

In the Matter of S.28(2) of *the
Royal Newfoundland Constabulary Act,*
1992 (the “Act”)

And In the Matter of

A public complaint of Diane Spurrell
Dated the 27th day of April, 2009

Between;

**The Royal Newfoundland Constabulary Public
Complaints Commission**

And;

Diane Spurrell

Complainant

And;

Constable R. Priddle

Respondent

And;

Constable L. Puddicombe

Respondent

And;

Chief of Police Robert Johnston

Respondent

Decision of the Chief Adjudicator

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Preface

1. These proceedings have their origin in a reference to the Chief Adjudicator by the Commissioner of the Royal Newfoundland Constabulary Public Complaints Commission dated the 30th day of November, 2010 pursuant to the Royal Newfoundland Constabulary Act, 1992, SNL. 1992, C. R-17 and too the Royal Newfoundland Constabulary Public Complaints Regulations CNLR 970/96.

THE REFERENCE READS AS FOLLOWS;

In the Matter of S.28(2) of the Royal Newfoundland Constabulary Act 1992
("the Act")

And in the Matter of the Public Complaint
of Diane Spurrell dated the 27th day of April,
2009

Date: November 25, 2010

To: John W McGrath, QC.

2. Pursuant to the Act and the regulations made thereunder, Cst. Lisa Harris (formerly Puddicombe) (regimental #717) and Cst. Rodney Priddle (regimental #599) are alleged to have conducted themselves in a manner unbecoming a police officer and liable to bring discredit upon the Royal Newfoundland Constabulary by;

- a) Without good and sufficient cause, making an arrest or detaining Dane Spurrell, contrary to Section 3(1)(a) of the Royal Newfoundland Constabulary Public Complaints Regulations CNR 970/96 (“the Regulations”), thereby committing an offence pursuant to Section 3(2) of the Regulations;
 - b) Use of unnecessary force with Dane Spurrell contrary to Section 3(1)(b) of the Regulations, thereby committing an offence pursuant to Section 3(2) of the Regulations;
 - c) Being discourteous to Dane Spurrell contrary to Section 3(1)(c) of the Regulations, thereby committing an offence pursuant to Section 3(2) of the Regulations;
 - d) Neglecting or omitting to promptly and diligently perform their duties as police officers, contrary to Section 3(1)(d) of the Regulations, thereby committing an offence pursuant to Section 3(2) of the Regulations.
 - e) Carrying out their duties in a manner contrary to the RNC Policy and Procedures Manual contrary to Section 3(1)(j) of the Regulations thereby committing an offence contrary to Section 3(2) of the Regulations.
 - f) Conducting themselves in a manner contrary to Section 3(1)(o) of the Regulations thereby committing an offence contrary to section 3(2) of the Regulations.
3. The particulars of the alleged offences are as follows: That Cst. Puddicombe and/or Cst. Priddle did, on or about the 19th day of April, 2009 at or near Mount Pearl, Newfoundland & Labrador and/or St. John’s, Newfoundland & Labrador, unlawfully take a person into custody, namely Dane Spurrell and thereafter detain and arrest him, all without lawful authority and in breach of the provisions of the Detention of Intoxicated Persons Act, the Criminal Code and the Charter of Rights and Freedoms. In the course of the said detention and immediately prior thereto, Cst. Puddicombe and/or Cst. Priddle did employ inappropriate and profane language while addressing Dane Spurrell and did use such force in excess of what was necessary in the circumstances resulting in minor injuries to Dane Spurrell. Cst. Puddicombe and/or Cst. Priddle did not afford Dane Spurrell an opportunity to communicate with his mother, notwithstanding his repeated requests to do so.

4. Pursuant to Section 28(2) of the Act, this matter has been referred to you to conduct a hearing pursuant to the Act and the Regulations made thereunder or to refer it to another Adjudicator.

5. Subsection 3(1) of the Royal Newfoundland Constabulary Public Complaints Regulations states; a Police Officer shall not conduct himself or herself in a manner unbecoming a Police Officer and liable to bring discredit upon the Royal Newfoundland Constabulary which shall include but not limited to the following:
 - a. Without good and sufficient cause make an arrest or detain a person;
 - b. Use unnecessary force with a prisoner or other persons contacted in the execution of duty;
 - c. Be discourteous to a member of the Public;
 - d. Neglect or omit to promptly and diligently perform his or her duties as a police officer;
 - e. Carry out his or her duties in a manner contrary to the RNC Policy and Procedures Manual;
 - f. Conduct himself or herself in a manner contrary to the Act.

Issues – Memorandum of Fact and Law – Commissioner

The relevant issues pertaining to these proceeds are as follows:

- a) Whether the police officers, or either of them, did without good and sufficient cause to make an arrest or detain Dane Spurrell on April 19, 2009 contrary to S. 3(1)(a) of the regulations;
- b) Whether the Police Officers, or either of them, did carry out their duties in a manner contrary to the RNC Policy and Procedures Manual on April 19, 2009 contrary to S. 3(1)(j) of the Regulations;
- c) Whether the Police Officers, or either of them, did neglect or omit to promptly and diligently perform his or her duties as a police officer on April 19, 2009 contrary to S. 3(1)(d) of the Regulations;
- d) Whether the Police Officers, or either of them were discourteous to Dane Spurrell on April 19, 2009 contrary to S. 3(1)(c) of the Regulations;
- e) Whether the Police Officers, or either of them, used unnecessary force with Dane Spurrell on April 19, 2009 contrary to S. 3(1)(b) of the Regulations;
- f) Whether Constable Harris conducted herself in a manner contrary to S. 2(1)(o) of Regulations of the Royal Newfoundland Constabulary Act, 1992, S.8(1)(g);

Onus of Proof, Balance of Probabilities

- a) The onus of proof rests with the Commissioner, no obligations or onus rests with the Respondent.
- b) In *F.H. v. McDougall* [2008] 3 S.C.R. (S.C.R.) Rothstein J. writing for the Court pertaining the Standard of Proof stated;

“In the result, I would reaffirm that in civil cases there is only one standard of proof and that is proof on the balance of probabilities. In all civil cases, the trial judge must scrutinize the relevant evidence with care to determine whether it is more likely than not an alleged event occurred.

- c) There is no burden on the Respondent to disprove anything.
Royal Newfoundland Constabulary Public Complaints Commission v. Constable Krista Clarke (Day) et al. [1994] Harris Book of Authorities Tab 1.

Synopsis of Facts of the Chief Adjudicator's

1. On the 19th day of April, 2009 at 12:18 a.m. Dane Spurrell had reached the intersection of Commonwealth Avenue & Topsail Road, at or near the City of Mount Pearl/St. John's, NL and was proceeding in an easterly direction along Topsail Road aforesaid and heading to his home to wit: 28 Greenwood Crescent off Topsail Road, Mount Pearl, NL.

2. Dane Spurrell's evidence is:
 - Q. What exactly was happening at the time you looked at your phone (showed the time as 12:18 a.m.)
 - A. There was traffic but then afterwards there was no traffic.
Transcript, November 5, 2012, page 50, lines 19-21

3. There is conflicting evidence as to where Dane Spurrell was situate as he ambled east on Topsail Road aforesaid towards home to wit: 38 Greenwood Crescent, Mount Pearl, NL.

4. It is certainly not trite to say that the evidence of the complainant, Dane Spurrell and the Respondents, Constable Priddle and Constable Harris, is froth with conflict which necessitated a careful analysis of the evidence offered by the respective parties involved in these proceedings.

5. The only certainty is that at 12:15 a.m. on Sunday, April 19, 2009 an RNC motor vehicle driven by Constable Harris and Dane Spurrell, son of the complainant, were situate in the same locale and Dane Spurrell was the "dark figure", wearing predominately dark clothing.

6. The photographs tendered in evidence disclose an area in the immediate vicinity of where Dane Spurrell was detained and arrested comprised of a mix of to wit: sidewalk, dirt, pavement and curb being terrain that Dane Spurrell maintains he traversed prior to his encounter with Constable Harris and Constable Priddle.
7. The documentary evidence from Constable Harris, to wit: Police Notes have identified Dane Spurrell "walking in the middle of the Road" (Topsail Road) whilst in her Case Summary Notes, she noted "male was walking in the center of the curb lane headed east"
8. The result of the conflict that evolved as to where Dane Spurrell was situated on Topsail Road aforesaid was a harbinger of the evidence that followed in these proceedings.
9. The most dramatic, prominent and poignant conflict between Constable Harris and that of Dane Spurrell have as their origin Dane Spurrell's detention pursuant to the provisions of the *Detention of Intoxicated Persons Act*, RSNL 1990 Chapter D-21 as amended and whether or not a motor vehicle had swerved around Dane Spurrell due to his alleged presence on the roadway causing potential harm to himself and/or others.

"As I (Constable Harris) was merging onto Commonwealth Avenue, I was checking my blind side, you know, looking behind me. I noticed a car was traveling north on Commonwealth Avenue to go east on Topsail Road in the merge lane and it swerved pretty, pretty obviously that caught my attention and I looked and I

saw that the car had swerved because of “the dark figure” that I had noticed before. So I turned my car around. I did a u-turn on Commonwealth Avenue and proceeded back up onto Topsail Road. I drove past “the dark figure”. I wasn’t sure if it was male or female but they had been walking and they were down off the sidewalk to cause this car to swerve.

Transcript, December 7, 2011, page 17, lines 4-19.

10. Dane Spurrell testified in response to the following questions:

Q. Well, were you concerned about walking at night, this particular night?

A. As far as I (unintelligible), it was safe.

Q. And what made you think you were safe?

A. Because – I don’t know, instinct.

Q. Instinct. What instinct are you talking about? What do you mean by that?

A. It’s just a feeling I get.

Q. So you weren’t concerned about your safety in the state of the night or the darkness of that particular night, would that be correct? You felt safe, is that your evidence?

A. Safe enough to walk where I was walking to at that point in time.

Transcript, November 5, 2011, p. 70, line 21 - page 71, lines 1-11.

11. Dane Spurrell went on to state and refute the assertion by Constable Harris that a car swerve around him and stated it didn’t occur:

Q. No, not entirely, I’m just saying I should ask, do I understand what you’re saying is that you had looked to see if there was traffic coming before you walked out onto the roadway?

A. I looked, there was nothing there.

Q. Okay, so as a consequence, do I gather that you felt safe when you walked out onto the roadway with your back to traffic.

A. Sure.

Q. Now there may be some evidence that in fact, a car swerved around you. Do you remember anything about that?

A. No swerving vehicle.

Q. A car swerving around you?

A. Do you like pie?

Mr. O'Flaherty, He said, "no swerving vehicle, Mr. Wicks,

12. Mr. Wicks:

Q. Oh, I didn't understand him to have said that, so that is your evidence, no swerving vehicle.

A. No swerving.

Q. Okay, did any vehicle come past you as you were walking on the roadway?

A. Last I checked, it was only the police car.

Q. So your recollection is that there was no vehicle that came past you as you walked on the roadway?

A. Except for the police car.

Q. And that was, in fact, coming from the other direction was it not?

A. It was going the same way that I was walking.

Transcript, November 5, 2012, page 72, line 17 – page 74, line 2.

13. Constable Harris' evidence was "the dark figure" proven to be Dane Spurrell displayed the following physical characteristics and to support her reasonable and probable grounds for his detention, to wit: eyes appeared droopy, face flushed, his speech and his walk at the time was very staggered, it wasn't a fluid motion.

Transcript, December 7, 2012, page 20, lines 17-20,

14. Constable Harris reiterated that she felt Dane Spurrell was impaired, possibly, it doesn't seem alcohol but impaired by drugs. A review of Constable Harris hand written notes (marked consent C#11) described Dane Spurrell as having to wit: slurred speech, watery and squinty eyes, flushed face, disorganized thought and disoriented walk. A review of Constable Harris Case Summary, Crown Attorney Report (Consent 1A) notes comprised the following observations, to wit: Constable Harris observed signs of impairment by possible drug such as to wit: slurred speech, watery and squinted eyes, flushed face, disorganized thought and disoriented walk. It is important to note that on December 7, 2012, page 21 of her testimony she stated no slurred speech, nothing slurred.

Constable Harris was asked:

Q. Okay, was there anything about his speech pattern?

A. It was very incoherent, very disorganized.

Q. It was incoherent?

A. Very jagged.

Q. It was incoherent was it?

A. Incoherent in that it wasn't you know, it wasn't again a fluid structure to wit: it wasn't, it wasn't a conversation as such, it was just very jagged.

Q. Okay, was he able to articulate what he meant? Were you able to understand what he was saying?

A. Yes

Q. Okay, I believe – and you also told Sergeant Roche that what he was saying was age appropriate as well, correct? On page 21, you were asked the question “was he able to articulate himself properly on page 21, what are your answers?”

A. Yea,

Q. Yes, he (Sgt. Roche) asked you to describe how he spoke to you? Can you just tell the adjudicator what you said?

ADJUDICATOR

Q. Can you slow down a little, I want to take this down.

A. Sorry, sir. I said. “It was slow”.

Q. You said “it was articulate”?

A. It was slow and it was concentrated but still like you know, with regards to age appropriate language, very much so. It was almost like he would start a sentence, stop in between, kind of what he was saying and then forward it which to me I wasn't sure if it was concentrated you know, trying to make sure he said the right thing or other times it was pure sarcasm.

Transcript, December 7, 2012, p. 113 - line 20 - p. 115 – line 13.

15. Further conflict and confusion existed between Dane Spurrell and Constable Harris as to precisely where Dane Spurrell was positioned on Topsail Road aforesaid as Dane Spurrell headed east on Topsail Road and towards home, to wit: 38 Greenwood Crescent, Mount Pearl, aforesaid.

Constable Harris stated:

Q. On Commonwealth Avenue, okay. Your notes and I believe your evidence indicated the person you observed was in dark clothing and you say walking in the center of the curb lane that's what your notes say?

A. That's what my notes say.

Q. As your Case Summary indicates the same thing, a male in dark clothing walking in the center of the curb lane?

A. I was at the time just being, you know very general and didn't think, you know, it was a matter of a foot to be specific, if he was in just right of center or the very center.

Q. Okay, so when you use the term the center of the road or in the center of the curb lane in your evidence, you're using that in a figurative sense, not to actually describe where the person was.

A. No, as I explained, Mr. Spurrell was to the right of center, if I'm to be specific and when I explained to Mr. Spurrell, I said you're walking in the middle of the road. I didn't narrow it down to him.

Transcript – December 7, 2012 p. 62, line 24 – page 63, line 23.

16. Constable Harris too provided a cautioned statement to Sergeant Roche as part of the investigation as to laying a charge pursuant to the DIP Act & Criminal Code offence, she informed Sergeant Roche, as a result of a question:

“he (Dane Spurrell) wasn't on the sidewalk, he wasn't on the curb or the gravel, he was down on the roadway; to which Constable Harris replied “Correct”.

Transcript – December 7, 2012, page 73, lines 9-11.

.../11...

17. Constable Harris was also posed the following question:

Q. But you didn't say he was in the center of the Road or in the Center of the curb lane, right?

A. Correct, either way, I thought he was still in danger.

Transcript – December 7, 2012, page 75, lines 10-12.

18. Constable Harris was also queried as follows:

Q. Oh, I see. So you say, Mr. Spurrell was in the location here, (DS #2)

A. Correct.

Q. Isn't that essentially the same location that Mr. Spurrell said he was in? That's his marking right there, the black.

A. Yeah, I don't disagree.

Q. And down here you say you saw him down at (DS #3)?

A. Correct.

Q. So you and Mr. Spurrell don't disagree on where he was and clearly from looking at the photographs, he's neither in the center of the road nor in the center of any curb lane, is he?

A. No but he was in enough to cause concern that a vehicle would hit him or a vehicle had to swerve around him.

Q. Constable Harris, do you agree that according to your recollection, he was neither in the center of the road nor was he in the center of the curb lane?

A. I agree that he was not in the center but that he was just right of center.

Transcript – December 7, 2012, page 78, line 8 – Page 79, Line 9.

19. Ultimately some consensus was achieved when Constable Harris in response to a subsequent question from the Chief Adjudicator was asked

Q. What I want to know is how far, okay, how far off that sidewalk was he (Dane Spurrell) in feet.

A. Off the sidewalk, he was probably a foot and half – two feet.

Transcript – December 7, 2012, page 249, lines 23-24, page 250, lines 1-2.

Synopsis of the Commissioner

Investigation & Detention of Dane Spurrell by Constable Harris

1. The Commissioner's position IS that on the 18th day of April, 2009, Dane Spurrell left his home headed to a retail business on Commonwealth Avenue, Mount Pearl, NL at approximately 10:50 p.m. and was detained by Constable Harris at 12:15 a.m. on April 19, 2009.
2. Dane Spurrell was detained by Constable Harris at 12:15 a.m. on Sunday the 19th day of April, 2009 as a result of allegedly walking through a merge lane at the intersection of Commonwealth Avenue and Topsail Road, in the City of Mount Pearl, NL.
3. Dane Spurrell was detained as a result, it is alleged of causing a car to swerve to avoid Dane Spurrell as he headed east on Topsail Road to his home to wit: 38 Greenwood Crescent, Mount Pearl, NL.
4. Constable Harris' Police Notes disclose Dane Spurrell, wearing dark clothing, walking in center of the curb lane and displayed to wit: slurred speech, watery and squinty eyes, flushed face, disorganized thought and disoriented walk and due to those grounds her notes state, he was detained pursuant to the provisions of *the Detention of Intoxicated Persons Act*.
5. Constable Puddicombe (hereinafter referred to as Constable Harris) approached Dane Spurrell and directed him to walk on the sidewalk which would be on the southern side of Topsail Road.
6. Constable Harris approached Dane Spurrell and queried of him why he was walking on Topsail Road and not on the sidewalk.

7. Constable Harris concluded from her exchange with Dane Spurrell that he was being uncooperative given his lack of response to her questions.
8. Constable Harris concluded he was intoxicated; however, Dane Spurrell had told Constable Harris he had not consumed alcohol or drugs. Constable Harris then concluded he was doing drugs based on her observation of to wit: droopy eyes, slurred speech, disorganized thought, disoriented walk which she further described as very staggered and detained him pursuant to the Detention of Intoxicated Persons Act.
9. Constable Harris had concluded that reasonable and probable grounds did exist to detain Dane Spurrell which occurred at 12:29 a.m. on April 19, 2009 prior to Constable Priddle arriving on the scene.
10. The evidence is that though Dane Spurrell communicated slowly he was concentrated and was articulate.
11. The Commissioner maintains that Dane Spurrell was neither intoxicated by alcohol or drug and contrary to a variety of assertions offered by Constable Harris that his walking was disoriented and in the middle of the road. Constable Harris did subsequently acknowledge that she never saw Dane Spurrell walking in the middle of the road and Constable Harris never saw Dane Spurrell swaying, stumbling or weaving prior to his detention.
12. Dane Spurrell maintained he did step out on Topsail Road. He denied he was walking out into a lane of traffic on Topsail Road but did walk along the fringe of the curb which he described as a "curb".
13. Constable Harris did ultimately concur with Dane Spurrell as to his precise location as he walked along Topsail Road.

14. Constable Harris eventually admitted that Dane Spurrell was between eighteen inches (18") to two feet (2') from the curb.
15. Constable Harris concluded from their initial verbal exchange that Dane Spurrell was combative, uncooperative and antagonistic.
16. Constable Harris did admit that prior to Dane Spurrell's detention, he was on the parking lot of The Paint Shop, 10-15 feet off Topsail Road and headed to a section of sidewalk on Topsail Road in no immediate risk of harm to himself or others.
17. Constable Harris testified that Dane Spurrell's combativeness, uncooperativeness and antagonistic behavior led her to conclude he was intoxicated by drug.
18. Constable Harris also concluded his unusual facial appearance which she thought pertained to visual impairment also assisted her in concluding he was intoxicated by drug.
19. The evidence was clear Constable Harris made no enquiries of Dane Spurrell as to the nature of the drugs he did consume on the day of his detention though he did state he did not use drugs that day or any day.
20. The evidence was that Constable Harris failed to ask what medication or drug he had taken or been taking.

Constable Priddle Investigation pursuant to the DIP Act.

21. Constable Priddle arrived at the scene at 12:20 a.m. approximately ten (10) minutes subsequent to Constable Harris arrival.

22. Constable Priddle stated Constable Harris advised him she saw Dane Spurrell walking “in the middle of the road (Topsail road) and she saw a car swerve to avoid hitting Dane Spurrell and almost struck him and she suspected that Dane Spurrell was intoxicated and he wasn’t being cooperative.
23. Constable Priddle describes his investigation as a ten (10) second or less examination of Dane Spurrell. He accepted Constable Harris analysis, concluded he was intoxicated by drugs due to the lack of any response of his pupils to his flashlight. Constable Priddle could offer no assistance to type of drugs he suspected.
24. Both Constables ordered Dane Spurrell to the police cruiser which he refused and a skirmish ensued to which Dane Spurrell responded in a passive aggressive manner as both officers physically detained him.

Arrest of Dane Spurrell for Obstruction of Police Officers.

25. Constable Harris and Constable Priddle in less than a half a minute determined that Dane Spurrell’s resistance merited him being charged with obstruction.
26. Constable Harris and Constable Priddle offered no evidence that he struck either of the officers.
27. Counsel for the RNC, Rachel Huntsman, and Staff Sergeant Adams also of the RNC had a discussion on the morning of April, 2009, the result of the melee that occurred in the early morning hours of April 19,2009 pertaining to an obstruction charge against Dane Spurrell.

28. Further discussion ensued between Rachel Huntsman, legal counsel to the Chief of Police, Staff Sergeant Adams and Sergeant Dawe of the RNC Readers Office that resulted in no charges pursuant to the DIP Act against Dane Spurrell.
29. Constable Harris admitted to being confused and frustrated with the lack of cooperation from Dane Spurrell and thus decided to detain, arrest and convey him to the lockup because he was being uncooperative.

