IN THE MATTER OF A PUBLIC HEARING
OF THE COMPLAINT OF GREGORY PARSONS
BETWEEN
THE ROYAL NEWFOUNDLAND CONSTABULARY
PUBLIC COMPLAINTS COMMISSION ("Commission")
AND
CONSTABLE DONALD MALONEY, RESPONDENT
("Complaint")

DECISION

I. INTRODUCTION

A. The Complaint

The Complaint referred to me was filed by Gregory Parsons ("Parsons") on October 22, 1997 against Constable Donald Maloney ("Maloney"). The Complaint concerned the failure of Maloney to conduct a proper and thorough investigation into a complaint by Corey Evans ("Evans"), which failure led to the improper laying of a charge of assault causing bodily harm against Parsons. A copy of the amended Reference to Adjudicator dated the 12th day of October, 2000, is attached to my decision as Attachment "A" ("Reference").

The Reference states that Maloney had conducted himself in a manner unbecoming a police officer. The specific allegations were first, that Maloney arrested and detained Parsons without good and sufficient cause contrary to s. 3(1)(a) of The Royal Newfoundland Constabulary Public Complaints Regulations ("Regulations"). Secondly, it was alleged Maloney neglected or omitted to properly and thoroughly investigate a complaint by Evans, which caused the arrest, charging and imprisonment of Parsons without good and sufficient cause and/or reasonable and probable grounds contrary to s. 3(1)(d) of the Regulations.

Maloney denied the allegations set forth in the Reference.

B. The Incident

In April 1997, Parsons was facing a second trial on a murder charge in the death of his mother. He had been previously convicted for her murder and sentenced to life imprisonment. However, that conviction had been overturned and a new trial ordered. Pending the new trial on murder charges, Parsons was free on a Court Undertaking.

Early in the morning of April 18, 1997, Evans complained to the RNC that he had been brutally assaulted by Parsons and his friend, David Woolridge ("Woolridge") on George Street in St. John's. On April 22, 1997, Parsons was arrested by Maloney, charged with assault causing bodily harm, and breach of recognizance, on the same day Parsons made a first appearance in Provincial Court and was imprisoned.

On April 23rd, Maloney reinterviewed Evans and conducted further investigation. This further investigation established inconsistencies with Evans' prior statements to the RNC and showed some support for Parsons' version of the incident. As a result of this new information, Maloney met with Mr. Wayne Gorman and Mr. Colin Flynn on April 24th at the Crown Attorney's office. They discussed the impact of the new information on the case against Parsons. On April 25th, 1997, Parsons was granted judicial interim release with the consent of the Crown.

Maloney's investigation of the incident continued between April and September of 1997. On September 15, 1997, one day prior to the trial date on the charges arising from this incident, the Crown stayed the charges against Parsons.

C. The Hearing Process

The Hearing was conducted on the following dates: May 29, September 15, November 6, 7, 9, 10, 14 and 21, 2000 and January 8, 9, 11, 18, February 1 and June 21, 2001. I made two rulings during the course of the Hearing. The first dated September 15, 2000 dealt with a preliminary application by Maloney's counsel objecting to my jurisdiction over the Complaint. The second, dated January 18, 2001, was an Interim Ruling to decline to hear a witness proposed by counsel for the Chief of Police. The latter ruling was the subject of an application to the Supreme Court Trial Division and was upheld by Handrigan J. in his Ruling dated June 11, 2001.

Documentary evidence was entered as evidence during the hearing. It included all statements taken during Maloney's investigation, all police reports, and notes, court documents, medical documents, certain RNC Routine Order and excerpts from the RNC Policy Manual. In addition to documentary evidence entered by the parties by Consent or as Exhibits during the Hearing, oral testimony was heard from 16 witnesses. Witnesses for the Commission were David Camp, qualified as an expert witness as to police investigative techniques and standard operations in assault cases; Gregory Parsons, the Complainant; Constable Cst. James Higdon; Sgt. Calvin Barrett; Cst. Sean Donovan; Dr. Craig McIssac; Cst. Karl Piercey; Brian Peddle, taxi driver; David Evans, brother of

Corey Evans; and David Woolridge, Co-Accused with Parsons in the incident. Witnesses for the Respondent included Dr. Simon Avis, Forensic Pathologist, Chief Medical Examiner, qualified as an expert witness; Stephen Dawson, Crown Attorney, qualified as an expert witness concerning criminal law practice and procedure; Colin Flynn, at that time, Director of Public Prosecutions, qualified as an expert witness concerning criminal law practice and procedures; Thomas Mills, at that time, Senior Crown Attorney-Special Prosecutions, qualified as an expert witness concerning criminal law practice and procedure; Cst. Charles Shallow and Cst. Donald Maloney, the Respondent. At the completion of the hearing, it was agreed that the transcripts of the entire hearing would form part of the record.

D. The Issues

(i) Whether Maloney arrested or detained Parsons without good and sufficient cause?

