Constable Poyser testified it happened quickly, maybe a second-second and a half, and that it was a “half of a minor grab and a push type of deal.”

Under cross examination Constable Poyser stated he “might have grabbed” but if he had grabbed [REDACTED] it wasn’t for long. He stated that the total interaction with his hand making contact with [REDACTED] lasted for about a second to a second and a half. Constable Poyser further stated that he wasn’t 100% sure if he had grabbed [REDACTED] or not, but that there was contact that lasted one to one and a half seconds. Constable Poyser acknowledged, after repeated questioning, that in his compelled interview he stated he had “grabbed” [REDACTED]. He acknowledged that at several times in his compelled interview he had acknowledged “grabbing” [REDACTED].

In reviewing Exhibit #9, (*the compelled interview of Constable Poyser*) Constable Poyser makes four references to “grabbing” [REDACTED].

In Constable Poyser’s evidence-in-chief, cross examination, and compelled interview he consistently stated that [REDACTED] advanced towards him, and that the physical response to this (*whatever the degree of physical contact is determined*), was to move him back. Also, throughout Constable Poyser was consistent that this physical interaction occurred over one to one and a half seconds in duration.

I find that Constable Poyser’s evidence at this Tribunal, and his statements at the compelled interview with Professional Standards, are consistent and credible. I find he did grab [REDACTED], as he advanced, and that the physical nature of this interaction lasted between one to two seconds.

The Prosecution, in their submissions, stated “So in terms of the witnesses that we’ve heard, the evidence of Mr. Brito and [REDACTED], as you know, and this was made clear at the beginning of this matter, the Prosecution’s position is not the same as the public complainant and the victim.” The position of the Prosecution is the excessive force and improper conduct related to the grabbing of the collar and admitted and all of the surrounding circumstances, have the effect of rendering Constable Poyser’s reaction and the force used, and in the manner used as unreasonable in all of the circumstances.

As a result of my analysis of the evidence, I am left with the evidence of Constable Wander and Constable Poyser (*in testimony and his compelled interview*), to determine

whether the nature and duration of the physical interaction between Constable Poyser and [REDACTED] constitutes an act of unlawful or unnecessary exercise of authority contrary to the Police Services Act. The Prosecution, Mr. Dubois, supplied a case book, with several cases, to assist me with this determination.

The first case, *Constable John B. Burgess v St. Thomas Police Force*, Ontario Police Commission, (March 1, 1989) establishes the test that needs to be applied in this case. To quote on page #5, the last paragraph, “The word ‘unnecessary’ as used in the section in question might mean ‘not absolutely essential’ or it might mean ‘unreasonable under the circumstances.’” It continues with, “We find that the word ‘unnecessary’ as used in the section does not mean ‘not absolutely essential’ but rather means something closer to ‘unreasonable under the circumstances’ considering the other options that were in fact available.’ ”

This test is confirmed by the case of *Constable Paulo Batista v Paul Smith and Ottawa Police Service*, Ontario Civilian Commission on Police Services, (February 22nd, 2007), and supported by *Diana Berketa v Regional Municipality of Niagara Police Services Board and Constable William Gurney*, Ontario Superior Court of Justice, (October 31 and November 1, 2007).

I accept this as the test I must apply in this case.

The Prosecution then turns me to the case of *Chartier v Greaves*, Ontario Court of Superior Justice, (October 23rd, 2001). This case establishes on page 16, paragraph(c) that, “The onus of proving that the force used was not excessive lies on the police officers. Put another way, the onus on a plea of justification in the use of force lies on him who asserts it.” This case goes on further to state, on page 16, paragraph(d) that, “The police officer is not at liberty to shirk his/her duty. If he/she does, he/she may be charged with “neglect of duty”. A police officer should, where possible, explain why an obviously alternative but less dangerous course of action was not taken.” This premise is confirmed in the case of *Huard v Romaldi*, Board of Inquiry Police Services Act, (April 30th, 1993).

The premise in the two cases cited above is that the onus is on Constable Poyser, and the Defense, to explain why the force is reasonable, and I accept this premise.

The Prosecution also supplied the case of *Constable Ansel Hill No. 2503 v Metropolitan Toronto Police Force*, The Police Services Act, (January 9th, 1979), and I accept that it stands for the principal that provocation is not an excuse and I again accept this premise. And the case of *Joseph Kerr, Police Constable 1955, Identification Bureau, Metropolitan Toronto Police v Thomas McGrenere, Esq., Q.C. Member*, The Ontario Police Commission on Police Services, (November 9th, 1999) that stands for the proposition that defending yourself to an anticipatory assault is not always reasonable.

I am left to find was the force applied by Constable Poyser “unnecessary” as defined in the *Burgess case*. Did Constable Poyser and the Defense explain why the force was reasonable?

I find that with the knowledge that Constable Poyser possessed of [REDACTED]’s past acts of violence, it was not unreasonable for him to repel [REDACTED]’s advancement by grabbing him, and pushing him back, in an act that occurred over less than two seconds as he explained in his evidence and compelled statement, and that the evidence from the complainants was not clear and convincing.

In reviewing all the facts of this case, I find that the level of force applied by Constable Poyser was not as a result of provocation, and reasonable to stop the advancement of [REDACTED]. It does not meet the standard of “Unnecessary Exercise of Authority”

Consequently, I find Constable Poyser, not guilty.

Michael A. Moore #695
Superintendent-Peel Regional Police