Officers Failure to promptly and Diligently perform their Duties as Police Officers

30. Constable Harris testified that prior to and Dane Spurrell's subsequent detention, she had suspected Dane Spurrell to have both medical and behavior conditions.
31. Dane Spurrell did thus upon his detention request a phone call to his mother or for Constable Harris to arrange a phone call to his mother.
32. Constable Harris testified she didn't telephone Dane Spurrell's mother because she had no obligation to do so.
33. Constable Harris testified that during Dane Spurrell's detention and arrest, she suspected Dane Spurrell had both a medical and behavioral condition. At the lockup both attending officers concluded he was not exhibiting signs of intoxication by alcohol nor drugs except his eyes did raise issues for them, they both concluded he was diagnosed with something and both suspected a physical or mental disability.

Officers Discourtesy and use of Inappropriate Language

34. Dane Spurrell testified both Constable Harris and Constable Priddle were both discourteous to him and uttered profane language. Constable Harris told him she wasn't his goddam babysitter and she also asked him if he knew where the fucking sidewalk was.
35. Dane Spurrell testified that Constable Priddle used the word Fuck several times including "what kind of fucking drugs are you on" and the words "you know fucking well". Dane Spurrell stated to that Constable Priddle had shouted at him which was confirmed by John Taylor, a taxi driver present on The Paint Shop parking lot.
36. Constable Harris admitted to uttering profane language at work "when it is called for" and been utilized as a questioning technique. She denied uttering any profane language towards Dane Spurrell at anytime.
37. Dane Spurrell testified he was subjected to injuries to his wrists, left foot, face and chest as result of his detention. His attending physician Dr. McIssac concluded thus to be minor in nature.
38. The two police officers denied excessive use of force and stated the process of his taking down to effect a detention and arrest was carried out according to protocol. None of the civilian witnesses could confirm those assertions made by Dane Spurrell.

Synopsis of Constable Harris Submission

1. Counsel for Constable Harris commenced his submission by referencing a disagreement between Dane Spurrell and his mother Diane Spurrell, the complainant in these proceedings. The suggestion being that it was inappropriate for Dane Spurrell to go out because it would appear the video store on Commonwealth Avenue would be closed by the time he got there and Diane Spurrell was concerned for his safety more particularly in terms of the direction he was going to take.

2. Dane Spurrell's medical issues were also raised and the complainant Diane Spurrell informed the proceedings that her son had been dealing with the following medical issues since birth, to wit:

- a) heart defect repaired at age three (3) months;
- b) Three (3) years of age was diagnosed with to wit: Global Developmental Delay. Dane Spurrell, it was stated, also had extra cerebral fluid which required the insertion of a splint into his head, the "fluid" was constricting his optic nerve which lead to permanent damage to his optic vision.
- c) We know now that his Global Developmental Delay issues impacted his speech, he couldn't eat food, he didn't walk until he attained the age of eighteen (18) months.
- d) Dane Spurrell was diagnosed at age eight (8) with Pervasive Development Disorder which falls under the category of Asperger's Syndrome.

3. Counsel for Constable Harris submits that she noticed a dark figure walking east with the traffic, she didn't pay much attention to traffic on Topsail Road until she saw a car swerve to avoid hitting a dark figure which caused Constable Harris to be concerned for the person's safety and to advise the said individual to be careful. Constable Harris also stated that the dark figure who we now know to be Dane Spurrell was not on the sidewalk but in on the road.

Constable Harris – December 17, 2012 at page 16 lines 16-49

- 4.a) Dane Spurrell admitted that at the time he had reached Commonwealth Avenue and Topsail Road, he conceded that there were a few vehicles and they drove off and the street was basically empty.
- b) Dane Spurrell was questioned as to what was Constable Harris motive for stopping him and he responded with a variety of answers including, to wit: "to help or see what's going on; at first she was probably trying to help me and so since nothing ever really happens much, "they were bored, they saw me and I was easy prey".
- c) The issue of where Dane Spurrell was positioned on Topsail Road generated much debate between "being in the middle of the road"; "partially walking on the roadway"; "both feet on the pavement" to "center of the curb" to "not on the sidewalk"; "not the center" to "far enough off to the side to cause cars to swerve around him" to "he was on the center of the curb" to "not on the sidewalk on the curb"

5. Constable Harris concluded her evidence by saying that irrespective of where precisely he was located on the roadway “I thought he was still in danger”.

Reference: Constable Harris – December 7, 2012 at page 74, line 20

6. Constable Harris no doubt attempted to engage Dane Spurrell in conversation which generated an array of responses including to wit: I’m fine, leave me alone or something similar which lead to her concluding that Dane Spurrell was both uncooperative and standoffish.

7. Dane Spurrell without reservation acknowledged that his clothing that morning was consumed with the color black and that he was not immediately visible to drivers nor could he see drivers with his back to vehicle traffic.

Reference: Dane Spurrell – October 28, 2011 at page 106, line 18;

8. Constable Harris continued to probe Dane Spurrell without much success so she commenced focusing on his attitude and physical appearance including his uncooperative, immature, sarcastic behavior, his eyes, his demeanor, including his to wit: speech which lead her to suggest he was using drugs.

9. Constable Harris made additional comments including to wit; his eyes appeared droopy, face was flush, his speech, walk was staggered, it wasn’t a fluid motion, she also stated no slurred speech, it might have been disorganized or incoherent but nothing slurred, thus she concluded he was intoxicated by a drug because she couldn’t smell any alcohol.

10. Grounds to detain under DIP Act

- a) Constable Harris formed her reasonable and probable grounds to detain Dane Spurrell premised on his uncooperative and sarcastic behavior, there was no slurred speech, it might have been disorganized and incoherent but nothing slurred.
- b) Constable Harris ruled out alcohol intoxication because she was unable to discern the presence of the smell of alcohol yet he denied the consumption of alcohol or drugs at the time he was detained.
- c) Counsel for Constable Harris suggested that Dane Spurrell's eyes stood out they were fairly closed which suggested a sign that somebody was using drugs so too his speech and thought process wasn't forthright but appeared at times to ramble, another sign of drugs.

Reference: Constable Harris – November 6, 2012 page 127, line 19 and November 6, 2012 page 134, line 15.

11.a) Counsel for Constable Harris relied upon the observations of Correctional Officers Harvey and Keith Connors who suggested that their observation lead them to the conclusion that Dane Spurrell was using drugs

b) Correctional Officer Connors suggested Dane Spurrell was either completely wired or something was wrong. He did say too that Dane Spurrell was generally cooperative, he wasn't violent or down or sad.

c) The complainant Diane Spurrell didn't deny, in fact she was forthright in describing how Dane Spurrell deals with events he doesn't agree with or people he doesn't agree with which can best be described as uncooperative or sarcastic or which his mother described as passively uncooperative.

Reference: Diane Spurrell – October 26, 2011 at page 86, line 15.

12. Dane Spurrell no doubt can be easily described and which he candidly admitted as being sarcastic, uncooperative, passive obstructionist and takes no exception to be so described.
13. Dane Spurrell was certainly not reticent in displaying his lack of regard for the RNC as a collective group premised on three disturbing incidents that caused him to conclude he had been let down by the RNC and certainly not shy about expressing his feelings.
14. Counsel on behalf of Constable Harris maintained she was properly trained to carry out her responsibilities pursuant to the provisions of *the Detention of Intoxicated Persons Act* and associated policies and procedures of the Royal Newfoundland Constabulary.
15. Constable Harris left no doubt that she was properly and appropriately trained to deal with issues including detention resulting from consumption of alcohol and drugs.
16. Constable Harris too advised she had adequate training to deal with “abnormal behavior” issues to wit: schizophrenia, by-polar disorder and Autism which was touched on through her Police Studies Program at Memorial University of NL.
17. Constable Harris states Dane Spurrell continued to be an obstructionist and obstructive on The Paint Shop parking lot and asked Dane Spurrell if it was his desire to be arrested and his response was “sure” to which Constable Harris responded “you are now arrested”.

18. Dane Spurrell candidly admitted he was not complying with Constable Harris requests to get into her police cruiser because what she was doing was a mistake which was arresting him.

19. Dane Spurrell was thus detained pursuant to the DIP Act, Dane Spurrell advised Constable Harris when asked why he was being detained, he was advised he was being detained for being drunk and on drugs.

20. Dane Spurrell did acknowledge that a struggle did ensue in Constable Harris attempting to place him in her vehicle and as she did, he kept bouncing off the vehicle and not going in the vehicle.

21. Counsel for Constable Harris made the point of stating that her struggle with Dane Spurrell was to the extent he did not pay enough attention to her when he was initially detained.

Reference: Dane Spurrell – November 5, 2012, page 148.

22. Dane Spurrell was candid and straight forward with his evidence in admitting he did prevent Constable Harris from getting him into her police cruiser.

23. The evidence discloses that Constable Priddle arrived at the parking lot of The Paint Shop and carried out his assessment of Dane Spurrell and not getting a smell of alcohol concluded, he had to be impaired by a drug and Constable Harris along with Constable Priddle used several police techniques to get him under control in order to put the handcuffs on him.

24. Constable Harris, whilst trying to assist Constable Priddle getting Dane Spurrell into handcuffs states that during this exercise, she was very frustrated with Dane Spurrell and unable to understand why he was neither listening to her nor cooperating with her.

25. Dane Spurrell's description of his detention was due to neither Constable Priddle nor Constable Harris' preparedness to listen to him as to what and why he was being detained.

Reference: Dane Spurrell – November 5, 2012 at page 149, line 30.

26. The civilian witnesses to wit: Mrs. Laura Pinhorn and Ida Coffey were sitting in Ms. Coffey's car, the radio was on. Mrs. Coffey's car window was partially opened, she heard no conversation, Ms. Coffey didn't hear foul language and her car was on the parking lot of The Paint Shop for about ten (10) minutes in an area well lit and all of twenty (20) feet away from the scene of activity. These ladies stated neither of them saw either of the officers abuse Dane Spurrell but did believe Dane Spurrell resisted the officers when they were trying to help him.

Reference: Coffey – November 6, 2012 at Page 51, line 15.

27. Following the skirmish on the parking lot of the Paint Shop, Constable Harris states she obtained Dane Spurrell's name and date of birth and then gave him the police caution and his rights pursuant to the Charter of Rights and Freedom.

28. The issue of charging Dane Spurrell pursuant to S. 129 CCC for resisting arrest (obstruction) presented a challenge. Constable Harris believed she had grounds to charge Dane Spurrell, however, confusion prevailed as legal counsel for the Chief of Police believed a charge of resisting following a detention pursuant to the DIP Act was not proper; however, it appeared Chief of Police's counsel misinterpreted the circumstance and ultimately determined such a charge would have been in order.

29. Constable Harris had denied Dane Spurrell's request to make a call to his mother since she was of the opinion the only call he was permitted was to his lawyer since he was under arrest and the call to his lawyer was in accordance with RNC Policy & Procedures Manual.

Reference: Constable Harris – December 7, 2012, page 30, line 14.

30. Counsel for Constable Harris submits that following an arrest an RNC Officer must inform a person arrested of the right to retain and instruct counsel without delay.

Reference: RNC Policy and Procedures Manual

31. Constable Harris denied Dane Spurrell's request to phone his mother enroute to the St. John's City Lockup stating she had no requirement or obligation to permit Dane Spurrell to phone his home or mother since RNC Officers only allow persons under arrest to call their lawyer.

32. Counsel for Constable Harris submits that her only obligation to Dane Spurrell after his arrest was to provide him with the right to phone his lawyer which request he had refused.

33. Constable Harris suspected Dane Spurrell during his arrest and detention might have medical behavioral issues but she submitted he did not advise her that he was dealing with such issues because he didn't raise any such issues with her despite her questions.
34. Dane Spurrell complained that due to the confrontation between him and the officers, they used excessive force to restrain and detain him and as a result sustained injuries to wit: his wrists and eye though minor in nature. Dane Spurrell's attending physician confirmed that the injuries he sustained were minor in nature and would heal up in a week or two.
35. Constable Harris suggested that from the time Dane Spurrell was detained and arrested and conveyed to the St. John's City Lockup, he did not make a complaint regarding any injuries being sustained.
36. Constable Harris did maintain that any force she utilized with Dane Spurrell was not excessive and fully compliant with the RNC Policy and Procedures Manual.
37. Constable Harris' Counsel suggested the complainant and her son, Dane Spurrell were financially motivated and thus these proceedings would have a significant impact on the reliability of his evidence.

Synopsis of Constable Priddle's Submission

1. Counsel for Constable Priddle submits that his client was not present when Constable Harris made her unilateral decision to detain Dane Spurrell pursuant to the provisions of *the Detention of Intoxicated Persons Act* referred to as the DIP Act and emphasized that he neither took a role nor played any part in the decision to detain and arrest Dane Spurrell made prior to his arrival on the parking lot of The Paint Shop.

2. Constable Priddle does acknowledge his role in the decision made and that of Constable Harris to charge Dane Spurrell with obstructing an officer deemed to be in the lawful execution of one's duty which included Constable Harris. Constable Priddle did support Constable Harris assertion that Dane Spurrell was combative in his dealings with both officers and reasonable and probable grounds did exist both subjectively and objectively to charge him.

3. Counsel for Constable Priddle rejects Commissioner Counsel's assertion that Dane Spurrell did not exhibit violence towards either or both officers. Constable Priddle maintains his assertion that a physical confrontation did occur.

4. Constable Priddle did acknowledge his use of profanity in his confrontation with Dane Spurrell on the parking lot of The Paint Shop on Topsail Road but it is his submission that the said language was not meant to be discourteous to Dane Spurrell but as a means of conveying a message to Dane Spurrell in an effort and means to get the melee under control and abate further escalation and a mechanism to prevent the need for force to lessen the tension between the parties.

5. Counsel for Constable Priddle does accept the issues as clearly defined by Commission Counsel that included:
 - a) Whether the police officers to wit: Constable Harris and Constable Priddle or either of them did without good and sufficient cause arrest or detain Dane Spurrell on April 19, 2009;
 - b) Whether the aforesaid officers or either of them did carry out their duties in a manner contrary to the RNC Policy and Procedure Manuel on April 19, 2009.
 - c) Whether the aforesaid officers or either of them did neglect or omit to promptly and diligently perform his or her duties as a police officer on April 19,2009;
 - d) Whether the police officers or either of them were discourteous to Dane Spurrell on April 19, 2009;
 - e) Whether the police officers or either of them used unnecessary force with Dane Spurrell on April 19, 2009;
 - f) Whether the officers conducted themselves in a manner contrary to the Royal Newfoundland Constabulary Act.

6. a. Counsel for Constable Priddle offered no submission regarding the observation of Constable Harris or her action or any decision she may have made before Constable Priddle arrived at the scene.
- b. Counsel for Constable Priddle submits any decisions he made were premised upon the information provided him by Constable Harris insofar as the decision to detain Dane Spurrell pursuant to the provisions of the DIP Act.
- c. Constable Priddle, however, submits the decision to arrest and charge Dane Spurrell with obstruction of Constable Priddle in the execution of his duties was grounded on reasonable and probable grounds that did exist to charge him.

7. Does Constable Priddle bear any responsibility for the detention of Dane Spurrell pursuant to the DIP Act?

Counsel for Constable Priddle submits that he bears no responsibility since he was relying solely on the information provided by Constable Harris and which he believed to be accurate and reliable.

Counsel for Constable Priddle draws a vast distinction for a decision made when all officers are working in tandem in each others company in contrast with this instance, Constable Priddle was not directly involved in the decision making process.

8. Constable Priddle's role regarding initial detention.

Counsel for Constable Priddle submits that the decision making process as to Dane Spurrell's apprehension and detention was that of Constable Harris.

Constable Priddle's position regarding the aforesaid detention was solely that of Constable Harris, the decision was made before he arrived at the scene and he had to rely upon the decision made by Constable Harris.

9. Constable Priddle's role respecting laying of charge pursuant to S. 129 CCC

Counsel for Constable Priddle states that the charge of obstruction made in this instance was a joint decision made by both Constable Harris and Constable Priddle.

10. Counsel for Constable Priddle accepts the criteria laid down for the making of an arrest which has a subjective component, and an honest belief by the officer, the arrest has to be objectively grounded on reasonable and probable grounds for its existence and the reasonable man standard has to be complicit.

R v. Storrey [1990 1 SCR 241.]

11. Section 129 CCC states:

A) Everyone who resists or unlawfully obstructs a public officer or peace officer in the execution of his/her duty or any person lawfully acting in and of such an officer is guilty of:

a) An indictable offence and is liable to imprisonment for a term not exceeding two years or:

b) An offence punishable on summary conviction;

B) Counsel for Constable Priddle submits given the fluidity of the fact situation that arose in making the arrest, circumstances change rapidly in those types of instances, thus a police officer is entitled to reject or discard information that he has good reason to disbelieve.

Regina v. Golub [1997] 117 CCC (3d) 193 (and be permitted to draw inferences from the facts that he accepts).

12. Did Constable Priddle have reasonable and probable grounds to believe he was in the execution of his duty?

a) Counsel for Constable Priddle submits the initial confrontation commenced prior to his arrival and he was relying on the information provided by Constable Harris, to wit; Dane Spurrell was out in the middle of Topsail Road and too that a car had swerved to avoid him

- b) Counsel for Constable Priddle submits he did his own cursory inquiry which he described as a “quick check” done to reassure himself that Constable Harris had the reasonable and probable grounds to charge Dane Spurrell and that Dane Spurrell did willfully obstruct him in the execution of his duties which included being verbally uncooperative in not providing his name. Constable Priddle also had formed his own opinion that Dane Spurrell seemed to be “really drugged out”.
- c) Counsel for Constable Priddle submits as well that Dane Spurrell didn’t make things easy for him given there was no way of knowing that Dane Spurrell was dealing with a medical condition, knew little of his medical condition and rejected the suggestion he was autistic other than to accept the fact that he was difficult.

Transcript, December 12, 2012, page 19, line 15 – page 20, line 10.

13. a) Counsel for Constable Priddle relies upon the evidence of the complainant, Diane Spurrell that her son, Dane Spurrell, when faced with a scenario that he doesn’t like or agree with, he does become uncooperative.

b) Counsel for Constable Priddle also as part of his submission does rely upon an exchange between Counsel for Constable Harris and the complainant Diane Spurrell to confirm Dane Spurrell’s likely response of no cooperation in dealing with the police that lead to the charge of obstructing a police officer.

Q. One of the things you said in direct examination; I believe, and you can correct me if I’m wrong, is that you would not expect him to be cooperative when dealing with incidents like this, for instance;

A. That’s right because he, he wanted to come home and as far as he was concerned, he hadn’t done anything wrong, so.

Transcript, October 26, 2011, page 103, lines 11-18

.../33...

- c) Counsel for Constable Priddle also made the point that intoxicating substances to wit: cocaine, ecstasy and painkillers have no smell and one potential sign of intoxication is abnormal appearance in the eyes and too his decision to assist with the arrest was reasonably based on the information he received and his own quick check.

14. Did Constable Priddle have reasonable grounds to believe Dane Spurrell was resisting or obstructing him while in the execution of this duty?

Counsel for Constable Priddle rejects the submission of Commissioner's Counsel that Dane Spurrell was passive resistant and submits that Dane Spurrell did "fight" Constable Priddle.

Transcript, October 26, 2011, page 17, lines 7-14.

15. Constable Priddle also defined his interaction with Dane Spurrell as a physical confrontation.

Transcript, October 26, 2011, lines 18-19

16. Counsel for Constable Priddle submits that Dane Spurrell resisted his efforts to put him in the patrol car by resisting with his feet by kicking the door of the police vehicle and other means of fortifying Constable Priddle's efforts by using what he describes as "strong force movements".

17. Counsel for Constable Priddle also submits and exchange between Counsel for Constable Harris and Dane Spurrell

Q. And were you cooperating with him (Cst. Priddle)?

A. No.

Q. What were you doing?

A. I was trying to avoid going into the vehicle, trying to explain over and over that this was some kind of mistake and to just listen.

Q. Okay, so you didn't accept that he should be putting you into the vehicle at that point in time?

A. Yes.

Q. So you resisted him from putting you into the vehicle?

A. Yes.

18. Counsel for Constable Priddle submits that sufficient evidence was adduced to establish on the balance of probabilities that Dane Spurrell did actively resist and obstruct the officers to place him in the RNC patrol vehicle and the subjective and objective grounds did exist to lay a charge pursuant to S. 129 CCC.

Discourteous Language; Constable Priddle

19. Counsel for Constable Priddle testified that the comments "you knew...fucking well" directed at Dane Spurrell likely emanated from his voice.

Constable Priddle referred to it as "use of force continuum" which is a tool police officers utilize against a person resisting an officer's command and more of an effective tool than having to resort to physical force.

Conclusion

Counsel for Constable Priddle took no stance regarding the alleged breach of the RNC Public Complaint Regulations. Counsel for Constable Priddle admitted he knew little about those dealing with Autism, he had no formal training with regards to "disorders on the Autism Spectrum" yet he told Constable Harris she was on the right track and left.

Counsel for Constable Priddle concluded his submission by stating the commission has previously reasoned that good faith in the officer's conduct may serve as a Defence. In the hearing the *RNC Public Complaints Commissioner v. Thistle & McGrath*.

The essence of the submission by Counsel on behalf of Constable Priddle is that any decision that he had made throughout these events was premised upon and made in good faith (bona fides) and any decisions that were made and erroneous were through lack of knowledge in dealing with people suffering from Autism.

Counsel for Constable Priddle requests the Adjudicator to render a finding of not guilty pertaining to the charges to which he has responded.

Synopsis of Diane Spurrell's Submission

1. The Chief Adjudicator has reviewed the introduction of Diane Spurrell's complaint and its content; and can only acknowledge that it has been reviewed but doesn't assist in arriving at this decision since it is simply off topic and doesn't deal with the issues that are required to be addressed.
2. The Chief Adjudicator acknowledges the Commissioner's Complaint and Statement of Facts.