(ii) Whether Maloney conducted a full and proper investigation of the assault complaint by Evans prior to arresting and charging Parsons?

Maloney's counsel, Mr. Piercey, identified an issue in his brief and oral argument concerning the particulars of the alleged breaches stated in the Reference. He argued that the Reference does not clearly state what the charge is. The Reference alleges,

> "That Constable Maloney did, between the 18th of April, 1997 and the 15th of September, 1997, . . . fail to properly and thoroughly investigate a complaint by Corey Evans, thereby causing the arrest, charge and imprisonment, without good and sufficient cause and/or reasonable and probable grounds, of the complainant Gregory Parsons."

Mr. Piercey suggested that since Parsons was arrested, charged and imprisoned on April 22, 1997, then granted bail on April 25, 1997 that the case against Maloney ends on April 25, 1997. I do not agree. The charges that had been laid against Parsons on April 22, 1997 were stayed on September 15, 1997. The Reference correctly covers the period up to the September 15, 1997 because up to that date Parsons remained "charged" with two offences. The evidence of what transpired during the period specified in the Reference was relevant to consideration of the allegations against Maloney.

E. The Decision

My consideration of the issues in this Reference has involved a review of all the evidence, case law and the submissions of the parties. My decision reflects the evidence I found relevant to the issues. I applied the case law on the issues of reasonable and probable grounds for arrest and charge and the duty of police to conduct a thorough investigation. In my view, the Commission has through the evidence before me established, on the balance of probabilities, that Maloney has conducted himself in a manner unbecoming a police offer, as specifically alleged in the Reference.

II. THE FACTS

A. Pre-Arrest

At the time of the incident, Maloney had been in active service with the Royal Newfoundland Constabulary for 12 years. He had been assigned to the Criminal Investigation Division for about a month at the time of the incident in April 1997. Maloney's prior service with the RNC was in the patrol division and drug squad. He was assigned the investigation of Evan's assault complaint on April 18, 1997, when he began

his regular 9:00 a.m. to 5:00 p.m. shift. About 3:00 a.m. that day, Evans had given a written statement to Cst. J. Higdon of the RNC Street Patrol. Evans had complained of being assaulted by Parsons and Woolridge outside on George Street, St. John's at approximately 11:30 p.m. on 17th of April, 1997. Evans said he had been at the Corner Stone Night Club on George Street where he encountered Parsons and Woolridge and a verbal altercation occurred between them. Evans stated that Parsons and Woolridge had followed him outside the Corner Stone onto George Street, chased him down the street, attacked him from behind, knocking him to the ground, whereupon they both began to kick him until he escaped into a Gulliver's Taxi Cab that he said had pulled along side. Evans' description of events in the first statement given to Cst. Higdon included very specific details of the encounter with Parsons and Woolridge, of how the assault occurred outside on George Street, and even the number of the taxi cab was either 33 or 133. He also admitted to having consumed 7 or 8 beer during the evening prior to the alleged assault.

Upon his initial receipt of the complaint, Maloney reviewed Evans' first statement taken by Cst. Higdon earlier that morning. He met with Evans on the same day and took a second statement. Maloney had the opportunity to observe Evans' physical injuries and testified that he believed the injuries to be consistent with the assault as described by Evans. Maloney arranged to have Evans' injuries photographed by Cst. Karl Piercey. Maloney was aware that Evans had an extensive prior criminal record and had been drinking on the night of the incident, but testified that he founds Evans to be cooperative and credible. Also on this first day of his investigation, Maloney obtained the clothing

from Evans that he had worn during the incident to be examined as an exhibit. Maloney also contacted the doctor who had treated Evans at the hospital in the early morning, concerning the degree of injuries suffered by Evans.

Also on April 18, 1997, Maloney together with Cst. Sean Donovan interviewed the taxi driver who had taken Evans from George Street to his home. The taxi driver, Brian Peddle, gave answers to questions during the interview which were recorded by Maloney. Peddle indicated that two people ran in front of his cab. A man then climbed in Peddle's cab as passenger in the front seat. Peddle said that this man had identified a person outside the cab as Woolridge. Peddle also observed that his passenger was intoxicated. Peddle's statement at Consent #12, Tab 3 had indicated that his passenger was "almost asleep on the way home". Maloney in the interview asked Peddle whether the other person chasing his passenger was Parsons. Maloney assumed from Peddle's demeanor following this question that Parsons was one of the persons involved. Peddle's statement as recorded by Maloney was that, "I have to live on the hill". Maloney assumed that to mean that Peddle lived in Shea Heights where Parsons also lived, and that Peddle feared Parsons. Peddle declined to sign his statement.

Following a three day long weekend, Maloney resumed his investigation of Evans' complaint on Tuesday, April 22, 1997. At about 9:30 a.m. that day he spoke to Evans' brother, David Evans. David Evans told Maloney that Evans and Parsons had a prior history of "bad blood". David Evans described a prior incident on George Street where Parsons had allegedly acted aggressively towards Evans.