Statement of Complainant

3. The complainant states there was intermittent and low volume of traffic at or about 12:15 a.m. when the events that gave rise to these events occurred.
4. The complainant states that Dane Spurrell safely manoeuvred his path toward home.
5. The complainant states that Dane Spurrell didn't do anything that required police involvement.
6. The complainant states that Constable Harris refused Dane Spurrell's request to call his mother.
7. The Complainant states Dane Spurrell did not utter any profane language and only raised his voice to get the attention of a taxi driver who happened on the scene.
8. The Complainant's take exception to Constable Harris' choice of words or phraseology particularly the suggestions of the presence of a vehicle that swerved around Dane Spurrell which she does reject.
9. The complainant rejects the suggestion that a vehicle swerved around Dane Spurrell.
10. The Complainant rejects the suggestion of a car avoiding Dane Spurrell.

11. The Complainant questions the absence of any reference to a swerving car in Constable Harris notes.
12. The Complainant questions the rationale for the absence of a serving motor vehicle in Constable Harris notes.
13. The Complainant refutes the suggestion that Dane Spurrell was either combative or aggressive.
14. The Complainant denies Dane Spurrell used any aggressive force further it is submitted his position was like that of an immovable rock.
15. The Complainant states Constable Harris based upon her obvious frustration clouded her ability to make a sound decision particularly following the script set out in the RNC Policy and Procedures Manual.
16. The Complainant suggest that Constable Harris erred in believing that her obligation to provide Dane Spurrell ended with a phone call once he attain the age of majority.
17. The Complainant states Constable Priddle put little effort into this search and simply relied upon the efforts of Constable Harris that didn't attain the reasonable non-standard.
18. The Complainant states Constable Priddle's efforts were insufficient.
19. The Complainant states that both Constable Harris and Constable Priddle did utter profanity.
20. The Complainant suggests in this instance the use of profanity as a tool to control Dane Spurrell was unnecessary.
21. The Complainant states that the use of the words that Dane Spurrell used was aggressive in this context is invalid.

22. The Complainant states that Constable Priddle did use a flashlight to pry open the eyes of Dane Spurrell.
23. The Complainant states that neither of the officers followed the RNC Policy and Procedures Manual as required.

Complainant's Response to Defence

24. The Complainant denies the accusation that Dane Spurrell did not respond to enquiries by the two (2) Respondents and that he was uncooperative and says he responded as he knew how and when he could follow or understand the question.

Correction Officers Perception of Dane Spurrell

25. The Complainant states the correctional officers had it correct that something was not quite right with Dane Spurrell.

Dane Spurrell's Hatred of Police

26. The Complainant states that these events have satisfied Dane Spurrell's distrust of the RNC and will result in his continuing to have little trust in the RNC.

Training of Constable Harris

27. Commissioner's Counsel concludes that Constable Harris had little understanding of the RNC Policy and Procedures Manual.
28. The Complainant states that Constable Harris efforts never met the reasonable man standard to detain and or arrest.

Did Dane Resist?

29. The Complainant states a citizen may decline a wrongful detention and Dane Spurrell knew he had done nothing wrong and used as much force as required to prevent an unlawful arrest.

Dane's Failure to Communicate Medical Conditions to Constable Harris

30. The Complainant states Dane Spurrell denies he is Autistic and further the Complainant states Dane Spurrell has an extra DNA that results in his facial appearance somewhat different which is fairly obvious looking at him. The Complainant states he is obviously different, however, the two Respondent's missed it completely.

Was Dane Kicking?

31. The Complainant states Dane Spurrell did not know how the word kick is defined and that anything that Dane Spurrell did untoward was simply to protect himself.
32. The Complainant further states that all he did was "to resist being moved".

Response to Statement of Argument

33. The Complainant accepts the Statement of Argument of the Commissioner up to paragraph 102 but regarding paragraph 103 submits the physical injuries he sustained were the result of Constable Priddle's rough handling.

Did the Officer use Unnecessary Force

34. The Complainant rejects commissioner counsel's submission that no unnecessary force was used against Dane Spurrell.
35. The Complainant also submits Dane Spurrell had no scrapes, bruises or injuries when he left home.
36. The Complainant submits that Dane Spurrell's arrest was unlawful and the force used was unnecessary.
37. The Complainant submits Constable Priddle didn't exercise due diligence in relying upon the information that he received from Constable Harris.
38. The Complainant is insistent that Constable Priddle did cause damages to Dane Spurrell's eye.

Dane's Interest were not served

39. The Complainant submits that Dane Spurrell was not provided the reason for his arrest and wasn't informed of his right to Counsel without delay pursuant to the Charter of Rights and Freedoms. The Complainant states Constable Harris refused to tell him why he had been arrested and detained.
40. The Complainant submits the actions of Constable Harris were punitive and void of good faith.
41. The Complainant submits Dane Spurrell's testimony has been consistent throughout these proceedings.
42. The Complainant suggests the evidence offered by Constable Harris was confusing, incorrect and untrustworthy.
43. The Complainant suggest Constable Priddle changed his story regarding use of profane language and submits his credibility thus was compromised.

Conclusion

44. The Complainant states the arrest and detention of Dane Spurrell was an unlawful arrest and detention.
45. The Complainant seeks sanctions against both Respondents.

Detention Pursuant to Provisions of the DIP Act.
Detention and Arrest without Good and Sufficient Cause

- a) Adjudicator David Eaton, QC., made these comments in the Royal Newfoundland Constabulary Public Complaints Commission v. Constable Krista Clarke (Day) et al. wherein he stated:

“these provisions do not provide police officers with broad and unfettered powers to arrest persons who are under the influence of alcohol. It is implicit in the wording that not only must the person be intoxicated, but that there must be either some immediate safety concern (for that person or others) or some concern for the public order. The requirement that the police officer form an opinion, is no different than many other statutory provisions. The opinion must be based on evidence sufficient to justify the formation of that opinion. There must be reasonable grounds.

Reference: Royal Newfoundland Constabulary Public Complaints Commissioner v. Constable Krista Clarke (Day) et. al.

The aforesaid comments have assisted in the decision made in this instance and take from the aforesaid comments that reasonable and probable grounds and good and sufficient cause must peacefully co-exist.

- b) The comments of Cory J. and principles set forth, a unanimous decision in R. v. Storrey [1990] (1 SCR 241)

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

Reference; R. V. Storrey [1990] 1SCR 241

The comments of Mercer J. in *Newfoundland (Royal Newfoundland Constabulary) v. Newfoundland (Royal Newfoundland Constabulary Public Complaints Commission)*

[2002] NJ. No. 203 at paragraph 30;

...a police officer has a duty to thoroughly and properly investigate an alleged offence before arresting and charging a person. It is the duty “of making due inquiry as the circumstances of the case ought to indicate to a sensible man is, without difficulty, presently practicable.” *Dumbell v. Roberts* (1947) 1 All E.R. 326 at 329 (C.A.); *R v. Storrey* – p. 323.

are succinct, poignant and of immense assistance in dealing with the fact situation in this matter in view of the stark contrast of the respective positions advanced.

Reference: *Newfoundland (Royal Newfoundland Constabulary) v. Newfoundland (Royal Newfoundland Constabulary Public Complaints Commission)* [2002] NJ. No. 203

We too are conscious of the thoughts made in *R. V. Golub* [1997] NJ. No. 3097 (ONCA) and the apt comment that a detailed analysis of a fact situation is not a luxury a police officer can afford; however, to that I would say that with the significant position an officer holds enormous responsibility that must prevail and in so performing one’s responsibilities, wisdom must prevail over valor.

“Often, the officer’s decision to arrest must be made quickly in volatile and rapidly changing situations. Judicial reflection is not a luxury the officer can afford. The officer must make his or her decision based on available information which is often less than exact or complete. The law does not expect the same kind of inquiry of a police officer deciding whether to make an arrest than it demands of a justice faced with an application for a search warrant”.

We do fully appreciate and do not lose sight of the aforesaid comments in arriving at this decision.

Reference: *R. V. Golub* [1997] OJ No. 3097 (ONCA) at 8

We take no exception to the position advanced by Counsel for the Respondent, Constable Harris that states:

“In deciding whether reasonable and probable grounds exist, the officer must conduct the inquiry which the circumstances reasonably permit. The officer must take into account all information available to him and is entitled to disregard only information which he has good reason to believe it unreliable.”

Reference; Chartier v. Quebec (Attorney General) [1979] 2 SCR 474 at 4 – Harris Book of Authorities

So too the insightful comment from Smith v. Richards as cited in Maloney v. Royal Newfoundland Constabulary Public Complaints Commission particularly regards to clarifying and procuring a clear understanding of reasonable and probable grounds: “For a police officer to have reasonable and probable grounds for belief in the commission of an offence, the belief must take into account all of the available information. An officer is entitled to disregard only that information which he or she has good reason to believe unreliable. In this circumstance, it is improper to ignore reliable exculpatory circumstance and only pay attention to factors that tend to incriminate...the above noted obligation of law, of course, is qualified by the overriding basic requirement that there be, at a minimum, reasonable and probable grounds. An officer who has properly reached that threshold is not obliged to meet and pursue further and additional aspects of information before executing arrest and charging authority (even though they may be available). This means that a police officer is not compelled by law to speak to every potential witness before making an arrest; nor is it imperative in every instance to speak with both parties involved in a dispute. In some circumstances, there will be credible independent witnesses (or other real or compelling evidence) who will be highly probative and lawful grounds may be achieved. In other circumstances, however, the matter may be so finely cut and consideration of both sides or the position of both parties is then both prudent and advisable. When there is cause to believe that the matter may be reasonably disputed (or is equivocal in some material respect) an officer should decline to arrest or charge until such time as all available information is reviewed, including the positions of both parties.”

Reference: Smith v. Richardson, as stated in Maloney v. Royal Newfoundland Constabulary Public Complaints Commission, 2002 CarswellNfld. 207, (NLTD) at 42.

Detention of Dane Spurrell

Pursuant to the Provisions of the Detention of Intoxicated Persons Act

1. Did Good and Sufficient Grounds Exist?

- a) The origin of Dane Spurrell's detention was his presence walking east to the right of center of the curb lane, 18" – 2' off of the curb on Topsail Road near the intersection of Commonwealth Avenue and Topsail Road, Mount Pearl, NL when a car had swerved to avoid striking him yet that event did not appear in Constable Harris' Police Notebook nor her Case Summary.
- b) Dane Spurrell stated that Constable Harris appeared in the aforesaid area driving a RNC motor vehicle at precisely 12:18 a.m. on April 19, 2009.
- c) Constable Harris stated she subsequently detained Dane Spurrell, he having presented the following physical characteristics, Constable Harris' initial version which appeared in her RNC Police Notebook on April 19, 2009 included to wit: slurred speech, watery and squinty eyes, flushed face, disorganized thought and disoriented walk.
- d) Pursuant to the provisions of the *Detention of Intoxicated Persons Act*, Constable Harris eliminated the detention of Dane Spurrell due to alcohol having observed no smell of alcohol emanating from Dane Spurrell. Dane Spurrell in response to a query from Constable Harris advised he had not been drinking and she thus concluded it had to be a drug. Constable Harris was asked the following questions in an effort to seek clarity as to where precisely Dane Spurrell was positioned between the Topsail Road and Commonwealth Avenue intersection and The Paint Shop parking lot.

Q. Okay. So I take it then we can agree then that there's no point in time when you actually observed the dark figure (Dane Spurrell) in the middle of the road.

A. Not in the middle but on the road, yes.

Q. And there's no point in time when you actually observed him in the middle of the curb lane.

A. No, again you know, noticed him the entire time on the road.

Constable Harris notes, including those contained in her Police Notebook and those contained in her Case Summary stated Dane Spurrell displayed disoriented walking which is noteworthy in view of the ensuing exchange.

Q. Do we also agree that you didn't make any observation at the time about the dark figure's walking, any staggering or stumbling or anything like that?

A. No.

Q. Do we agree on that?

A. That's correct.

Transcript – December 7, 2012, Page 86, lines 10-16.

2. Dane Spurrell had denied in response to questioning by Constable Harris that he had neither used drugs that night nor consumed alcohol on the day in question. Constable Harris didn't query if he was taking prescription drugs or using any type of medication.
3. Constable Harris admitted that she did not notice any staggering by Dane Spurrell, a characteristic often prevalent amongst intoxicated persons; neither did the Correctional Officers to wit: Captain David Harvey and Keith Connors yet as noted above, she did state that he displayed disoriented walking on her initial encounter with him.
4. Constable Harris was asked why she didn't release Dane Spurrell after concluding that Dane Spurrell was not intoxicated by alcohol and only possibly intoxicated or based on suspicion regarding his consumption of drugs. Her response was that he was uncooperative and combative and subsequently asked;

Q. So at that point in time, what grounds (reasonable and probable) would you have had to suggest he was intoxicated?

A. Again, the situation itself...when I stopped the vehicle and spoke to him. I was able to see his face and thus I was able to form the grounds that yeah, I believe this person was intoxicated by drugs.

Q. So that's when you actually found your grounds is it, when you actually saw his face.

A. Correct.

Transcript – December 7, 2012, page 94, lines 10-24, page 95, lines 1-8.

6. Constable Harris also in response to a question.

Q.is that by looking at him and the way he's speaking and it was like he had a vision impairment.

A.....I believed he had a vision problem.

Transcript – December 7, 2012, page 95, lines 16-22.

6. It is also important to note that Constable Harris did believe Dane Spurrell had a vision problem as she said above by looking at him but made that judgment call before she had decided to arrest him and satisfied she had reasonable and probable grounds to detain him pursuant to the provisions of the *Detention of Intoxicated Persons Act, December 7, 2012.*, yet her testimony on December 7, 2012 was her decision was made simultaneously when she arrested him.

7. The following exchange took place between the Chief Adjudicator and Constable Harris:

Q. Did you ask him whether he was under doctor's care?

A. No the Corrections Officers did.

Q. You didn't think to ask him that question?

A. No sir.

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Q. Did you think to ask him if he was – and you'd come to the conclusion that he was impaired by a drug, if he had been prescribed medication that day?

A. No I did not ask him that.

Q. You didn't ask him that question?

A. No sir, I didn't.

9. The enclosed exchange followed:

Q. So you had eliminated the issue of alcohol. Then we're down to a drug, impaired by a drug.

A. Yes sir.

Q. You didn't think to ask him that question?

A. No sir, because I believed, I think most police officers would say even if somebody is intoxicated by a prescription drug, one that they're authorized to have, if they're still intoxicated or still a danger to themselves, you would still have to take the steps to ensure their safety. So even if he had – if I had have asked and he had said yes, I'm on such and such medication maybe then I would have contacted Mrs. Spurrell but at that point when I – when I was given the opportunity to ask those in depth questions, the decision had already been made to arrest Mr. Spurrell.

Q. Here's what I don't understand. You had eliminated alcohol right because there was no smell of alcohol?

A. Uh-um.

Q. So your down to one choice and you made that choice because there was no other choice to make, but didn't make further inquiries before you made that big step that you took.

A. I'm sorry Mr. Adjudicator.

Q. The big step you took, right, you had concluded that he was impaired, which is what your Case Summary says, by a drug?

A. Intoxicated too.

Q. But you didn't make any further inquiry in terms of trying to determine, how did you get to the conclusion of determining in your own mind that he was impaired by a drug?

A. I guess, Mr. Adjudicator, at the time I don't think it mattered in my line of thought or in my line of reasoning. It didn't matter what he was impaired by, what type of drug, whether prescribed or not and like I said most times, especially when it comes to if you believe someone is intoxicated by a drug, they're not, most people are not going to admit it to you.

Q. But you didn't even ask the simple question. You did not ask one question in all that time he was there with you what medication or what drug he had taken. Would you agree with me on that?

A. Yes I would Mr. Adjudicator.

Transcript – December 7, 2012, page 261, line 10 - page 264, lines 1-4.

10. Constable Harris was also asked

Q. Now at that time before you had detained him, did you ask how about his potential visual impairment?

A. Not before I detained him.

Q. Did you specifically ask him whether he had any medical conditions?

A. I don't recall that I did.

Q. Did you specifically ask him if he was on drugs?

A. I can't recall, I asked him if he had been drinking.

Transcript – December 7, 2012, page 126, Lines 22-24 and page 127, line 2.

11. The evidence offered by Constable Harris as to the origins of Dane Spurrell's detention had more to do with his antagonistic and uncooperative attitude.

.../49...

Q. Well you agreed with Dane that he was not in the middle of the road that he was to the side near the curb once you instructed him to get (out)? Off the road, why didn't you just let him go then.

A. Because he wasn't being cooperative with me.

Q. In what way?

A. As I stated before, I asked him why he wasn't on the sidewalk and he said "I'm fine, just leave me alone and so he wouldn't answer my questions and then he became uncooperative and antagonistic and saying, like, you know there is no sidewalk here.

Transcript – December 7, 2012, page 218, lines 15-24 and p. 219, lines 1-18.

12. Constable Harris provided a quite detailed and graphic description of the events that followed including an account of asking Dane Spurrell why he was being a danger to himself.

Q. Were you working alone or with some other officer?

A. I was alone, Mr. Adjudicator.

Q. And is that a standard kind of practice or was it at that time?

A. It is, depending on what area you work.

Q. Now an incident occurred in the early morning hours of April 19, 2009 in the Topsail Road/Commonwealth Avenue area. Can you explain whether you were there and how you came to be there?

A. Yes. Mr. Adjudicator, late during my shift, I guess early Sunday morning on April 19, 2009, at approximately 12:15 a.m., I was travelling east on Topsail Road just before – just west of Commonwealth Avenue/Mount Carson Avenue intersection. I was turning right. I was in the right hand merge lane to turn and proceed south on Commonwealth Avenue. When I was in that lane, I noticed ahead of me in the opposite merge lane from Commonwealth to merge, say, east onto Topsail Road, was a dark figure. I never paid much attention to it. As I was merging onto Topsail Road in the merge land and it swerved pretty –

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pretty obviously that caught my attention and I looked and I saw that the car had served because of the dark figure that I had noticed before. So I turned my car around. I did a U-turn on Commonwealth Avenue and proceeded back up onto Topsail Road, I drove past this dark shadow. I wasn't sure if it was male or female, but they had been walking and they were down off the sidewalk to cause this car to swerve. I went back up to go east onto Topsail Road. I passed by the dark figure, but because I couldn't see their face or determine their gender or age I did another U-turn and came back west on Topsail Road, which is when I noticed that it was a male, I believed to be a teenager because he was small in stature, small in height, and I put down my window and I said excuse me, something to that effect of, excuse me, how come you're not on the –how come you're not on the sidewalk, and he said, I'm fine, leave me alone. I asked another couple of similar questions, like, what's going on, how come you're out this late and each time the response I was given was, I'm fine, leave me alone. So then I became concerned because this person wasn't cooperating with me, you know, why were they being so standoffish, I was just asking simple questions, I believe. So I did another U-turn into the parking lot of The Paint Shop on Topsail Road.

Q. Before you go on, can I just ask what the lighting conditions were in that area?

A. In the area of the merge lane, it was dark, there was no street light there, I don't believe at the time. Again it was dark I just saw a dark shadow. I couldn't really ...

Transcript: December 7, 2012, page 16, line 5 – page 18, line 24.

13. Constable Harris provided the following physical characteristics, Dane Spurrell portrayed as she attempted to ascertain why she believed he was putting himself and others in danger.

Q. So I pulled my vehicle into The Paint Shop parking lot. I exited my vehicle and I said, you know, I want to talk to you, I want to get some information from you, I am concerned because you're walking in the middle of the road, and I feel like you may get hit.

A. Uh-hm.

Q. You know, vehicles are having to swerve around you, and the male continued to ignore me and to say, you know, I'm fine, leave me alone, I haven't done anything wrong. At that time, I noticed his face, it was much closer to me, where his eyes appeared droopy, he had a flushed face, his speech and his walk at the time that I had noticed prior was very staggered, it was fluid motion. Because of that and the nature of it was 10:30 – or 12:30 a.m., almost 12:30 a.m. at that point on Saturday night, I was concerned that this person possibly was intoxicated, so I told the individual that I would like to speak to him and get some information from him, and again he said – I said where are you coming from and he pointed in the direction of Topsail Road West. I said where are you going and he pointed in the direction of Topsail Road East. I said, what's your name, and he said, I haven't done anything wrong. I'm fine, leave me alone. At this point, I never had any indication or never thought that there had been any kind of alcohol involvement, I never got any smell of alcohol. There was no slurred speech, it might have been disorganized and incoherent, but nothing slurred. So at that point, I believed that the person was intoxicated by drugs. I asked the person, I think before this, had they had anything to drink tonight and he said, no. I said have you had any drugs and again he said no. In my experience, people don't often admit, especially if they're under age if they've had any alcohol or drugs. So, anyway, I advised the person that I was detaining him under the Detention of Intoxicated Persons Act, and at that time I grabbed hold of Mr. Spurrell....

Reference: Transcript-December 7, 2012, page 19, lines 22-24, page 20, lines 1-24 and page 21, lines 1-22.

.../52...

14. Dane Spurrell in response to the officer's instruction, to wit: you should be up on the sidewalk he stepped up onto and off the sidewalk which Dane Spurrell concluded was apparently not sufficient in the eyes of Constable Harris.

Dane Spurrell's evidence arising from his direct examination by Commissioner's Counsel is as follows:

Q. Yeah, that's fine, okay, so then she said "you were walking in the middle of the road"

A. Yes

Q. What did you say?

A. I replied by saying, "no I'm not, I'm on the side of the road.

Transcript, October 28, 2011, page 123, lines 17-23.

15. The following exchange of Commissioner's Counsel cross-examination of Constable Harris is an apt description of Constable Harris advising Dane Spurrell her grounds for detaining him.

Q. You made the statement "so I – I grabbed hold of his right arm, I said you are being detained under Detention of Intoxicated Persons Act because I feel you have been – you're impaired possibly by; it doesn't seem like alcohol, but impaired by drugs and you're going to harm yourself by walking in the middle of the road.

A. Correct.

Q. Is that an accurate reflection of what you told Mr. Spurrell?

A. Correct.

Transcript December 7, 2012, page 119, lines 2-13

15. Constable Harris from her initial encounter with Dane Spurrell had concluded he was uncooperative, she suggested he was on drugs which conclusion she reached from his physical appearance that included to wit: droopy eyes, flush face, squinty and watery eyes, disoriented thought and disoriented walk. She had eliminated grounds for impaired by alcohol because there was no smell of alcohol. Constable Harris had, on the aforementioned day concluded he was impaired by a drug and ultimately decided to detain him pursuant to the provisions of the *Detention of Intoxicated Persons Act*. The evidence from Constable Harris is that she had decided to detain Dane Spurrell prior to the arrival of Constable Priddle. Constable Harris reasonable and probable grounds to detain Dane Spurrell were premised on his lack of cooperation which included failure to make eye contact with her when she attempted to get his attention, his facial appearance which she concluded didn't appear to be the norm and his apparent visual impairment.

The following exchange provides an understanding and rationale for the reasonable and probable grounds upon which Constable Harris relied.

Q. So that's when you actually found your grounds is it, when you actually saw his face?

A. Correct.

Transcript, December 7, 2012, page 95, lines 5-8.

17. Constable Harris also provided further evidence;

Q. Now at that time before you had detained him, did you ask him about his visual impairment?

A. Not before I detained him.

Q. Did you specifically ask him whether he had any medical conditions?

A. I don't recall that I did.

Q. Did you specifically ask him if he was on drugs?

A. I can't recall, I asked him if he had been drinking.

Q. Did you specifically ask him whether he was taking prescription drugs?

A. I did not ask him.

18. Dane Spurrell does candidly acknowledge he resisted Constable Harris and Constable Priddle's efforts to handcuff and place him in the patrol car which Constable Priddle described as passive aggressive. Dane Spurrell also stated he didn't strike Constable Priddle, however, he didn't cooperate with Constable Priddle's efforts to put the handcuffs on him.

19. Constable Harris efforts in the formation of his reasonable and probable grounds took all of approximately five (5) minutes to amass and resulted subsequently in her reasonable and probable grounds being riddled with inaccuracies after he was detained. It is important to note whilst he was asking to call or talk to his mother, Constable Harris was suggesting if he had cooperated she would have taken him home.

Transcript; December 7, 2014, page 31, lines 4-7 and page 33, lines 4-6.

20. It is fair to say that Constable Harris misconstrued Dane Spurrell's failure to respond to questions that she had posed because he just didn't have the capacity to do so due to the way the questions were framed an example being do you have an issue with your eyes. The answer was yes, but he wasn't able to explain what his eye problem was. His response merited a phone call that he requested to or from his mother. It seems that practically speaking, his request merited an immediate response and why it didn't behoove any observer. One finds that an experienced, competent Police Officer like Constable Harris ought to have been both

knowledgeable and familiar with her RNC Policy and Procedures Manual to the extent the phone call would provide immediate contact with his mother, even from a practical sense and would have lowered Constable Harris' level of frustration and provided answers to some frustrating questions that she simply did not pursue for no justifiable reason.

It is easy to conclude that Constable Harris had held Dane Spurrell in a subservient position throughout the entirety of this exercise. She wasn't talking with him but talking down at him. One can surmise that there lies the root cause of the problem which she created for herself. Her misjudgment was self-induced. The approach to her decision making was harsh and retaliatory and resulted in hasty and unwise decisions. It became apparent in little time that there didn't exist good and sufficient cause nor reasonable and probable grounds to detain and arrest Dane Spurrell. There were many discrepancies with her reasonable and probable grounds. The principles set out in *R v. White* [1947] SCR 268 dealing with the issues of credibility leads one to conclude that confidence and reliability are the hallmarks of a sound witness, Constable Harris, didn't provide that level of confidence with her evidence.

The absence of any reference in Constable Harris Police Notebook or Case Summary to a motor vehicle swerving around Dane Spurrell was the tipping point for his detention and arrest which left immense doubt in terms of her reliability, this event should not have gone unnoticed.

The essence of Dane Spurrell's physical makeup include, to wit: droopy eyes, squinty eyes, flushed face, disoriented walk, his comment regarding his walk was he walked like a penguin and one of his natural features merited a phone call that he

had requested to which Constable Harris failed to respond at her peril. To degress for a moment, Constable Harris angst towards Dane Spurrell was palatable and illogical. Constable Harris was dealing with Dane Spurrell, Constable Harris eliminated impaired/intoxicated by alcohol, her conclusion was it had to be drugs. Her response to a question, did she ask Dane Spurrell if he was under doctor's care instead of a straight no, she stated no the correctional officers did. We still are left wondering what the correct response or answer was, however, it was an example of evasiveness. The answer Constable Harris didn't pursue. She didn't inquire of and neither did she phone his physician to ascertain if he had prescribed Dane Spurrell medications, certainly one would think it would justify further inquiry. Constable Harris subsequently stated:

“so even if he had – if he had have asked and he had said yes, I am sick and such a medication maybe then I would have contacted Mrs. Spurrell but at that point I.....the decision had already been made to arrest Dane Spurrell”.

Her aforesaid response was the essence of and typified the incorrigible attitude which she manifested and allowed to permeate throughout the entirety of this sorry episode.

Constable Harris' Detention of Dane Spurrell

Did good and sufficient cause exist?

Constable Harris was quite correct when she testified *the Detention of Intoxication Persons Act* provided her with the capacity to detain and arrest Dane Spurrell provided the criteria in the specific Regulation was applicable, to wit: he was intoxicated, harm to himself and others or cause a nuisance.

4.(1) Where a peace officer finds in a place to which the public has access a person who is in an intoxicated condition, he or she may, where that peace officer is of the opinion that the person may:

- a) Be a danger to himself or herself;
- b) Be a danger to others; or
- c) Cause a nuisance
- d) Take that person into custody.

Constable Harris relied upon the following physical characteristics to bolster and formulate her reasonable and probable grounds in determining that Dane Spurrell was intoxicated and was to be detained.

Her signs of intoxication were to wit: his demeanor, squinted and watery eyes, flushed face, slurred speech, disorganized thought, incoherent thought, disoriented walk, walk was staggered.

Constable Harris initial encounter with Dane Spurrell was between 12:15 a.m. and 12:35 a.m. when he was advised he was being detained and charged with resisting arrest.

Constable Harris asked Dane Spurrell between 12:40 a.m. and 12.48 a.m. which was after he was arrested and detained if he had been drinking or taking drugs to which he replied no. She then asked him if he had a vision impairment to which he replied "yes".

Constable Harris in the early part of her testimony on December 7, 2012 in response to questioning by her Counsel regarding her Police Studies Program at Memorial University student, she took a course identified as Abnormal Behavior which included to wit: schizophrenia, bi-polar disorder, she also stated that autism was touched on as well but that was after these enclosed events.

Constable Harris was certainly not reticent in stating that she had some experience with or was familiar with Autism/Asperger's Spectrum Disorder through her High School years and was exposed to a "very severe person who was functioning with autism".

Constable Harris in her evidence provided Dane Spurrell with the criteria at her disposal pursuant to the DIP Act by advising Dane Spurrell she had three (3) options at her disposal by informing him that going home was the initial option should he cooperate with her by informing him that she could take him home if he was just a little bit impaired just having a little bit too much to drink or other reasons, the Detox Center was not an option because he was uncooperative, she unilaterally concluded the Detox Centre would not take him, the only option left was the Lockup and that is where she detained him. We hazard a guess to say he didn't fully understand what she was saying to him.

Section 5(1) of *the Detention of Intoxicated Persons Act* states:

5.(1) Where a person is taken into custody under Section 4, the person having custody of him or her shall release that person

- a) On his or her recovering sufficient capacity to remove himself or herself without danger to himself or herself or others and without causing a nuisance;

The events of the early morning of April 19, 2009 as detailed by Constable Harris in her viva voce testimony on December 7, 2012 as they unfolded and as seen from her eyes were the result of Constable Harris' attention being directed to a dark figure who from the perspective of Constable Harris was walking in the middle of Topsail

Road which necessitated a motor vehicle going through the merge lane from Commonwealth Avenue to Topsail Road headed east which Constable Harris said had to swerve, swerve pretty obviously to avoid the person who we now know was Dane Spurrell.

Constable Harris version of these events is that she caught up with Dane Spurrell, there was an exchange between them and Constable Harris was not enamored by the welcome she received and his lack of cooperation.

Her opening salvo with him was “you’re not on the sidewalk” to which he responded, “I’m fine, leave me alone”. Regrettably, the temperature unfortunately rose which is an apt description of what occurred.

We know from the evidence, Constable Harris provided a vast array of observations which were not consistent certainly not where Dane Spurrell was positioned when the motor vehicle swerved around him as he was making the trek headed east on Topsail Road.

Constable Harris had Dane Spurrell positioned in the middle of the road, in the center of the curb lane and which she ultimately agreed was 18” to 2’ from the curb, in the curb lane head east as Dane Spurrell had so stated and from which position Dane Spurrell had remained steadfast.

Transcript; December 7, 2012, page 249, lines 23-24 and page 250, lines 1-3.

Dane Spurrell had little difficulty with questions put to him when the subject was specific, pointed and direct to wit: have you been drinking, have you been doing drugs, where are you coming from, where are you headed to, did you have any alcohol. He answered with his emotionless tone.

From one’s observation, generalized questions merited little response from Dane Spurrell other than to wit: “I’m fine” or “no”, there was much brevity; however, he was able to convey the message when the questions were on target, to wit: do you have problems with your eyes? yes.

Constable Harris, Police Notes included reference, to wit: his speech was slurred, he exhibited disorganized thought, he had disoriented walk, he wore a dark jacket, he walked in the center of the curb lane headed east, he wore dark jogging pants, Constable Harris also had her Case Summary (Consent 1A) in more detail about these events including, to wit: observed signs of impairment by possible drug, slurred speech which ultimately became no slurred speech, water and squinty eyes, flushed face, disorganized thought, disoriented walk which through his self-depreciating humor stated he walked like a penguin.

Constable Harris' viva voce evidence offered the following observations:

There was no slurred speech, it might have been, it might have been disorganized and incoherent but nothing slurred.

Transcript; December 7, 2012, page 21, lines 8-10

The aforementioned comments are a polar opposite of what we see in her Police Notes on April 19, 2009 to her testimony of December 7, 2012.

Q. okay, all right, now in your Police Notebook and in your Case Summary that you had prepared the evening of April 19, 2009, you don't refer to the vehicle swerving a dark figure do you?

A. At the time, I didn't, those are just to jog my memory so at the time I didn't think it necessary to get into that much detail as my Police Notes and Case Summary Report would have been completed, you know shortly after and it was still fresh.

Q. What are just to jog your memory?

A. My Police Notes, they're just a memory.

Transcript; December 7, 2012, page 66, lines 16-24

We thus are to ascertain that a detailed account of the events that precipitated these proceedings about a car swerving around Dane Spurrell merited no acknowledgement in her Police Notebook or Case Summary, it is as if these events had not occurred.

The origin of Dane Spurrell's detention was premised on a swerving vehicle around Dane Spurrell that was a danger to himself and others on the roadway but didn't justify or merit any acknowledgment.

She went on to say in regards to the lack any annotation in her Police Notes or Case Summary.

A. Again, Mr. Adjudicator, this is just a brief synopsis that you provide for the Crown Attorney when they go before the Judge in the morning. At the time, I did not get into – if I had to detail every single incident about that night, similar to my interview that I gave to Sergeant Roche, I would have been there all morning trying to type that or regurgitate. My interview that I provided Sergeant Roche was a few days after the fact, but at that point I had been advised of the severity of what was going on, so obviously I felt the need to provide more detail at that time.

Q. So when you were giving the statement to Sergeant Roche, that was actually a cautioned statement, wasn't it?

A. It was, yes.

Q. So at that stage, you wanted to be as accurate as possible, did you?

A. That is correct.

Q. So then can we say then that your statement to Sergeant Roche is going to be more accurate probably than your notes that you took at the time and your case report?

A. I would say it's possible. There may be some, you know, differences. My notes and the case report again is a brief synopsis.

Q. Uh-hm.

A. So I would believe that those would be most accurate, but to say that they had every bit of the detail that occurred that night would obviously be incorrect, they don't have every bit of the detail because that would just take far too long for – my duties as a police officer would be – I would never do anything else because I would be continuously writing.

Q. I understand, but we're now talking about – the statement you give to Sergeant Roche, then I take it –

A. It provides more detail. Whether or not it's more accurate, it would depend

Q. Just let me finish my question.

A. Sure.

Q. The question I was asking you is at that particular time you knew you were giving a cautioned statement?

A. Correct.

Q. Right, and this was for the purpose of an investigation of whether or not Mr. Spurrell had been assaulted, correct?

A. Correct.

Q. And you had somebody present with you from the police association or the brotherhood,

A. Correct?

Regrettably this is where Constable Harris' investigation went completely arye and the credibility of her reasonable and probable grounds did decompose.

Constable Harris in her oral testimony on December 7, 2012 acknowledged when dealing with Sergeant Roche who was carrying out an internal investigation for the RNC and taking a Cautioned Statement from Constable Harris, her cautioned statement was more accurate probably then her Police Notes and Case Summary.

Constable Harris testified by explaining the Police Notes and Case Summary as follows:

“they don't have every bit of detail here that would take far too long, my duties as a Police Officer would be, I would not do anything else because I would be continuously writing”.

Transcript; December 7, 2012, page 69, lines 9-14

She also states “he was on the road the entire time but I didn't see him in the middle of the road”. That statement leaves one in significant doubt as to the reliability and accuracy of the information she was providing.

Transcript; December 7, 2012, pages 73-86

In regards to the reasonable and probable grounds for the detention of Dane Spurrell, Commissioner's Counsel in querying Constable Harris, suggested to her between his walk, which Dane compared himself to walking like a penguin, his eye, it seemed like vision impairment but at some time they were watery and bloodshot...it seemed like vision impairment.

And that Constable Harris had observed his vision impairment prior to his being detained. Constable Harris rising from a question stated:

“it seemed like he had vision impairment”

Transcript; December 7, 2012, pages 90, lines 11-20

Q. Thank you. You were describing a circumstance when you have been observing Mr. Spurrell inside and outside your vehicle before you detained him, are you not?

A. You mean during the interview?

Q. Yes.

A. Yes.

Q. Right, so you're describing the circumstances that you observed before you say to him you have been detained under the DIP Act, right?

A. Yes, uh-hm.

Transcript; December 7, 2012, page 91, lines 1-12

Constable Harris didn't follow the RNC Policy and Procedures Manual for dealing with Mental and Abnormal Behavior.

Constable Harris stated she found his speech incoherent, very disorganized yet she was able to understand what he was saying, he was alert, he was articulate, it was slow but concentrated.

Transcript; December 12, 2012, page 114.

Constable Harris stated one of the reasonable and probable grounds for his detention was his staggered walk to which Dane Spurrell made a self-deprecating comment that he walked like a penguin. A phone call to Dane Spurrell's mother would have dispelled a lot of uncertainty as to what his medical issues were. Constable Harris' fixation was on everything but providing a phone call that would have alleviated contentious issues at play that were never addressed.

If Constable Harris had acknowledged and respected the RNC Policy and Procedures Manual dealing with Mental/Behavioral Condition Affecting Subjects of Investigation and the protocol therein, Dane Spurrell should and would never have been detained.

The RNC Policy and Procedures Manual sets out requirements to be followed; There was behavior displayed, acknowledged and clearly identified from a medical impairment to wit: vision impairment, the RNC Manual dealing with such occasions to wit: vision impairment, required Constable Harris where there was concern as to the cause of his appearance, Constable Harris was required willwithout delay:

(4) Consider contacting the subject's family; that rule was very clear.

The conclusion that Dane Spurrell was dealing with a medical condition was made by the two (2) correctional officers.

It was fundamentally apparent to the correctional officers that they were dealing with someone who had a medical issue and/or mental issue and certainly his an eye problem which he (Dane Spurrell) had admitted to Constable Harris though he couldn't explain what the eye problem was Constable Harris, didn't peruse the issue pursuant to the RNC Policy and Procedure Manual as required. It begs the appropriate why was a phone call from his mother not permitted in order to dispel a lot of legitimate questions that justified resolution.

Transcript; December 7, 2012, page 132, line

With respect, Constable Harris was asked whether she had complied with the five (5) criteria to follow in the RNC Policy and Procedures Manual dealing with Mental & Abnormal Behavior and Conditions affecting Subjects of Investigation given the issues she was facing and she casually admitted, she failed to follow any of the steps as required and regrettably she attempted to give an evasive response to Dane Spurrell what I have concluded to be disingenuous dealing with his request for a phone call to or from his mother which she could have facilitated and didn't.

The insensitivity that she displayed was both callous/unjustified and completely inconsistent with the RNC Policy and Procedures Manual. Constable Harris was simply impervious to correction.

The incident and ramifications that evolved from his arrest and detention could have easily been avoided if a single phone call had taken place. There was no justification for the attitude displayed by Constable Harris that resulted in her impertinent comments.

What is also telling is the intransigent and obstinate attitude Constable Harris displayed having failed the process neither knowing nor appreciating the substance of her RNC Manual and having failed Dane Spurrell by detaining him when neither good and sufficient cause nor reasonable and probable grounds did exist.

Constable Harris attempted to distinguish mental illness from vision impairment suggesting that vision impairment was not an issue that would fall under the umbrella of Medical & Abnormal Behavioral and not something to be addressed by a physician which this Rule called for. Constable Harris when asked about her duties and responsibilities pursuant to the RNC Manual, she suggested it would be absurd for her to conform to the enclosed rules, it would be impossible to deal with these potential issues in essence she would never get her work done if she had to deal with issues arising from the RNC Policy and Procedures Manual, it was an attempt by her to disavow herself of any responsibility to comply. Constable Harris intransigence by denying Dane Spurrell a call to his mother was a flagrant violation of her responsibilities. When Constable Harris advised the only responsibility she had was to provide Dane Spurrell his rights and caution pursuant to the Charter of Rights & Freedoms and then to advise when asked what policy she was referring to, she simply said she didn't know.

Constable Harris made some other impertinent comments which left the clear impression that these mandatory Rules in the RNC Policy and Procedures Manual could be enforced at the discretion of the Police Officer, she also stated that calling in a medical doctor would depend on the severity of the medical issue.

One can't appreciate what had developed at the City Lockup. She was asked by the Commissioner's Counsel what hand book she was reading from and she advised "she had no legal obligations to phone his mother" because "she had no legal obligation or it's not her responsibility to contact a parent." Her response was mystifying, it simply made no sense and Constable Harris manifested either lack of knowledge or ignorance of the RNC Policy and Procedures Manual and its contents which bear repeating.

Investigation and Detention of Dane Spurrell by Constable Harris pursuant to the provisions of the Detention of Intoxicated Persons Act.

4.(1) Where a peace officer finds in a place to which the public has access a person who is in an intoxicated condition, he or she may, where that peace officer is of the opinion that the person may:

- a) be a danger to himself or herself;
- b) be a danger to others; or
- c) cause a nuisance,

5.(1) where a person is taken into custody under Section 4, the person having custody of him or her shall release that person

- a) On his or her recovering sufficient capacity to remove himself or herself without danger to himself or herself or others and without causing a nuisance; or

The primary issue at play is whether or not Dane Spurrell was detained and arrested without good and sufficient cause contrary to S.3(1)(a) of the Royal Newfoundland Constabulary Public Complaints Regulations.

3.(1) A police officer shall not conduct himself or herself in a manner unbecoming to a police officer and liable to bring discredit upon the Royal Newfoundland Constabulary which shall include but not limited to the following:

- a) Without good and sufficient cause make and arrest or detain a person.
- b) Use unnecessary force with a prisoner or other person contained in the execution of duty.
- c) Be discourteous to a member of the public;
- d) Neglect or omit to promptly and diligently perform his or her duties as a police officer;
- e) Carry out his or her duties in a manner contrary to the Policy and Procedures Manual;
- f) Conduct himself or herself in a manner contrary to the Act.

Transcript, December 7, 2012 Page 161, lines 10-24, Page 162, lines 1-6,

Constable Harris response to Commissioners' Counsel's questions included:

Q. I'm going to suggest to you, Constable Harris that what happened on the night in question was you became frustrated with Mr. Spurrell, is that correct?

A. Sure.

Q. And his behavior was such that you were upset with Mr. Spurrell and frustrated at the circumstance that you find on the side of the road.

A. Sure.

Q. Right; and you told him on a number of occasions that he would have to take the consequences of his behavior, correct?

A. Correct.

Transcript, December 7, 2012 Page 161, lines 10-24, Page 162, lines 1-3,

Constable Harris because here she was frustrated with Dane Spurrell decided to punish him by refusing to take him home. She didn't release him.

Q. Why didn't you contact his family to determine whether he could be released to them.

A. Because I had no obligation to do so.

Transcript, December 7, 2012 Page 169, lines 21-24,

She was going to charge him with resisting, she didn't believe he had a mental illness, believed he had vision impairment, didn't have to involve a medical doctor which was incorrect.

Transcript, December 7, 2012 Page 170, lines 5-8,

Constable Harris had little understanding of the RNC Policy and Procedures Manual when she left him at the Lockup that night. As much as Constable Harris felt Dane Spurrell was frustrating her, she was quite obstinate with him. She was punishing him for her belief, he was making her job difficult, she was indigent and this was retaliation time and she decided she had power and the legal responsibility to provide him with his legal right to contact a lawyer and "that was it" her words. She simply had no grasp of the workings of getting access to a phone call having been conveyed as a prisoner.

Transcript, December 7, 2012 Page 178, lines 4-10,

Constable Harris in her statement to Sergeant Roche arising from an internal investigation provided an array of descriptions as to where Dane Spurrell was positioned on Topsail Road at the time of the events that led up to his detention, which started with to wit: walking center of curb lane headed east, walking east on Topsail Road, person (Dane Spurrell) on commonwealth Avenue in merge lane, he wasn't in the center of the merge lane, he wasn't in the very direct center but he wasn't on the sidewalk, he was actually down on the roadway. She had said he was walking in the curb lane on Topsail Road heading east which she then said was incorrect, then she stated it was close to the center, then closer to the middle of the road, then it was, he wasn't in the enter nor the center of the curb lane, now he was right of center.

The aforesaid comments typify what regrettably brought Constable Harris' reliability into question and created immense doubt in the accuracy of her evidence.

She simply didn't have the necessary grasp of the RNC Policy and Procedures Manual that had application to this fact situation which comment I take no pleasure.

She didn't instill a sense of confidence in her capacity to follow the Regulations. She was not mindful of the necessary capacity to work with the RNC Policy and Procedures Manual. She wasn't efficient and some of her dealings and actions were the result of her antagonism towards Dane Spurrell that frustrated her which one would submit led her to including profane language in her arsenal which was unnecessary.

Constable Harris unfortunately had lacked the requisite appreciation as to how disquieting and regrettable her performance was;

It is not one's intention to weaken her self-confidence but her performance was condescending when it wasn't justified. She met a set of circumstances that she couldn't control and why she didn't call for assistance when Constable Priddle provided little if any was unfair to herself and to Dane Spurrell as well.

We find that none of her actions and deeds were malicious and I wish to emphasize that fact, however, it is our conclusion that Constable Harris was overwhelmed by a set of circumstances that created some grief for her especially when dealing with a young man challenged with some medical issues and called upon to deal with practically by herself. She was simply overwhelmed with the task she encountered.

Did Constable Priddle have Good and Sufficient Cause to Make an Arrest or Detain Dane Spurrell?

It is acknowledged Constable Priddle did not arrive simultaneously with Constable Harris who made the decision to detain Dane Spurrell.

It has to be said that a quick ten (10) second or less inquiry as in this instance would not have provided Constable Priddle with an adequate opportunity to determine how unreliable the information Constable Harris had provided. The decision to detain and arrest him had been made prior to his attendance at the scene.

Constable Priddle had neither impact nor impute into the decision, he simply provided the thrust and muscle to place Dane Spurrell in the RNC Cruiser driven by Constable Harris and left the scene, leaving Constable Harris with the responsibility of driving Dane Spurrell to the lockup.

Constable Priddle relied upon the decision made by Constable Harris to detain Dane Spurrell.

Constable Harris did pass Dane Spurrell on to Constable Priddle to carry out his own analysis of Constable Harris decision which took all of ten (10) seconds which were Constable Priddle's words and departed the scene.

I have concluded that Constable Priddle did have an honest belief as to the accuracy and reliability regarding the information he was provided by Constable Harris; however, from the reasonable man standard, we frankly believe that a reasonable man would conclude that the enquiry Constable Priddle carried out was a lackluster effort, the effort made by Constable Priddle any independent observer being a reasonable man could not have been inspired.

Constable Priddle relied upon the integrity of Constable Harris and no doubt had an honest belief of what he had heard from Constable Harris which I accept from a subjective standpoint; however, his participation in those events were as he described. However, there is an objective standard too, the objective standard is what would – reasonable man conclude.

Constable Priddle was very candid with his comments that his assessment of Dane Spurrell had taken all of ten (10) seconds which I find to be inadequate, inefficient and unfair. It merited more than that especially when a person's freedom is the issue in arriving at the decision. The jurisprudence relied upon to make this decision affects both officers. One is mindful of the decision in R v. Storry (1990) 105 N.R. 81 (SCC)

In R v. Storry (1990) 105 N.R. 81 (SCC) the Supreme Court of Canada relied upon and adopted the following principles in Dumbell v. Roberts (1944) 1 All E.R. 326 (C.A.) at page 91, the Court therein set out in the decision the critical importance of a Police Officer establishing reasonable grounds for suspicion of guilt as a mechanism to ensure the public is protected:

“the power possessed by constables to arrest without warrant, whether at common law for suspicion of felony, or under statute for suspicion of various misdemeanors, provided always they have reasonable grounds for their suspicion, is a value protection to the community; but the power may easily be abused and become a danger to the community instead of protection. The protection of the public is safeguarded by the requirement, alike of the common law, and so far as I know, of all statutes, that the constable before arresting must satisfy himself that there do in fact exist reasonable grounds for suspicion of guilt. That requirement is very limited. The police are not called on before acting to have anything like a prima facie case for conviction; but the duty of making such inquiry as to the circumstances of the case ought to indicate to a sensible man is, without difficulty, presently practicable does rest on them; for to shut your eyes to the obvious is not to act reasonably”.

In the case of Constable Priddle, one defers to the comments of the Adjudicator David Eaton, QC. in The Royal Newfoundland Constabulary Public Complaints Commission v. Constable Krista Clarke (Day) et al.

That cast a wide shadow over these events.

“I conclude, therefore that Constable Day and then Constable Hickey detained Mr. Nolan without having good and sufficient cause to do so. They made assumptions rather than inquires, and either did not fully understand the requirements or the purposes of the DIP Act or were not concerned about them.

In this instance in fairness, Constable Priddle through inadvertence assumed that what he had been told was reliable and sufficient, however, he had to satisfy himself that reasonable and probable grounds had been established; He had an obligation to ensure he was satisfied those reasonable and probable grounds did exist for his suspicion, he also had an obligation which one would suggest was not an onerous task, it wasn't a burden resting on his shoulders and certainly warranted more than a ten (10) second stop. He had to make an inquiry and what happened was not so.

A community has to be left with a sense of confidence with the efforts of its police officers and I would suggest no person could feel secure when questions arise as to the depth of this investigation and certainly when it took all of ten (10) seconds of time by his own admission and depart the scene for no apparent reason.

Acknowledgement is made of the decision RNC PCC v. Constable Layman in that matter the adjudicator made the following astute observation.

“Deprivation of an individual” freedom is a very serious act. Citizens should not be arrested without just cause upon reasonable inquiry by the police,

Constable Priddle's inquiry was not a reasonable effort; there was no sense of intensity, it certainly would not have inspired confidence, it appeared to be carried out with a sense of complacency and was very short lived.

Deference is made to an additional comment made by the Adjudicator in RNC PCC v. Constable Patricia Layman (1998)

“arrests by the Police should only be carried out after due inquiry and careful exercise of judgment. Further, the investigation and allegations must be conducted thoroughly and diligently prior to the laying of a criminal charge”.

The effort of Constable Priddle lacked any sense of intuition.

One didn't get a sense either that Constable Priddle made any genuine effort to enquire of Constable Harris the basis upon which she amassed her reasonable and probable grounds that satisfied her that she had good and sufficient cause to arrest and detain Dane Spurrell.

A review of Constable Harris' Police Notebook and Case Summary by Constable Priddle may have warranted additional discussions before a decision to detain and arrest was made.

His obligation was to make an inquiry with respect didn't occur. There did not appear to be any reason why he had departed the scene so quickly to attend to an urgent matter or been ordered to do so.

The conclusion is that Constable Priddle did not have good and sufficient cause to detain and arrest Dane Spurrell and in so doing breached S. 3(1)(a) of the RNC Regulations.

Dane Spurrell's Arrest by Constable Harris For Obstruction of a Police Officer

Offences relating to public or peace officer – Everyone who:

- a) Resists or willfully obstructs a public officer or peace officer in the execution of his duty or any person lawfully acting in aid of such an officer,
- b) Omits, without reasonable excuse, to assist a public officer or peace officer in the execution of his duty in arresting a person or in preserving the peace, after having reasonable notice that he is required to do so, or
- c) Resists or willfully obstructs any person in the lawful execution of a process against lands or goods or in making a lawful distress or seizure,
- d) Is guilty of an indictable and liable to imprisonment for a term not exceeding two years, or
- e) An offence punishable on summary conviction.

The enclosed events that precipitated the charge for a Breach of S. 129 CCC against Dane Spurrell resulted from Constable Harris concluding that reasonable and probable grounds did exist to detain and arrest Dane Spurrell based upon good and sufficient cause.

It is my conclusion that Constable Harris did not have good and sufficient cause to detain and arrest Dane Spurrell pursuant to the provisions of the DIP Act which Constable Priddle did and does submit was a joint decision made by both Officers.

I reiterate, this decision is premised upon one's inability to rely upon a multitude of assertions made by Constable Harris' concerning Dane Spurrell which included walking in the middle of Topsail Road which when she was cross examined said was simply a figure of speech which lead to he was walking in the center of the curb lane and ultimately he was 18" to 2' from the curb. Constable Harris continued too to use the word center liberally which included right of center or the very center.

This decision is on my inability and reluctance to accept Constable Harris' testimony that a car that she states swerved around Dane Spurrell and headed in an easterly direction along Topsail Road which did not appear in either her Police Notes

nor her Case Summary and these aforesaid notes were prepared less than one (1) hour from the time Constable Harris appeared on Topsail Road aforesaid at 12:18 a.m. on April 19, 2009. I have difficulty understanding or accepting the explanation or rationale as to why this significant piece of material/information didn't appear in her Police Notes & Case Summary, it simply defines reality.

The swerving of a car around Dane Spurrell and the entanglement of Dane Spurrell with the two (2) officers could not have been lost in thought. The verbal exchange with this young man and being subject to profane language and calling for a phone call that never came could not have escaped Constable Harris.

Constable Harris reasonable and probable grounds for Dane Spurrell's arrest and detention included his slurred speech then she said there was "no slurred speech", his disorganized thoughts, his lack of coherence and being inarticulate were refuted by Corrections Officers Keith Connors and Captain David Harvey who did subsequent attest that Dane Spurrell provided no difficulties in that regard.

Constable Harris, in her testimony, had contradicted herself particularly regarding her reasonable and probable grounds that she utilized to arrest and detain Dane Spurrell and as a result of her contradictions had become a unreliable witness.

The droopy, watery and squinty eyes which Constable Harris referenced as several of the physical characteristics exhibited by Dane Spurrell to support her conclusion she had justifiable, reasonable and probable grounds that can be responded to simply by saying that he was asked if he was doing drugs or alcohol and he denied such events occurred.

I find Constable Harris knowingly failed to defer to the RNC Policy and Procedures Manual as required including her failure to refer to the provisions therein when issues regarding medical conditions and abnormal behavior arose that needed to be addressed. She knew or believed he was vision impaired.

The RNC Policy and Procedures Manual states when such issues arise, as in this instance, the RNC Member (Constable Harris) "will without delay" consider in that instance, to wit: a phone call to a family member or friend being his mother which Constable Harris refused that phone call for no explainable reason.

.../76...

Constable Harris didn't make any inquiries having concluded, he was impaired or intoxicated by drug as to what drugs he was using or what prescription drugs he was taking, justified asking why not?

Constable Harris misinterpreted the RNC Policy and Procedures Manual that deals with a prisoner to wit: Dane Spurrell being allowed to communicate with family members and friends at a holding cell to wit: St. John's City Lockup with the authorization of the persons in authority at the City Lockup provided the investigation is not compromised.

Constable Harris misconstrued the aforesaid provision through inadvertence or was completely oblivious to its existence which deals specifically with the provision that the decision to access a telephone call to his mother was under either authority of the Correctional Officers at the St. John's Lockup and completely out of the hands of Constable Harris once Dane Spurrell became the responsibility of the Corrections Officers and/or advertence due to her patience wearing thin with Dane Spurrell.

Constable Harris referred to Dane Spurrell's droopy eyes, disoriented thoughts and slurred speech as several of the physical characteristics she utilized to formulate her reasonable and probable grounds; however, slurred speech became no slurred speech.

Constable Harris initially stated that Dane Spurrell exhibited disorganized thoughts which then results in disorganized speech which then became he was coherent and being able to articulate, slow but concentrated and people were able to understand what he said.

In arriving at this decision, I have duly noted the thoughts expounded by *Chartier v. Quebec (attorney general)* [1979] 2. S.C.R. 474.

“For a peace officer to have reasonable and probably grounds for believing in someone's guilt, his belief must take into account all the information available to him. He is entitled to disregard only what he has good reason for believing not reliable. Since the suspect was denying that he had been involved in the incident and there was no reason to fear he would run off, all the descriptions provided by the eyewitnesses should have been checked out before he was incarcerated.”

I have concluded given the array of issues and there discrepancies that I have detailed herein, including failure to carry out her responsibilities pursuant to the RNC Policy and Procedures Manual herein, it is my conclusion the charge of breach of S.129 CCC had no merit in law.

The effort to charge him was baseless; he was, we conclude, the victim of an unlawful arrest, and were not an affront towards Constable Harris but simply an attempt to extricate himself and prevent an unlawful arrest from taking place. His efforts were simply to achieve a responsible resolution to a series of events, the culmination of police inaction and inadvertence.

Reference is made to Part 1, Chapter A, Arrest and Confinement, Page 4, S.9 which we have concluded to be a legitimate answer to the precarious position that he was placed in through no fault of his own.

Our conclusion that the detention and arrest of Dane Spurrell pursuant to the provisions of the DIP Act were not merited and reasonable and probable grounds did not exist. Dane Spurrell was detained and arrested based on the numerous inconsistencies in Constable Harris evidence and Police Notes and Case Summary.

The suggestion that he was now being an obstructionist premised on what he had been subjected to due to the efforts of Constable Harris and now to be subjected to a breach of S. 129 of the Criminal Code for resisting and willfully obstructing a Police Officer in the execution of one's duties was simply preposterous, unjust and unfair. Dane Spurrell did not merit what he had been subjected to.

It is our conclusion that there did not exist any justification by Constable Harris to pursue a charge for breach of S. 129 CCC, reasonable and probable grounds simply did not exist to justify the action of Constable Harris, neither good and sufficient grounds did exist in her pursuit of a conviction and certainly called into question Constable Harris' capacity for objectivity which did not permeate through these proceedings.

c. A person may use as much force as is reasonably necessary to prevent his unlawful arrest or to retain his freedom from false imprisonment and such conduct shall not constitute an unlawful escape, assault, resistance, obstruction or any other offence.

Constable Harris as well due to her lack of courtesies and her utterance of profanity at Dane Spurrell which she denied. We have no difficulty in concluding that the Commissioner has proven on the balance of probabilities that those utterances were made as well and do fall under the auspices of the RNC Policy and Procedures Manual Part 11, Chapter G – Courtesy that a lack of respect was certainly displayed by Constable Harris at and towards Dane Spurrell which resulted in a breach of S. 3(1)(c) of the Regulations.

Thus the Commissioner has met the burden of proof and on the balance of probabilities has established that Constable Harris and display discourteous to Dane Spurrell.

Constable Harris' Failure to Comply with the RNC Policy and Procedures Manual

Constable Harris testified that prior to and following his detention and subsequent arrest, she suspected Dane Spurrell had both a medical and behavioral condition:

Q. All right. So going back then to the question of the vision impairment that you observed and the possibility of a mental illness, as part of your duties, Constable, you're required to comply with the Policy and Procedures Manual of the RNC, correct?

A. That's correct.

Q. And, in fact, it's an offence under the regulations for you to carry out your duties contrary to the policies and procedures, correct?

A. That is correct.

Q. What is your training in the policies and procedures manual?

A. Throughout police training and initially during the police program we are given a course on some general overviews of the policies and procedures, and then we're provided a copy and access to it, and it's our responsibility to (unintelligible – coughing)

Q. Fair enough, and there's standing order, I believe from the Chief, that you're required to comply with it.

Reference: Transcript of December 7, 2012, page 134, lines 6-24 and page 135, lines 1-6.

Q. Now you testified that you suspected that Mr. Spurrell may have had a vision impairment or medical condition?

A. Uh-hm.

Q. Based on your observation before you detained him, correct?

A. Correct.

Q. Now before deciding to detain Mr. Spurrell did you ask him whether or not he had a medical or behavioral condition?

A. Not specifically. I asked what's wrong with you, why won't you listen to me, what's wrong with you.

Q. Okay, now this particular document sets out – first of all, I suppose, It advises police officers of a circumstance that they can run into, doesn't it, in the course of their – patrol officers, in particular, in the course of their work, correct?

A. Sure.

Q. What's the heading of it?

A. Medical, behavioral or conditions affecting subjects in investigation.

Q. Okay. And what does it say under Paragraph one (1) General?

A. There have been cases where an individual's behavior stemming from a medical condition has been misinterpreted by police and resulted in an inappropriate arrest or detention.

Q. So this policy and procedure requires you to keep that possibility in mind when you're dealing with people that you're investigating and potentially detaining?

A. Yes.

Q. Okay, and I believe if you go to the procedure it says, "Some persons may deny or not be aware of the existence of any medical behavioral conditions", correct?

A. Sure.

Q. If a medical condition is suspected or where there is concern as to the cause of a person's appearance, manner or behavior, members will, "without delay" and it lists five things, correct, do you see that?

A. I asked him what was wrong with him, yes. Obviously, in the search there – was no evidence of any kind of medical alert identification. He was asked if he had any type of medications and for contacting his family and friends, at that point he was considered an arrested individual and that he had to go to the city lockup before anything else could have taken place.

Q. Okay, and we'll get to that. I'm now at the stage, though, when you're actually – before you detained this individual, okay, there's only you and him there at that stage, right?

A. Sure

Q. And you're forming your

A. At that time, I did not believe there was any type of – I had no indication that there was any type of mental illness.

Q. No, but you had an indication there was a possibility he has vision impairment, correct?

A. No, I didn't, I would say that in the course of my duties, it would be almost impossible to ask every individual you come in contact with if they have any of these conditions or if they meet any of these criteria.

Reference: transcript of December 7, 2012, page 135, lines 19-24, page 136, lines 1-24, page 137, lines 1-24, page 138, lines 1-24 and page 139, lines 1-2.

Q. And doesn't it specifically say that under conditions where you may be aware or may suspect that that's the case, you must do these things, correct?

A. Yes, but Mr. O'Flaherty, I would say that, you know, if – again if every person you come into contact with...

Reference: Transcript of December 7, 2012, page 139, lines 14-24, page 14, lines 1-87.

Q. No problem, so you do acknowledge, though, that you didn't do any of the things that the policy requires before taking the step of detaining Mr. Spurrell?

A. No.

Q. You do agree with that, correct?

A. I agree, yes.

Reference: Transcript of December 7, page 142, lines 1-7.

The aforesaid cross-examination of Constable Harris by the Commissioner's Counsel is a testament to Constable Harris failure to comply with the RNC Policy and Procedures Manual Medical/Behavioral Conditions Affecting Subjects of Investigation as directed. Constable Harris acknowledged the possibility of Dane Spurrell dealing with a medical condition to wit: vision impairment in that event the Policy and Procedures Manual S. 3(a) that member will without delay:

“some persons may deny or not be aware of the existence of any medical/behavioral conditions. If a medical condition is suspected or there is a concern as to the cause of a persons' appearance, manner or behavior, members will without delay amongst other issues:

1)Ask the person whether any medical/behavioral conditions exist.

4)Consider contacting the subject's family or friends.

Reference: Consent Exhibit, Tab 4

Constable Harris failed to and essentially stated she didn't have time to do it and/or she did not have any familiarity with the Rule. Constable Harris response was one of obstinance and essentially she would make a subjective decision irrespective as to the aforesaid provision. Her answer was quite evasive and simply didn't provide a definitive response as to why she wasn't cooperating.

The aforesaid clause we reference says if a medical condition is suspected and she did suspect something or there is concern as to the cause of a person's appearance which she admitted, consideration being given to Constshe simply disavowed herself of the responsibility or the requirement to follow that provision...../82...

She stated that after he was detained and charged and Charter Rights read to Dane Spurrell, he had no further contact with anybody. It was too her call on issues of a medical condition, her response was it wasn't something I thought had to be dealt with by a medical doctor. Indeed Constable Harris couldn't provide any information as to the origins of which she was talking. Her course of action would be to taking him to the lockup and the Mental Health Review Board would assume some responsibility for him.

Constable Harris then advised she had no legal obligation to provide telephone connection to or from his mother as she stated "it is not my policy to contact a parent and I am not a babysitter".

Constable Harris also admitted she decided not to release him because of her arresting him for obstruction of a police officer, being intoxicated and he was combative and uncooperative. She premised the decision to detain him due to combativeness and uncooperativeness which shad nothing to do with the grounds for his arrest and release.

Constable Harris overlooked the existence of the provisions of the RNC Policy and Procedures Manual which allowed for communication with family and friends premised on authorization of persons in authority at the lockup and as long as an investigation was not compromised. She was not familiar with that provision. She was oblivious to her foray into the RNC Policy and Procedures Manual and her complete lack of understanding which is a requirement of a Police Officer and clearly contrary to Section 3(1)(j) of the regulations.

It is fundamentally apparent that Constable Harris became, as she ungraciously stated, frustrated with Dane Spurrell's failure to cooperate with her and as she categorized it, he was challenging her authority, she states he was going to have to pay the price for his being uncooperative with her and now would live with the consequence of his behavior which he did.

Constable Harris also, it is submitted, failed to consider her responsibilities as they pertain to dealing with matters of a medical issue. The two Correctional Officers who were on duty at the St. John's City Lockup had neither observed or been subjected to either uncooperativeness, obstructiveness or combative behavior neither of them witnessed coordination difficulties or any signs of impairment but both did believe there was either mental or physical disability issues at play. It was his physical appearance that raised alarm bells.

Constable Harris in this instance did display a lack of understanding of how, when and why the RNC Policy and Procedures Manual would come to play a part in these proceedings. She was completely overwhelmed with her lack of fully understanding the contents of the RNC Policy and Procedures Manual and its wordings.

Constable Harris also by her utterance of profanity at Dane Spurrell and certainly the content and the caustic and condescending style of her comments were certainly not in the context of gathering potential evidence to build a case against Dane Spurrell. The discourteous comments too contravened the RNC Policy and Procedures Manual, Part 11, Chapter G, Courtesy, Page 1.

The Commissioner has certainly established premised on the evidence offered herein and on the balance of probabilities that Constable Harris breached S. 3(1)(j) of the Regulations in that she did carry out her duties in a manner contrary to the Policy and Procedures Manual and S. 3(1)(o) did conduct herself contrary to the Act S. 8(1)(g) by disobeying the Constabulary Regulations, Orders and Rules respecting Policy and Procedures.

Dane Spurrell's Arrest by Constable Priddle For Obstruction of a Police Officer

Offences relating to public or peace officer – Everyone who:

- a) Resists or willfully obstructs a public officer or peace officer in the execution of his duty or any person lawfully acting in aid of such an officer,
- b) Omits, without reasonable excuse, to assist a public officer or peace officer in the execution of his duty in arresting a person or in preserving the peace, after having reasonable notice that he is required to do so, or
- c) Resists or willfully obstructs any person in the lawful execution of a process against lands or goods or in making a lawful distress or seizure,
- d) Is guilty of an indictable and liable to imprisonment for a term not exceeding two years, or
- e) An offence punishable on summary conviction.

Constable Harris had made the call to detain Dane Spurrell pursuant to the provisions of *the Detention of Intoxicated Persons Act* and Constable Priddle relying upon what he believed to be authentic and reliable information provided by Constable Harris assisted her proceeding to request Dane Spurrell to take a back seat in the RNC Patrol vehicle which resulted in Dane Spurrell providing verbal protestations and what he described as a passive aggressive response.

Constable Priddle provided a reasonable description how the aforesaid events played out.

Q. You say he resisted. Resisting is one thing, did he at any point attempt to strike back at you or her that you could see?

A. In a couple of minutes from now I'll explain that. However, I don't – he didn't use his hands or he didn't – he was passive aggressive meaning that – if we walked away, he wouldn't have done anything to us. However, when we were trying to effect an arrest, he fought, as opposed to aggression who would be someone who would attack you.

Transcript, December 20, 2012, page 17, lines 4-12

Dane Spurrell provided his own response to how he best described how he saw these events unfold.

Q. And did you strike or push Constable Priddle?

A. No.

Q. Did you cooperate with Constable Priddle to let him put the handcuffs on you?

A. No.

Q. Why not Dane?

A. Because I was too busy trying to get them to understand.

The Officers had decided to arrest Dane Spurrell because they had deemed that he was obstructing and resisting them in their effort to detain him at the St. John's City Lockup and decided to arrest him pursuant to S. 129(a) of the Criminal Code of Canada, Constable Priddle had advised he had thirty (30) seconds to make that decision.

Q. And there was a discussion for about thirty (30) seconds with Constable Harris about the issue of him being charged with Section 129 CCC.

A. Correct.

Transcript, December 20, 2012, page 41, line 4-19.

That there existed an array of inconsistencies in Constable Harris' testimony including where Dane Spurrell was positioned on Topsail Road, to wit: in the merge lane, in the middle of the road (Topsail) through the intersection of Topsail Road and Commonwealth Avenue, the right of the center of the curb lane, 18" to 2' from the curb on the southern side of Topsail Road.

That his speech was slurred, it wasn't slurred speech, a motor vehicle swerved around Dane Spurrell, there was no motor vehicle having swerved around Dane Spurrell, his disorganized thoughts included he was inarticulate and incoherent, then his thoughts were articulate and coherent, slow but concentrated.

That Dane Spurrell displays disoriented walk, yet the evidence was clear there were no problem with his coordination and balance, he neither stumbled nor weaved. Constable Harris conveys the impression that her evidence was consistent and reliable but leaves one on reflect with a sense of insecurity and unable to feel a level of confidence with her observations.

That the evidence from Constable Harris was Dane Spurrell's face was watery and squinty eyes, face was flushed and she believed his vision was impaired which raised the specter whether the physical characteristics his face displayed were due to impairment or to the medical issues he was dealing with to wit: Autism/Asperger Spectrum Disorder along with his own self deprecating humor that he walked like a penguin which was how he described his disoriented walk which Constable Harris did concede.

That the vast array of discrepancies aforesaid leave much concern whether reasonable and probable grounds did exist to charge Dane Spurrell with a breach of S. 129 of the Criminal Code of Canada (Obstruction of a police officer).

That to justify the aforesaid charge reasonable and probable grounds were required to proceed; however, to identify reasonable and probable grounds it requires carrying out a thorough, complete and reliable inquiry which did not occur.

That in order to achieve that level of confidence with one's decision, the rationale for that conclusion is ably assisted from the thoughts expressed in *Chartier v. Quebec (Attorney General)* [1979] 2 S.C.R. 474.

“For a peace officer to have reasonable and probable grounds for believing in someone's guilt, his belief must take into account all the information available to him. He is entitled to disregard only what he has good reason for believing not reliable. Since the suspect was denying that he had been involved in the incident and there was no reason to fear he would run off, all the descriptions provided by the eyewitnesses should have been checked out before he was incarcerated.

That we have no knowledge as to precisely what Constable Priddle gleaned from his discussions with Constable Harris as to her reasonable and probable grounds that did exist and lead to his participation in the detention and arrest of Dane Spurrell pursuant to the Detention of Intoxicated Persons Act.

That we do know that there was no consistency to the reasonable and probable grounds that Constable Harris originally relied upon to arrest Dane Spurrell that were riddled with inconsistencies.

That Constable Harris' reasonable and probable grounds didn't withstand the scrutiny of an in depth, thorough and vigilant inquiry assisted by her own array of contradictions.

That it is our firmly held belief that Dane Spurrell's response to his unlawful arrest were not an act of aggression, one would characterize it as a defence oriented reaction to prevent Dane Spurrell from being unlawfully detained.

That Dane Spurrell's efforts were not meant to prevent or stymie Constable Priddle from carrying out his responsibilities but to prevent the groundless unlawful arrest from taking place.

That Constable Priddle's inquiry was inadequate, it wasn't sufficient, Constable Priddle was not vigilant enough himself and too reliant on Constable Harris.

That there was no depth to Constable Priddle's investigation which he stated took all of ten (10) seconds. He didn't appear engaged or adequately inquisitive.

That there doesn't appear that he inquired into the contents of Constable Harris' Police Notebook which would have been a reasonable start. There appears to have been little interaction between Constable Priddle and Constable Harris.

That this analysis of Dane Spurrell's response who has concluded him to be honest and honourable in his dealings with the Constable Priddle, Dane Spurrell it is concluded knew he was being victimized and responded in kind.

That Dane Spurrell was astute enough to be aware he was being unjustly and unfairly treated and certainly his call to or from his mother would have prevented this sorry spectacle and bring some sense of normalcy to an event that needlessly spun out of control and to show the shortcomings in Constable Priddle's assistance in Dane Spurrell's arrest and detention.

That the conclusion is that Dane Spurrell's efforts were neither to obstruct nor resist these officers. The reasonable and probable grounds Constable Priddle was were acting upon were grossly deficient and a little more time spent communicating with Constable Harris should have included a phone call to or from his mother.

That there is no doubt that patience is a virtue which regrettably didn't prevail on April 19, 2009.

In *Foley v. Shannahan* (1990) 82 Nfld. & PEI R 271, paragraph 27 (NLTD). Riche J. made this succinct comment:

“Reasonable and probable grounds I find must be found from normal, logical thoughts which leads to a conclusion is very likely correct”.

There were no grounds to justify charging Dane Spurrell with a breach of S. 129 of the Criminal Code of Canada for obstruction of a Police Officer in the execution of his duty. Dane Spurrell was simply attempting to put a halt to his unlawful arrest which we do conclude.

Did Officers Constable Priddle and Constable Harris Utilize Unnecessary Force in Order to Detain Dane Spurrell?

The Commissioner has concluded that he has failed to meet the Burden of Proof and that on the Balance of Probabilities either of the officers utilized unnecessary force to detain Dane Spurrell and accept the motion of the Commissioner and renders a finding of not guilty in both officers favor.

Failure to Promptly and Diligently Perform Her Duties; Constable Harris

Constable Harris admitted that she became confused and frustrated with the lack of cooperation exhibited by Dane Spurrell and decided to detain and subsequently arrest and convey him to the St. John's City Lock-up due to his "uncooperativeness".

Q. I'm going to suggest to you, Constable, that what happened on the night in question was you became frustrated with Mr. Spurrell, is that correct?

A. Sure

Q. And Mr. Spurrell – he was, in your view at least, he was opposing you, he was challenging your authority, wasn't he?

A. Sure

Q. And his behavior was such that you were upset with Mr. Spurrell and frustrated at the circumstances that you found on the side of the road?

A. Sure

Q. Right and you told him on a number of occasions that he would have to take the consequences of his behavior, correct?

A. Correct

Q. And that's the reason that you conveyed him down to the Lockup?

A. Correct

Q. And that's why you drove by his house and when he asked you would you just drop him off at his house, you said no, you're an adult, you got to – as you said, I believe, "You have to take responsibility for your actions and face the consequences"?

A. Correct, I don't believe Mr. Spurrell was asking me to drop him off at his residence to release him on an appearance notice. I believe he was saying let's just pretend this never happened.

Q. Right, but you had the option to drop him at his house, fill out an appearance notice and say here you go Mr. Spurrell, you'll be in Court on this date or that date, didn't you?

A. It was an option, but myself and Constable Priddle and Sergeant Marrie both determined that that was not an appropriate option for us.

Q. What information did you provide to your sergeant about this?

A. I told him that I had a DIP, a detention of intoxicated person, who was not a candidate for alternative measures because he was uncooperative, and therefore would have to go to the City Lockup.

"I have one male DIP on board being charged with resisting arrest, not a candidate for other options, bringing him down below".

Q. Okay, did you provide him with other information?

A. No, that's pretty standard thing to say on the radio. You know, you don't want to tie up the traffic.

Q. Did you provide him with any other information?

A. No, I did not.

Q. Okay and prior to determining – I'm sorry, prior to telling Sergeant Marrie, "He's not a candidate for any other options", what did you do to determine he wasn't a candidate for other options?

A. I know in my experience that he would not have been a candidate for other options, You know, he wasn't cooperating with me, so I couldn't bring him home. Detox Centre would not take him because he was not cooperating. So the only option was to bring him to the City lockup.

Q. So are you telling the adjudicator that you didn't do anything before you decided he wasn't a candidate for any other options? You didn't make any phone calls?

A. No.

Q. You didn't phone his house?

A. No.

Q. You didn't phone the Detox Center?

A. No.

Q. You just said he's going to go down below to the lockup?

A. Yes.

Q. And that's the determination that you made without making any contact with anybody?

A. Yes.

Q. How did you come to that determination?

A. In my experience as a police officer, I would argue that no police officer makes a call to the Detox Center if they know that the Detox Center is not going to take them.

Q. So you're saying it's up to the police officer to determine by virtue of their experience whether or not they're going to take somebody?

A. Correct.

Q. So they don't have to contact the Detox Centre?

A. No.

Reference: Transcript of December 7th, 2012, page 161, lines 10-24, page 162, lines 1-24, page 163, lines 1-8, page 164, lines 22-24, page 165, lines 26-24 and page 166, lines 1-24.

Constable Harris testified that prior to and after his detention and subsequent arrest, she suspected Dane Spurrell was dealing with a medical and behavioral condition. Within minutes of speaking to Mr. Spurrell both Correctional Officers state he displayed no signs of intoxication by alcohol and no signs of intoxication by drugs except the possible appearance of his eyes. They both discussed this in the presence of Constable Harris and she referenced her belief that he was “diagnosed” with something. Both Correctional Officers testified they suspected from his appearance and behavior that Dane had something wrong with him, he looked like he had some sort of mental or physical disability. Officer Keith Connors testified as follows:

Q. So you would have had a chance to observe his demeanor?

A. Yes, I did, yes.

Q. What do you remember about his demeanor that night?

A. He was just completely, for lack of a better word, flat – like, there was no emotion, he wasn’t up, he wasn’t down, he wasn’t violent, he wasn’t sad, he wasn’t, you know, he was just...

Q. Was he disruptive?

A. No.

Q. Was he combative with you or the police?

A. No. Inside the...

Q. Only when you’re looking at him now. My questions are only about when you can see him.

Reference: Transcript, Nov. 6, 2012, page 162, lines 11-24 to page 163, lines 1-3.

Correctional Officer Keith Connors was asked:

Q. Did he look like he had some sort of mental or physical disability?

A. Yes.

Transcript: November 6, 2012, page 166, lines 6-8.

Correctional Officer Keith Connors did make an observation that appeared to contradict an earlier comment he made pertaining to Dane Spurrell's arrival at the St. John's City Lockup.

Q. Now you say you had told my friend Mr. O'Flaherty that he did not look drunk and he did not look like he was on drugs. He told you he wasn't drinking and he told you he wasn't on drugs and you believed him is that correct?

A. Uh-hm.

Q. Yet your immediate reaction, when he left the room was to say: he's fucking wired on something.

A. That was part of my comment, most certainly.

Q. So this contradicted your evidence that you, in fact believed him that he wasn't on drugs, you, in fact, suspected that he might be on drugs?

A. Well anything was a possibility. I firmly believed he wasn't but there was a possibility that something was wrong.

Transcript, November 6, 2012, page 175, lines 6-23.

Correctional Officer: Captain David Harvey.

He too had shown concerns that Dane Spurrell may have been a person who suffered from a mental disability to the extent that he stated:

"the tone of his voice, yeah, we knew there was something. We couldn't make diagnosis of what the issues were but we definitely knew there were some issues there.

Transcript, November 6, 2012, page 101, lines 4-8.

Captain Harvey was asked the following question in direct examination;

Q. Is there anything also about his appearance that stood out to you as being different?

A. Not one particular thing, but, yes, not only his appearance but in his mannerisms that night there was something that stood and that we had an issue with.

Q. Because pretty early on in this process you asked are you seeing a psychiatrist right now?

A. Uh-hm.

Q. And was that a stock question or was that something you asked because you –

A. That was something – as I said, I did notice his eyes stood out to me, that's all.

A. That was something – as I said, I did notice

Transcript – November 6, 2012, page 105, lines 12-24 to page 107, lines 1-24

A. Something, so I was just trying to – I also asked him if he was on drugs or if he was drinking alcohol and maybe, you know, let's see if we can ask more questions and get some more answers, right.

Q. Right. So is it fair to say then that within the point in time that you ask about him seeing a psychiatrist, had you by that point in time formed a conclusion that Mr. Spurrell may be suffering from some sort of mental condition and that's why you asked that question?

A. I don't know if I formed the conclusion, but I certainly formed the suspicion.

Q. Just think about my question. I'm saying at the point in time that you asked – by that point when you asked about him seeing a psychiatrist, had you by that point in time formed a conclusion that Mr. Spurrell may be suffering from some sort of mental condition and that's why you asked that question?

A. I don't know if I formed the conclusion, but I certainly formed the suspicion.

Transcript – December 7, 2013, page 1046. Line 1-21

A. Drugs, I (Constable Harris) thought maybe he's depressed, there's a teenager out 12:30 at night, and that's why I was concerned as well why is he taking these risks, why is he out in the middle of the road.

Q. All right, so going back then to the question of vision impairment that you observed and the possibility of a mental illness, as part of your duties, Constable, you're required to comply with the policies and procedures manual of the RNC, correct?

A. That's correct.

Q. And, in fact, it's an offence under the regulations for you to carry out your duties contrary to the policies and procedures, correct?

A. That is correct.

Q. What is your training in the policies and procedures manual?

A. Throughout police training and initially during the police program, we are given a course on some general overviews of the policies and procedures, and then we're provided a copy and access to it, and it's our responsibility to (coughing)

Q. Fair enough, and there's a standing order, I believe from the Chief, that you're required to comply with that?

A. Yes.

Q. So we all understand. I'd like the witness to be shown, please, Consent Exhibit 2, Tab 3. It's the other one, I'm sorry, it's a blue book with Consent Exhibits 2 on the front. Yeah, Tab 3, please, are you familiar with this document?

A. Yes, I am.

Q. And is this part of the policy and procedures manual?

A. Yes, I believe so.

Q. Now you testified that you suspected that Mr. Spurrell may have had a vision impairment or medical condition?

A. Uh-hm.

Q. Based on your observations before you detained him, correct?

A. Correct.

Q. Now before deciding to detain Mr. Spurrell, did you ask him whether or not he had a medical or behavioral condition?

A. Not specifically. I asked what's wrong with you, why won't you listen to me, what's wrong with you.

Q. Okay. Now this particular document sets out – first of all, I suppose, it advises police officers of a circumstance that they can run into, doesn't it, in the course of their – course of their work, correct?

A. Sure.

Q. What's the heading of it?

A. Medical, behavioral or conditions affecting subjects in investigations.

Q. Okay, and what does it say under paragraph 1 General?

A. "There have been cases where an individual's behavior stemming from a medical condition has been misinterpreted by police and resulted in an inappropriate arrest or detention".

Q. So this policy and procedure requires you to keep that possibility in mind when you're dealing with people that you're investigating and potentially detaining?

A. Yes.

Q. Okay and I believe if you go to the procedure it says, "some persons may deny or not be aware of the existence of any medical behavioral conditions", correct?

A. Sure.

Q. "If a medical condition is suspected or where there is concern as to the cause of a person's appearance, manner, or behavior, members will, without delay" and it lists five things, correct, do you see that?

A. I do.

Q. Did you do any of those five things?

A. I asked him what was wrong with him, yes. Obviously, in the search there was no evidence of any kind of medical alert identification. He was asked if he had any type of medications and for contacting his family and friends, at that point he was considered an arrested individual and that he had to go to the city lockup before anything else could have taken place.

Q. Okay, and we'll get to that. I'm not at the stage, though, when you're actually – before you detained this individual, okay, there's only you and him there at that stage, right?

A. sure.

Q. and you're forming your –

A. At that time, I did not believe there was any type of – I had no indication that there was any type of mental illness.

Q. No, but you had an indication there was a possibility he was vision impaired, correct?

A. No, I didn't. I would say that in the course of my duties, it would be almost impossible to ask every individual you come in contact with if they have any of these conditions or if they meet any of these criteria.

Q. Well, I don't think it requires you to ask of anybody you run into, it does –

A. But at that time, just prior to –

Q. Just one second now, hang on one second.

A. Sure.

Q. Doesn't this particular policy specifically say that it's your duty to keep this possibility in mind of people you encounter behaving or appearing different because of medical and behavioral issues, correct?

A. Correct.

Q. And doesn't it specifically say that under conditions where you may be aware of may suspect that that's the case, you must do these things, correct?

A. It does.

Q. And you've already told the commissioner that you did suspect he had a vision impairment?

.../100...

A. Correct.

Q. So we're not talking about how you run into every person on the street and those sorts of things. We're talking about a circumstance in which you did encounter an individual, you did suspect he had a medical condition, and you didn't do any of these five things did you?

A. Yes, but Mr. O'Flaherty, I would say that, you know, if – again if every person you came in contact with, if you ask them if they have a heart condition or if they have a you know, if they have a walking condition, I just think that's – it's impossible to think that that would be – you know, a police officer would be able to do that to every person they come in contact with.

Q. I totally agree with you, and again perhaps we're speaking in cross purposes. I'm not suggesting this policy requires you to do it with every person you speak to, but you are in the course of an investigating a person or the purpose of potentially taking away their liberty aren't you?

Constable Harris did too comment that prior to detaining and arresting Dane Spurrell that she suggested a medical condition at play, to wit: vision impairment and the possibility failed to be followed and pursuant to the RNC Policy and Procedures Manual Medical/Behavioral Conditions Affecting Subjects of an Investigation, Part 9, Chapter 3, Section 3 which required that a member "Will without delay"

3. Procedure:

Some persons may deny or not be aware of the existence of any medical/behavioral conditions, if a medical condition is suspected or there is concern as to the cause of a person's appearance, manner or behavior, members "Will without delay"

1. Ask the person whether any medical/behavioral conditions exist;
2. Check for the presence of medic alert or similar identification;
3. Establish whether the subject is in possession of medication;
4. Consider contacting the subject's family or friends; and
5. Consider consulting medical authorities, including conveying the subject to a hospital for examination.

The reasons for her failure to comply are found in Transcript; December 7, 2011, page 134, line 6 to page 139, lines 1-17

Constable Harris played the pivotal and primary role with the arrest and detention of Dane Spurrell and conveyed him to the City Lockup. He requested Constable Harris to provide him with the ability or opportunity to call his mother pursuant to the RNC Policy and Procedures Manual once he became a prisoner and being transported to the lockup.

Dane Spurrell arrived at the lockup and the correctional officers present to wit: Captain David Harvey and Correctional Officer, Keith Connors both acknowledged they believed there were medical issues at play.

The array of inconsistencies in the reasonable and probable grounds that Constable Harris had found didn't ignite a desire to peruse issues regarding his physical characteristics particularly his face which ought to have made her more suspicious and certainly more inquisitive as to whether he was dealing with a medical issue that resulted in her grappling with the thought he was vision impaired.

Constable Harris suspicions that Dane Spurrell was dealing with a Medical/Abnormal Behavior Condition Affecting Subjects of Investigation Issue Part 9, Chapter H – Section 3 which was certainly a medical issue and should have piqued Constable Harris attention as it pertained to the RNC Policy and Procedures Manual.

In the case of Constable Harris the significant discrepancy between her Police Notebook and Case Summary and her viva voce testimony at these proceedings was so profound, the investigation certainly as it pertained to Constable Harris was inept and simply unreliable.

It is also important to note that Constable Harris reasonable and probable grounds were deficient and certainly Dane Spurrell's physical characteristics upon which Constable Harris relied substantially were consistent with Dane Spurrell's physical characteristics including his walk, his thought process, his facial features which certainly were quite pronounced and certainly conveyed a message that his physical characteristics did merit further investigation.

Dane Spurrell's concerns that he raised at the time of his detention and arrest followed a request he made for a call to his mother and received no consideration when it was certainly obvious to Constable Harris that medical issues were at play.

Constable Harris was required to without delay perform five (5) matters to review as set out in Part 9, Chapter H. Section 3(a)(4) of the rules including, to wit:

(4) consider contacting the subjects family or friends.

Which regrettably Constable Harris failed to pursue and would have simply alleviated all the turmoil Dane Spurrell and the complainant were put through.

Constable Harris as well did oversee Dane Spurrell arrest and detention and conveyance to the City Lockup. The provisions applicable to his arrest and detention came under the provisions of Part 9, Chapter A, Arrest and Confinement S.12(d) that did provide to wit:

d. Arresting/escorting members will not normally allow the prisoner to communicate with family members, friends or attorneys while being transported. Notwithstanding an accused's right to counsel "as soon as practicable", communication with family and friends will be afforded at the holding facility with the authorization of the persons in authority provided the investigation is not compromised.

Constable Harris had a further aversion to carrying out her above noted obligation and responsibility. It is submitted the aforesaid would not have been a difficult task or chore to perform but a singular act of intransigence or perhaps an act of admonishment by Constable Harris for what can only be described as an act of defiance towards Dane Spurrell and her incorrigible behavior or the effort of how officers, particularly Constable Harris, fell short of what ought to have been done to justify the detention and arrest of Dane Spurrell including the reasonable and probable grounds that really didn't exist to proceed with his arrest and detention.

It is apparent from her own admission Constable Harris investigation was certainly quick, though not thorough. Her reasonable and probable grounds were contradictory. It is our conclusion that it was quick, hasty, rapid and certainly not thorough.

The foregoing conclusion is that commissioner has satisfied the onus of proof that on the balance of probabilities Constable Harris did breach S. 3(1)(d) of the regulations in that she failed to carry out her duties promptly and diligently.

Failure to Promptly and Diligently Perform His Duties: Constable Priddle

Dane Spurrell stated that upon Constable Priddle's arrival he had hoped that reason would prevail and an opportunity arise to talk to somebody who would listen who he did hope would be Constable Priddle.

Dane Spurrell said the initial question Constable Priddle asked was do you have a problem with your eyes and the reply Constable Priddle received was yes. Constable Priddle before providing an appropriate response, asked what kind of drugs are you on which I have concluded was the essence of what went wrong with his participation. It certainly epitomized lack of due diligence and why this entire event was derailed. Dane Spurrell never received a responsible answer to his question to Constable Priddle.

One also finds disappointing the lack of any intensity displayed by Constable Priddle in his effort to get to the root of the problem which was are there medical issues with this young man.

There is no doubt Constable Priddle was being sought by Dane Spurrell to intercede and for someone to listen to what he had to say YET all he got was inattentiveness. Constable Priddle's enclosed testimony is a fitting expose of what went wrong that morning and typified why it can be said that Constable Priddle failed to perform his duties diligently and promptly.

Q. The night that you (Constable Priddle) arrived on the scene, early that morning, did Dane ask for help?

A. I don't recall Dane asking me for help.

Q. Okay he says he did. He tried to talk to you and explain that it was a misunderstanding and you weren't...

A. He very well may have said that. You have to – not diminish anything, someone asking for help, in the situation that I was in, there was lots of things being said to me and unfortunately, they're things that I hear all the time, and maybe the generalization didn't help this situation in any way, but everyone lies to the police, everybody has a story, everybody shouldn't be locked up, everybody shouldn't be arrested, everyone – that's what I hear a lot and you have to put on your filter, and this was not my investigation.

It begs the question, how is it possible that Constable Priddle for all of his ten (10) second effort and is asked for his attention by Dane Spurrell can safely say from his evidence which is enclosed that he carried out his duties promptly and diligently when he didn't even provide an adequate, intelligent response and quickly departed the scene, the other telling comment he made was the investigation was not his. If it wasn't his investigation he certainly played a role, he may not have owned the investigation he played an active role.

In reference to comments made by Counsel for Constable Priddle regarding his client's interaction with Dane Spurrell and not being aware of his physical and medical limitations and absence of training in dealing with such circumstance.

We do accept Counsel's comments that Constable Priddle did not receive any formal training with respect to disorders on the Autism Spectrum.

We do note the thrust of Counsel's submission that Constable Priddle should not have to fall on his sword for the Royal Newfoundland Constabulary.

We do believe; however, if more time had been taken by Constable Priddle to carry out a more rigorous, thoughtful inquiry, one could appreciate the submission being made; however, one can safely say that a five (5) minute inquiry carried out by Constable Harris and a ten (10) second inquiry by Constable Priddle simply does not merit or justify concluding he exercised his best judgment.

The effort put forward by Constable Priddle was not fair to Dane Spurrell, there were no courtesies extended to him, he wasn't treated properly.

Constable Priddle ought to have known the RNC Policy and Procedures Manual and the responsibilities that come with it.

Constable Priddle could have had impact on the investigation yet ten (10) seconds simply doesn't cut it and a rapid departure after a "quick check" or ten (10) second turnaround when there appears to be no evidence offered to suggest

he departed on orders from his superiors doesn't warrant concluding that every effort was made by Constable Priddle to assist in responding to a legitimate request made by Dane Spurrell instead of profanity being directed his way which is essentially all he received.

Constable Priddle could have made a significant contribution if he had stayed and spent more time communicating with Constable Harris. It has to be repeated a failure to provide a telephone call to Dane Spurrell's mother when asked and didn't merit a response from Constable Priddle was simply unjustified when she could have provided significant information that would have brought the proceedings to a successful conclusion.

It is a fair conclusion neither of the officers gave Dane Spurrell much listening time; they simply talked over him.

Dane Spurrell made a legitimate request that was ignored that didn't have to be and one only has to look at the results of failing to listen.

Constable Priddle had a responsibility to exercise due diligence and did not carry out his responsibilities promptly and with due diligence in coming to this conclusion. It is duly noted the comments of Adjudicator Kean in Royal Newfoundland Constabulary Public Complaints Commission v. Thistle & McGrath, December 10, 2004.

Constable Priddle submits that he acted in good faith throughout his interaction with Mr. Spurrell. Constable Priddle also testified that although he was familiar with individuals with Autism, he had not received formal training with respect to disorders on the Autism spectrum.

Adjudicator Kean provided his thoughts arising from RNCCC v. Thistle and McGrath which we acknowledge in which he stated:

"it is apparent tribunals have accepted this defense in a variety of situations especially cases inviting good faith reliance on incorrect policy. The premise is that an officer should not be held individually responsible for an organizational failing."

We do respond to the comments of Adjudicator Kean by stating that this was not an organizational failing this was an example of Constable Priddle being lethargic in his efforts, he being a member of the RNC had to be or should have been aware of the RNC Policy and Procedures Manual and to the RNC Act and the application to these proceedings when Dane Spurrell requested a phone call to his mother. The request was in retrospect a significant request from Dane Spurrell to Constable Priddle. There was no justification being offered for failure to respond. It has to be said that a phone call would have resolved this regrettable situation.

Constable Priddle was in such a rush to leave the scene without extending any courtesies to Dane Spurrell. It had to be apparent that Constable Priddle and Constable Harris were dealing with a young man with physical limitations and medical issues. It is obvious that more time should have been spent inquiring of Dane Spurrell's background that pertained particularly to his physical and medical deficiencies. Thus the conclusion is that the Commission has met the onus of Proof on the balance of probabilities and a breach of S. 3(1)(d) of the Regulations.

Police Officers Using Profane Language and Displaying Disrespect
Constable Priddle – Profane Language

Dane Spurrell stated that he was the unwelcomed beneficiary of profane and disrespectful language uttered by Constable Priddle. Constable Priddle did admit, to his credit, he uttered and directed at Dane Spurrell the “f” word several times that included “what kind of fucking drugs are you on” and “you know fucking well”. Constable Priddle has admitted; however, that the use of profanity in this case was a questioning technique rather than an attempt to offend Mr. Spurrell which is not accepted. His language was unnecessary. Dane Spurrell was never reticent with his answers, he was not evasive. He wasn’t profane. Dane Spurrell was never disrespectful, he presented his testimony in a straightforward manner. I have no misgivings as to his reliability. I accept his testimony.

I found given his physical and mental shortcomings, to wit: Autism/Asperge’s Spectrum Disorder Dane Spurrell never created any concerns in providing his evidence. He wasn’t incoherent as suggested, his thoughts weren’t disoriented as suggested, though his speech could be slow which manifested itself during these proceedings, he was articulate which Constable Harris confirmed during her testimony.

Transcript: December 7, 2012, page 113-Page 115

I didn’t witness any display of disorganized thoughts, he was coherent as several of the witnesses did attest to including Corrections Officer Connors and Captain David Harvey. He ably conveyed his message. The language that Constable Priddle utilized was unnecessary, disrespectful and was contrary to the RNC Policy and Procedures Manual.

I am mindful that the Commissioner does bear the onus of proof on the balance of probabilities. Constable Priddle did ignore the policies procedures of the aforesaid Manual, and he failed to display the courtesies required and expected towards Dane Spurrell as was set out in the aforesaid Manual.

I do accept that Constable Priddle did shout at him which I find unnecessary and accept Dane Spurrell’s evidence in that regard. Dane Spurrell did not display any discourtesies to Constable Priddle, he never lost control only when he tried to extricate himself from the clutches of Constable Priddle and Constable Harris

.../109...

Constable Priddle denied he directed any such disrespectful comments towards Dane Spurrell that day which one can't accept.

There was no evidence adduced that Dane Spurrell was disrespectful towards either Constable Harris or Constable Priddle. There was no evidence he uttered profanity towards either of them.

The only aggression that he displayed was seeking a phone call to his mother.

Transcript; December 7, 2012, page 113 – page 115, line

We didn't witness any display of disorganized thoughts by Dane Spurrell, he was coherent as several of the witnesses did attest including Corrections Officer Connors and Captain David Harvey.

We find that Constable Priddle did use profane language towards Dane Spurrell and that he did display disrespect to Dane Spurrell when he suggested to him, "what kind of fucking drugs are you on" and "you know fucking well" as an unnecessary tactic which certainly didn't deter him in an effort to intimidate or run rough shod over him.

I have concluded that Constable Priddle out of exasperation made those comments which arose in such circumstances but doesn't excuse them from being made. I do not accept any suggestion that the profane language he uttered was any type of questioning technique because if it was meant to do so it had no effect. Constable Priddle got no traction from his approach, Dane Spurrell's disposition does not appear to have had any change due to Constable Priddle's verbal aggression. The only consistency was Dane Spurrell calling for a phone call to his mother.

I thus find him guilty of the enclosed offence and a breach of S. 3(1)(c) of the Regulations.

Police Officers Using Profane Language and Displaying Disrespect
Constable Harris – Profane Language

It became apparent shortly after their initial encounter that Dane Spurrell, Constable Harris and Constable Priddle were not on the same page. It certainly wasn't a genteel encounter.

I acknowledge that policing can be a tough occupation at the best of times, however, irrespective of how difficult and challenging these types of encounters become, the RNC Policy and Procedures Manual requires that an officer must display courtesies and respect towards the general public.

Dane Spurrell testified Constable Harris displayed little respect for him and the graphic language he was subjected to was both disrespectful and profane.

Dane Spurrell stated that Constable Harris became quite annoyed with him which became apparent from the tenor of the evidence that was offered particularly Constable Harris' annoyance with Dane Spurrell commencing with not using the sidewalk on Topsail Road.

Dane Spurrell was asked a question in direct examination:

Q. Now you need to tell the Adjudicator what happened then? Two of you are outside now in the parking lot, correct?

A. Out of my response, her response was, Do you know what a fucking sidewalk is? The "F" word wasn't suppose to be there. This gratuitous comment was simply unwarranted.

Transcript: October 28, 2011, page 115, Lines 17-19

Dane Spurrell states unequivocally he was the recipient of foul language from Constable Harris during this encounter and profane language was unnecessary.

Dane Spurrell also testified that he was the recipient of inappropriate language a second time that day. Dane Spurrell stated that he had made a request of Constable Harris to contact his mother after his arrest and the response he received was, she (Constable Harris) was not his goddam babysitter.

Transcript; October 31, 2011, page 73, lines 3-5.

Constable Harris denied she directed any such disrespectful comments towards Dane Spurrell that day; however, I have witnessed regrettably discrepancies between Constable Harris documentary evidence and her viva voce evidence throughout these proceedings that have caused me concern.

There was no evidence adduced that Dane Spurrell was disrespectful towards either Constable Harris. He didn't utter profanity towards either of them.

Dane Spurrell on the other hand, I acknowledge his shortcomings though he never created any concerns in providing his evidence. There was no use of profane language, he wasn't incoherent as suggested, his thoughts weren't disoriented as suggested, his speech could be slow but concentrated which manifested itself sometimes during these proceedings, he was articulate which Constable Harris confirmed during her testimony.

Q. Okay. Was there anything about his speech pattern?

A. It was very incoherent, very disorganized.

Q. It was incoherent?

A. Very jagged.

Q. It was incoherent, was it?

A. Incoherent in that it wasn't – you know, it wasn't again a fluid structure to it. It wasn't – it wasn't a conversation as such. It was just very jagged.

Q. Okay. Was he able to articulate what he meant? Were you able to understand what he was saying?

.../112...

A. Yes.

Q. Okay. I believe – and you also told Sergeant Roche that what he was saying was age appropriate as well, correct, on page 21? What was your answer?

A. Yes.

Q. Yes, he asked you to describe how he spoke to you. Can you just tell the Adjudicator what you said?

A. “It was slow, it was concentrated, but still, like, you know, with regards to age appropriate language very much so”.

Transcript: December 7, 2012, page 113 – page 115, line 17-19

Dane Spurrell’s testimony didn’t display any disorganized thoughts, he was coherent as several of the witnesses did attest including Corrections Officer Connors and Captain David Harvey.

There is no difficulty concluding that Constable Harris did use profane language towards Dane Spurrell and that she did display disrespect for Dane Spurrell when she suggested to him, “do you know what a fucking sidewalk is” and “I am not your goddam babysitter” out of complete frustration and exasperation towards him. I have concluded Constable Harris was irritated when she uttered these comments which I conclude were unjustified. There was no excuse for them being made. Any suggestion that the profane language she uttered was a style of questioning technique is simply not plausible in this instance. These comments were made in the context of frustration and not communicating with him as she desired.

Furthering the circumstance in which this language was used was not due to any sense of an inquiry to obtain valuable information in order to achieve resolution and conclusion to an alleged crime.

The issues here were simply not difficult to digest, the exchanges were not tumultuous and Dane Spurrell certainly didn’t display any discourtesies that would justify a rude or profane response.

Her comments to Dane Spurrell were not stylized in favor of a questioning technique and certainly not in the context in which they were made. Her efforts at berating him simply didn’t work and unnecessary.

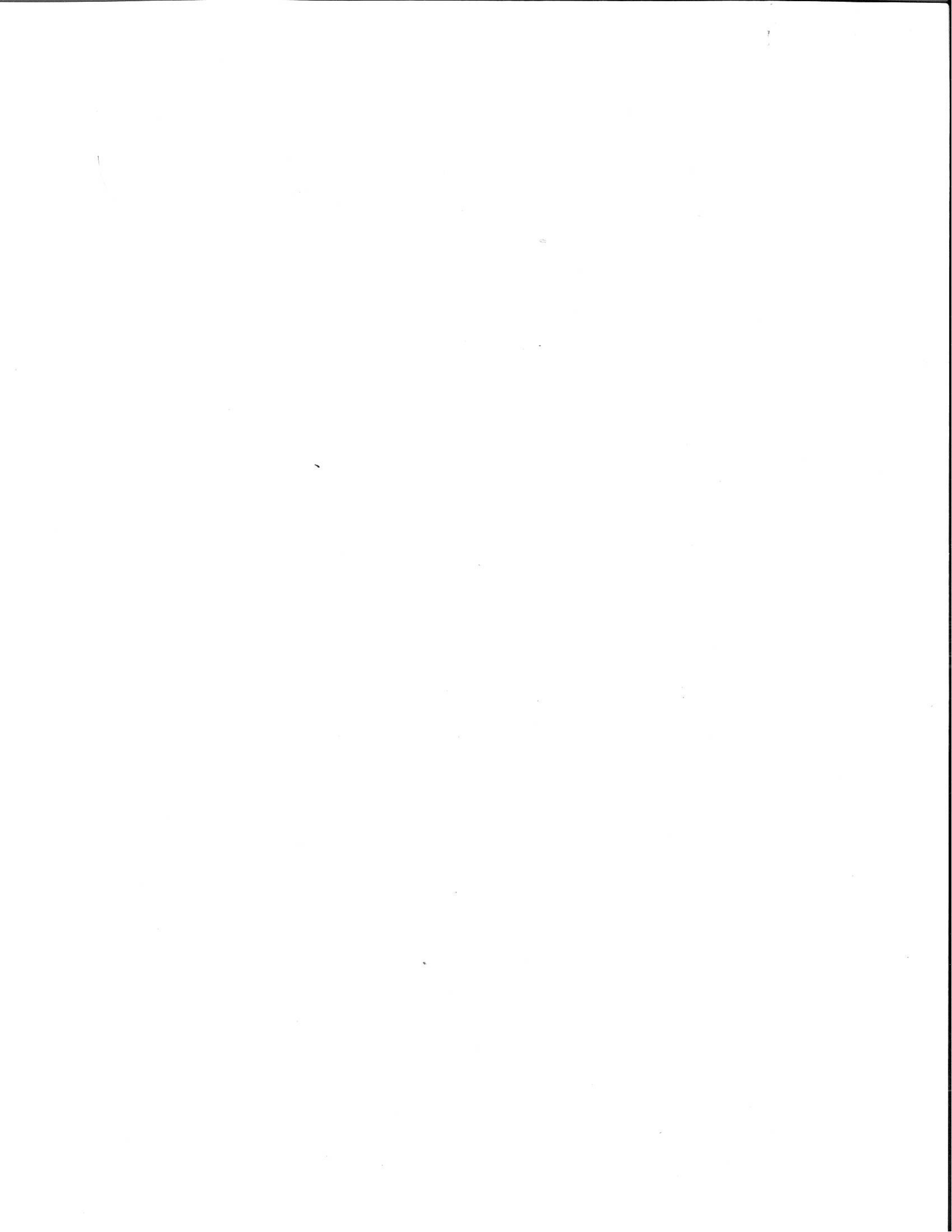
.../113...

Constable Harris use of profanity was unnecessary and didn't work, it was a verbal instrument that wasn't required.

The evidence I observed being offered by Dane Spurrell was quite comprehensible.

Constable Harris was simply dismayed and might it be suggested if her style of questioning had not been so forward and more normalcy prevailed, these circumstance would simply have evaporated into the abyss.

I find that Constable Harris' language and discourtesies were unnecessary and simply out of frustration and not necessary from an experienced officer. I do conclude that she breached S. 3(i)(c) of the Regulations.



Findings

Constable Harris

1. Constable Harris is found guilty of a breach of S. 3(1)(a) of the Regulations, without good and sufficient cause make an arrest and detain a person.
2. Constable Harris is found guilty of a breach of S. 3(1)(c) of the Regulations, was discourtesies to a member of the general public.
3. Constable Harris is found guilty of a breach of S.3(1)(d) of the Regulations, neglect to promptly and diligently perform her duties as a Police Officer.
4. Constable Harris is found guilty of a breach of S. 3(1)(j) of the Regulations, carry out her duties in a manner contrary to the Policy and Procedures Manual.
5. Constable Harris is found guilty of a breach of S. 3(1)(o) of the Regulations and conduct herself in a manner contrary to the RNC act S. 8(1)(9) to wit: failure to obey Constabulary Regulations, Orders and Rules respecting policy and procedure.

Constable Priddle

1. Constable Priddle is found guilty of breach of S. 3(1)(a) of the Regulations, without good and sufficient cause make an arrest or detain a person.
2. Constable Priddle is found guilty of breach of S. 3(1)(c) of the Regulations, was discourteous to a member of the general public.
3. Constable Priddle is found guilty of a breach of S. 3(1)(d) of the Regulations, neglect to promptly and diligently perform his duties as a Police Officer.

Conclusion

I wish the record to show that in arriving at this decision, we have relied upon the decision in *White v. R* [1977] S.C.R. 268 at page 272 which sets out the enclosed factors in assessing credibility which the prevailing issue through these proceedings.

A) Generally:

- a) Whether the witness is honestly endeavouring to tell the truth;
- b) Whether the witness is sincere and frank; and
- c) Whether the witness is biased, reticent and evasive.

B) Specifically:

The Court may consider the following;

- a) The witnesses' general integrity and intelligence;
- b) The witnesses' power to observe;
- c) The witnesses' capacity to remark and
- d) The witnesses' accuracy in statements.

In particular reference to the decision in *Fowler v. Adams* referenced by Counsel for Constable Harris (August 2004) that was affirmed 2006 NLTD 164, we wish to emphasize that we are quite mindful of the principles set out therein and submitted for our consideration by Counsel for Constable Harris.

We are cognizant that it has a two-fold component with the primary emphasis on the objective overview.

We are quite certain that officers do hold an honest belief in their actions and decision making. However, in the application of the principles involve the standard set for exercising and making these decisions is the reasonable man as referenced in the submission presented by Counsel for Constable Harris which we enclose *Fowler v. Adams* and make specific reference to. We have followed the principles as set out and give those principles significant consideration in arriving at our decision in this matter.

- a) The test is primarily an objective one.
- b) The board must measure the conduct of the officer by the reasonable expectations of its community.
- c) 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 apprized of the circumstances of the case.
- d) 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.
- e) Because of the objective nature of the test, the subjective element of good faith is an appropriate consideration where the officer is required by the circumstances to exercise his discretion.

Reference: Paul Ceyssens, Legal Aspects of Policing, loose-leaf (consulted on 7 June, 2013), (Salt Spring Island, BC: Earls Court, 1994) Ch. 6 and 12-18 – Harris Book of Authorities at Tab 4

Girard v. Delaney (1995) 2 PLR 337 (Ont. Bd. Inq.) – Harris Book of Authorities at Tab 5

Fowler v. Adams (August, 2004) aff'd 2006 NLTD 164 per Orsborn CJ – Harris Book of Authorities at Tabs 6 and 7

Thus in arriving at this decision, we acknowledge the comments referred to by Counsel for Constable Harris below and we have placed ourselves in the position of the reasonable man as he has submitted in reaching this decision.

In these, as in most disciplinary proceedings, there is no objective evidence of the community's expectations. Therefore in considering the objective component of the Discreditable Conduct Test, the Adjudicator must place himself in the position of a reasonable member of the community, fully apprized of all relevant circumstances including the facts underlying the alleged offences and the applicable legislation, regulations and policies. We can confirm that we have referred to that and are mindful of the comments made in arriving at the conclusion reached in this matter.

The issue at play in this fact situation had nothing to do with the relationship Dane Spurrell has with his mother and all to do with whether Constable Harris or Constable Piddle did or did not bring discredit on the RNC by breaching the RNC Public Complaints Regulations.

There were issues raised regarding his ability to communicate. We find no difficulty in that regard. We believe in this instance it wasn't his ability to communicate that caused a lot of the problems herein, it was the combination of Constable Harris' frustration believing she was being outwitted by Dane Spurrell, her failure to follow the RNC Policy and Procedures Manual and a significant lack of understanding of the provisions in that Manual and ultimately her failure to allow a simple phone call to and with his mother that would have put a stop to the unnecessary turmoil that followed.

Constable Harris in particular displayed an impervious, contemptuous attitude towards the RNC Policy and Procedures Manual. (hereinafter called the "Manual")

The conclusion in this matter has resulted in finding that Constable Harris to be an unreliable witness, her evidence particularly related to her reasonable and probable grounds was found to be deficient and contradictory.

Constable Harris failure to provide any reference to the "car swerving incident" in her Police Notebook and Case Summary resulted in a loss of confidence in her evidence, the explanation offered in her defence was found to be implausible. The evidence that she offered displayed lack of knowledge and understanding of the RNC Policy and Procedures Manual and what caused her difficulties. Her contemptuous attitude was quite revealing and regrettably her insensitive attitude to the importance of the Manual was quite disconcerting. We have concluded that Dane Spurrell's evidence was neither evasive nor unreliable. We have no questions as to how Dane Spurrell was able to offer his evidence.

Constable Harris's evidence was regrettably riddled with inconsistencies, it lacked consistency.

I acknowledge and accept Dane Spurrell had several previous experiences with the RNC; however, that being so and he did admit, these findings are premised herein solely on Constable Harris role with this file and the shortcomings that emanated from her participation in the investigation.

I acknowledge Dane Spurrell's admission too I "still hate them" which plays no role in these findings.

I note Counsel for Constable Harris does submit Constable Harris was properly trained in relation to *the Detention of Intoxicated Persons Act*, RSNL 1990, CD-21 (hereinafter referred to as the DIP Act) and the associated Manual.

Regrettably, it became apparent throughout the course of these events when she carried out her investigation, she displayed a lack of understanding and appreciation for those applicable provisions in the Manual. She left the clear impression, she lacked confidence in the rules themselves and their application.

In specific reference to the DIP Act, the reasonable and probable grounds and whether good and sufficient grounds did exist, a review of her evidence does disclose significant discrepancies, to wit: slurred speech, water and squinty eyes, flushed face, droopy eyes, disorganized thought, disoriented walk that Constable Harris formulated to support her reasonable and probable grounds and good and sufficient cause to detain and arrest Dane Spurrell through the course of the evidence herein became no slurred speech, the droopy eyes, flushed face, water and squinty eyes, became vision impairment, disorganized thought became articulate, coherent, slow but concentrated and her disoriented walk was Dane Spurrell displaying his natural walk.

Significant examples were offered by Constable Harris' Counsel regarding Dane Spurrell's obstructionist attitude, however, the conclusion is that neither of them can take ownership of same.

Regrettably, it was a situation of Constable Harris frustration with Dane Spurrell and Dane Spurrell's inability to develop a sense of confidence and comments with Constable Harris and certainly the profanity and discourtesies she displayed heightened the level of frustration between them.

The detention and arrest of Dane Spurrell as earlier stated was unjustified, there did not exist good and sufficient cause to arrest him and as noted the reasonable and probable grounds were contradictory.

One does acknowledge that Dane Spurrell did offer resistance to Constable Harris and Constable Priddle's efforts to detain him; however, we have concluded he had been the victim of an unlawful arrest and his efforts were not to interfere with the officers in the execution of their duties but to defy their effort to carry out a unlawful arrest. The three (3) witnesses, to wit: Ms. Pinshorn, Ms. Coffey and John Taylor offered little to these proceedings other than they heard little but witnessed the Officers efforts to detain Dane Spurrell but saw nothing out of the ordinary.

For the record, it is to be noted that the decision made by the RNC regarding the Breach of the DIP Act and how the RNC dealt with that matter played neither part nor had any impact or influence in the decisions arrived at here.

In reference to the comments made in the submission of Constable Harris reference as to comments of Dane Spurrell to Constable Harris in which he makes reference to leprechauns and zodiac signs, what Constable Harris found to be unusual supported her view that Dane Spurrell was on drugs.

If one follows those enclosed comments made by Dane Spurrell, his comments could appear to be one of a very lucid individual certainly not doing drugs. One could conclude the reference to leprechauns and zodiac signs to be simply levity, wit and sarcasm.

With particular reference to page 74, Paragraph 82 of the Memorandum of Fact and Law submitted by Counsel for Constable Harris, reference is made to the Manual, Part 1, Chapter A-S-7 Elements of a Lawful Arrest, Arrest and Confinement and states the Arrest and Confinement does not require RNC Officers provide an individual the opportunity to contact family members upon arrest. The only request with which Constable Harris complied is to provide or to retain and instruct Counsel without delay.

With respect, it is the belief that ultimately Dane Spurrell became a prisoner of Constable Harris the Arrest and Confinement, Part 1, Chapter A – Arrest and Confinement, S. 12 Members Responsibility for Prisoners became applicable:

Part 1, Chapter A – Arrest and Confinement

12. Members' Responsibility for Prisoners:

- a. Arresting/escorting members have responsibility for care, custody and control of all prisoners until they are:
 - i. Handed, with complete documentation to Lock-up or other detention facility staff;
 - ii. Searched; and
 - iii. Placed in a cell.

This responsibility continues inside the lockup where members will adhere to the policy of the facility.

- b. Arresting/escorting members will not normally allow the prisoner to communicate with family members, friends or attorneys while being transported. Notwithstanding an accused's right to counsel "as soon as practicable", communication with family and friends will be afforded at the holding facility with the authorization of the persons in authority provided the investigation is not compromised.

It is clear that Constable Harris did have a further responsibility which she failed to carry out and have concluded she wasn't going to carry out regardless and continued to defy the aforesaid rule.

The rule states "as soon as practicable" communicate with family and friends will be offered at the holding facility with the authorization of the person in authority provided the investigation is not compromised.

Constable Harris stated or decided she was not going to allow Dane Spurrell to get a phone call because he was under arrest and he had a right to call a lawyer which was RNC policy.

Regrettably, she had received a request. The request though legitimate was subject to the authorization by persons in authority at the facility. Constable Harris let inertia get in her way, she simply didn't act.

Constable Harris followed up that assertion by stating the reason she detained Dane Spurrell was due to her becoming frustrated with Dane Spurrell, he was challenging her authority and she was frustrated and agreed that he would have to take the consequences arising from his behaviour towards her and the reasons she took him to the lockup.

One would have expected her to say the reason she took him to the lockup was premised on reasonable and probable grounds; however, her viva voce testimony was entirely different, it was her frustration with Dane Spurrell certainly a very telling comment of her obstinance for the RNC Manual.

Transcript; December 7, 2012, page 101-162.

Constable Harris in response to a question as to why she didn't contact Dane Spurrell's family having detained him at the lockup was due to: "Because I had no responsibility to do so", Constable Harris went on to say that when she arrested him, she didn't believe there was a mental illness, she did believe he had a vision problem, she further states "it wasn't something that I thought had to be addressed by a medical doctor" which statement clearly manifested Constable Harris misunderstanding of the Manual. The Rule she misconstrued was only one (1) of five (5) she had responsibility for and which she simply didn't understand and didn't abide by.

The issue of the phone call and its lack thereof was further pursued by Counsel for the Commissioner as to why the phone call wasn't allowed. Constable Harris stated it was because she believed it was her obligation ONLY to provide Dane Spurrell with his right to call a lawyer. She also said while in her care or when passing him over to the Corrections Staff that he had a right to call a lawyer which was incorrect.

I have concluded that contrary to her assertions, she didn't follow the appropriate contents of the Manual as they applied to this circumstance. She obviously wasn't well versed or adequately trained or proficient enough with the provisions in the Manual as required in dealing with Dane Spurrell. Regrettably, Constable Harris levelled blame for the events that unfolded entirely on the Shoulders of Dane Spurrell which was unfortunate and incorrect.

A fair minded analysis of the facts placed before these proceedings could not possibly have concluded that her frustration was due to Dane Spurrell, it bears repeating and asking why a phone call to that young man's mother did not occur is simply absurd. This wasn't a circumstance where he was unable to communicate, he asked for a call to his mother yet it did not occur because Constable Harris said she had no obligation and thus became apparent that Constable Harris did not have an adequate grasp or understanding for the regulations of the Manual or she wasn't about to comply with the Manual.

She understood her obligation to provide him with his rights pursuant to the Charter of Rights and Freedoms. The entire process became too convoluted for her to appreciate her responsibilities and obligations after she had detained and arrested Dane Spurrell and brought him to the lockup.

Dane Spurrell's request to a simple phone call would have dissipated the frustration that Constable Harris had been experiencing that morning along with the extreme agitation she was experiencing and confronting.

In this instance why Constable Harris felt she didn't have obligation to provide or deal with that phone call that would have simply dispelled the turmoil that needlessly went remains a mystery. Constable Harris either didn't understand or appreciate the workings of the Manual.

The second incident pertaining to a phone call requested by Dane Spurrell took place upon his arrival at the lockup as a prisoner. This phone call would have been premised on the approval of the person in authority at the lockup provided the ongoing investigation wasn't compromised. That request was ignored for some unexplainable reason.

It was apparent uncertainty prevailed as to whose responsibility it was. It wasn't resolved so far as it can be seen, Constable Harris felt her obligation was to give Dane Spurrell his Charter rights. It would appear it was Constable Harris' call as to a phone call to Dane Spurrell's mother yet she did not pursue his request and he languished in the lockup for several hours. A simple matter that should have been resolved yet she did not take the lead when she certainly could have if she had a working knowledge of the rule.

Constable Harris testified she believed that she could utilize at her discretion the Manual. She obviously wasn't aware or certainly gave the impression the rules were not to be enforced on a mandatory basis but at her discretion or this is how I do it.

An illustration of how unfamiliar Constable Harris was with these rules occur during proceedings on December 7, 2012, page 176 – page 182, line 24

A. He was asking to speak with his mother, so I stated that, you know, under my care and responsibility he had the right to call a lawyer.

Q. Say that again?

A. Under my care when he was with me, or when I was passing him over to the corrections staff, that he had the right to call a lawyer. What happens once I left the lockup, I have no idea what their policy is.

Q. Let's just have a look at the particular section when this occurs in the tape, and I'm not going to put it on the tape to show what happens at that particular time. You've seen that a couple of times, correct?

A. I have, uh-hm.

Q. So Mr. Spurrell asks, I guess – is he asking you, to your recollection, or is he asking the officers if he can have a phone call at that stage?

A. I don't think he specified who he was directing the question to.

Q. And as far as you're concerned, like, in whose care is he at this particular stage?

A. He's still in my care at this point.

Q. He's still in your care, okay, so does that make it your decision as to whether or not he is going to get a phone call or not?

A. At that particular time, I believe so. I believe that's how the corrections would follow it.

Q. Pardon me?

A. I believe that's how the corrections officers would follow, yes.

Q. So you would get to decide that?

A. yes.

Q. And why did you decide when he asked to have a phone call that it wasn't appropriate for him to have one at that stage?

A. I said that it was – you know, I only have the obligation to provide him an opportunity to contact legal counsel. If I allowed every person that I detained to call anybody that they wanted, you know, again it would substantially add to –

Q. Uh-hm. So in terms of not what your general policy is, but why was it at that particular stage with Mr. Spurrell that he wasn't permitted to make a phone call?

A. Because I decided that I had the right or I had the responsibility to provide him with his legal right to contact a lawyer and that was it.

Q. And you weren't going to go any further than that?

A. No.

Q. Can I show you the consent exhibits, please, again #2 under the Tab – that would be Tab 5, arrest and confinement.

A. Which consent are you under?

Q. Consent # 2. Consent Book 2, the smaller one with four tabs in it.

A. oh, okay.

Q. This is – we're now dealing with Chapter A, Arrest and Confinement, and this would have been, according to the records, this would have been the particular portion of the policy and procedures manual in place.

A. Sorry, what tab?

Q. I'm sorry, Tab 5.

A. Okay

Q. As I said, this would have been the particular part of the policies and procedures manual that was in force at the time of this particular incident?

A. Uh-hm.

Q. Are you familiar with this?

A. Yes.

Q. And is it fair to say that it would be particularly important part for a patrol officer to understand and to act by, in accordance with?

A. Yes, I believe they're all important, but, yes.

Q. Well, we're talking about taking away people's liberty, though, aren't we?

A. Agreed.

Q. Right. So in terms of at the bottom, and I think it makes the point there under definition of arrest, (b), if you'll look at that. It does specifically say, "An arrest is the act of depriving an individual of his freedom as permitted and authorized by law"

A. Correct.

Q. Now if we go over to the page 6 of 8, which is under Section 12, "Member's responsibility for prisoners", and I think this is the topic you were alluding to about the cut off between when you are responsible for a prisoner and when the correctional officer become responsible, and under (a), I believe it says, "arresting escorting members have a responsibility to care, custody and control of all prisoners until they are handed with complete documentation to lockup or other detention facility staff".

A. Uh-hm.

Q. "Searched and placed in a cell".

A. Yes.

Q. So these things had not happened when Mr. Spurrell asked for his phone call?

A. No, they didn't.

Q. So in fairness, it's your call at that stage?

A. That's what I said, yes.

Q. Under (d), it says here, "Arresting escorting members will not normally allow the prisoner to communicate with family members, friends, or attorneys while being transported".

A. yes.

Q. "Notwithstanding an accused" right to counsel "as soon as practicable" communication with family and friends will be afforded at the holding facility with the authorization of the persons in authority provided the investigating is not compromised".

A. Yes.

Q. Were you aware of that provision of the policy and procedures manual on April 19, 2009.

A. Have I read that specific section? I can't say for certain, but I'm familiar with the fact that the officer could make that call.

Q. No, no, I'm sorry, I didn't mean to be unclear. Were you familiar with this particular provision on April 19, 2009?

A. No, no specifically, no.

Q. No. so you didn't know at that stage that communication with family and friends will be afforded at the holding facility with the authorization of the persons in authority provided the investigation is not compromised?

A. yes.

Q. That's correct, you didn't know that?

A. That's correct, no I did not know that.

Q. Now that you've read that and understand it, does this not suggest that provided that the HMP staff were okay with it, and provided that there was no compromising the investigation, then Mr. Spurrell was entitled to a phone call to his family?

A. Once he was turned over to corrections staff or under my care?

Q. No no before – this is the stage at which you're his responsibility – he's your responsibility.

A. Sure. I believe, yes, at the discretion of an officer, yeah, he was authorized.

Q. Where does it say there that it's the discretion of the officer?

A. It doesn't, but in practice, I believe.

Q. Okay.

This situation clearly exemplified Constable Harris inexperience with the RNC Manual which should not be.

Constable Harris also didn't seem to appreciate the provisions dealing with release after a prisoner being arrested; she was of the belief an individual would have to be brought directly to the lockup. She didn't grasp that an individual could be released on a simple Undertaking or Promise to Appear. She was of the belief a prisoner had to go directly to the lockup which wasn't correct.

She was of the belief too that bringing Dane Spurrell to the lockup, he would be dealt with pursuant to the provisions of the Mental Health Care Treatment Board for an assessment of his fitness to stand trial which was certainly not an issue in this matter and a doctor would have been requested to be called in to do an assessment of his fitness to stand trial.

I simply make these comments because Constable Harris didn't appear completely familiar with some facets of the process she had gone through including release provisions for Criminal Code offences and provincial statutes like the DIP Act. The Manual, it bears repeating she wasn't familiar with either its workings though conveyed the impression that she had a lot of experience in working with the Manual when the Manual described how Police Officers are to perform their duties which created a lot of frustration.

Constable Harris foray into the Manual depicted a lack of understanding of its workings though a requirement of a Police Officer and contrary to S. 3(a)(j) of the Regulations.

Constable Harris stated she didn't have time to do deal with a phone call as requested which response was a sign of neglect by stating she would make a subjective decision as to whether that decision was necessary irrespective as to what the aforesaid provision stated.

The Manual says if a medical condition is suspected and she did suspect something or there is concern as to the cause of a persons' appearance which there was here which she admitted, she simply didn't see herself with any responsibility to follow that provision.

We have concluded that Constable Harris became quite frustrated with Dane Spurrell's lack of cooperation and unable to gain his attention. Constable Harris as result of what she concluded to be an act of defiance simply decided not to comply with the Manual which I find to be a classic case of insubordination and a Police officer who displayed an impervious lack of respect for carrying out her duties and a breach of Part 9, Chapter 11, S. 3(1)(j) Medical/Behavioral Conditions of the Regulations.

Constable Harris went on to state at transcript; December 7, 2012, page 152, lines 23-24 to Page 153, lines 1-8:

A. So it's also RNC policy that the person is then brought to the city lockup where other questions such as medications, doctors, illnesses, that is addressed there. So regardless if I had called his mother, at that point I had already read his policy rights and caution and determined that he was to be charged under the Criminal Code. So my next course of action was to bring him to the city lockup.

Q. And what RNC policy are you referring to that requires you to do that?

A. I wouldn't be able to tell you. I believe it's under the mental Health and Safety Act. Wouldn't be able to specify exactly what the policy name is, but

That response conveyed a clear message that Constable Harris was unfamiliar with the Policy and Procedures of that applicable part of the Manual.

Constable Harris advised she had no legal obligation to provide telephone connection to or from his mother as she states "it is not my policy to contact a parent and I am not a babysitter".

Constable Harris also admitted, not to release him because of his arrest for obstruction of a Police Officer, being intoxicated and he was combative and uncooperative. Her decision to detain him, was as she stated, he was combative and uncooperative which necessitates repeating would not be the legal grounds for having him sit in the lockup

The Manual does dictate that in the event a prisoner, to wit: Dane Spurrell, is arrested and conveyed to the St. John's city lockup in that event the Manual dictates as follows;

Dane Spurrell had requested telephone access to his mother and/or his mother (the Complainant) be contacted. The evidence is quite clear he had made those requested several times.

Constable Harris acknowledged that she failed to follow the protocol set out in the RNC Policy and Procedures Manual, Medical/Behavioral Conditions affecting Subjects of Investigation. It simply didn't cross her radar screen, Constable Harris failed to grasp the context of the Manual particularly the heading Medical/Behavioral Context and Workings.

Procedure:

b. Some persons may deny or not be aware of the existence of any medical/behavioural conditions. If a medical condition is suspected or there is concern as the cause of person's appearance, manner or behavioural, members will without delay:

1. Ask the person whether any medical/behaviorable conditions exist;
2. Check for the presence of medic alert or similar identification;
3. Establish whether the subject is in possession of medication;
4. Consider contacting the subject's family or friends; and
5. Consider consulting medical authorities, including conveying the subject to a hospital for examination.

Regrettably, Constable Harris failure to respond appropriately to the aforesaid protocol having acknowledged that she had her suspicions that Dane Spurrell was dealing with a medical issue, to wit: vision impairment, failed to carry out her duties promptly and diligently.

Constable Harris' testimony in that regard, I find to be perverse:

Q. Having acknowledged her surprise that he was dealing with vision impairment, she made the following comments.

Q. Now before deciding to detain Mr. Spurrell did you ask him whether or not he had a medical or behavioral condition?

A. Not specifically. I asked what's wrong with you, why won't you listen to me, what's wrong with you.

I have concluded Constable Harris was determined not to respond to Dane Spurrell's request which the Manual required and was content to leave him languishing in the lockup.

Dane Spurrell had requested Constable Harris to consider his request to contact his family and friends without delay which protocol was set out in the Manual above, Constable Harris in her failure to respond to Dane Spurrell had no doubt a keen awareness that Dane Spurrell was dealing with amongst other issues, vision impairment.

Constable Harris also failed to properly, diligently and appropriately deal with the appropriate provisions in the Manual, Part 1, Chapter A, Arrest and Confinement.

The evidence in this instance clearly established, Constable Harris was simply in no mood to respond in a positive fashion and remained simply uncompromising.

Dated at St. John's, in the Province of Newfoundland and Labrador this 26th day of March, 2014.

A handwritten signature in blue ink, consisting of a large, sweeping loop that crosses itself once, followed by a short horizontal stroke.

John W McGrath, QC.
Chief Adjudicator