By about 11:00 a.m. on April 22, 1997, Maloney had in hand two statements from Evans describing the assault by Parsons and Woolridge outside on George Street, Brian Peddle's statement, which Maloney concluded corroborated Evans' statement because he thought it indicated that two people chased Evans to the taxi, the physical and medical evidence of Evans' injury, which Maloney assumed were consistent with the described assault, and David Evans' indication of previous conflict between Evans and Parsons. Based on this information, Maloney concluded he had a fairly complete investigation and reasonable probable grounds to arrest both Parsons and Woolridge.

B. <u>Post-Arrest/Pre-Charges Laid</u>

At around 11:20 a.m. on April 22, 1997, Maloney and Cst. Donovan picked up Woolridge at his home. Woolridge was given a police caution and taken to police headquarters. Although Woolridge made no formal written statement, he did say a number of things to Maloney and Donovan. He told them that he got into a fight with Evans inside the Corner Stone Night Club. He indicated that Evans started the fight inside the Corner Stone and that when he was punched by Evans first, he defended himself by giving Evans two or three punches. He said that Evans had a prior history of involvement in fights. He observed that Evans was drunk at the time of the fight in the Corner Stone. He indicated that Parsons had not hit Evans. Woolridge described a second encounter with Evans following the fight outside the Corner Stone on George Street. He said this encounter outside on George Street was only verbal and strictly between he and Evans. He recalled that Parsons and a number of other males and females in their party

were also present on George Street following their departure from the Corner Stone. Woolridge indicated he had chased Evans up George Street towards the Gulliver's Taxi stand and that no one had physically touched Evans outside the Corner Stone on George Street.

Following the interview with Woolridge, Maloney requested that Cst. Charles Shallow and Cst. Dowden go collect Parsons and convey him to police headquarters for questioning. At the time of this request, Shallow understood Maloney had grounds to arrest Parsons concerning the alleged assault on Evans. Parsons was read his rights and police caution, but when he asked whether he was under arrest, Cst. Shallow indicated that he was not. Parsons indicated that he did not want to speak to the police unless his lawyer was present. Parsons told Shallow and Dowden that he had not hit Evans and that he had witnesses that could attest to the fact.

C. Charge and First Appearance

At about 1:00 p.m. on April 22, 1997, Maloney entered the interview room at police headquarters where Parsons had been placed upon arrival. Maloney did not speak to either Cst. Shallow or Cst. Dowden prior to entering the interview room to speak to Parsons. Maloney advised Parsons that he was under arrest for assault causing bodily harm, and that he would appear in Court that afternoon. Although Parsons declined to give a formal statement to the police, he did tell Maloney, after he had been advised that he was under arrest and he would be charged, that he had no involvement in the fight inside the Corner Stone. Parsons also gave Maloney the names of other people who

could attest to the fight inside the Corner Stone. Parsons told Maloney that Evans had started the fight and that only one person, not Parsons, had hit Evans. Parsons' indication to Maloney at this time was that the people he was with at the club had defended him against Evans.

Parsons and Woolridge were conveyed to Provincial Court to be formally charged in the afternoon of April 22, 1997. Upon arrival at Atlantic Place they were placed in a holding cell awaiting their formal appearance in Court. An undercover RNC Constable, Cst. Augustus was placed in this holding cell, acting as another prisoner. In the presence of this undercover constable, Parsons and Woolridge did talk about the incident to the effect that Parsons was not responsible for hitting Evans and that it had been Woolridge had hit Evans. This information obtained by Cst. Augustus was not communicated to Maloney until after the charge was formally laid in Court that afternoon.

Parsons was formally charged on April 22, 1997 with assault causing bodily harm and breach of recognizance. As a result of these charges, his bail was revoked and he was imprisoned.

D. Pre-Stay of Charges

Wednesday, April 23, 1997, the day after Parsons was charged and imprisoned, Maloney continued his investigation. Maloney unsuccessfully attempted to contact Evans' companion the night in question, Jason Hollett. Maloney contacted Vince Dillon, who worked at the Corner Stone, a name that had been given to Maloney by Parsons on the

day of his arrest. Dillon confirmed that Evans and Woolridge had been involved in a fight in the Corner Stone on April 17, 1997. He also confirmed that Evans was escorted from the club, bleeding from the mouth. Dillon told Maloney that Woolridge left the bar with Parsons, and he understood from Parsons the fight started due to comments Evans had made to Parsons. Dillon did not observe Parsons involved in the fight inside the club. Dillon told Maloney that neither Parsons nor Woolridge appeared intoxicated, and that Parsons had been attempting to calm the situation inside the club. Dillon gave Maloney names of other witnesses inside the club, namely Robert Kurtsman, a bartender, and Matt Kean, a doorman, who had taken Evans from the Club on the night in question. Maloney interviewed these individuals on April 23, 1997.

Maloney also contacted Evans and interviewed him for a third time at police headquarters at around 12:20 p.m. on April 23, 1997. Maloney confronted Evans concerning the information that the fight occurred inside the Corner Stone Club. Evans' third statement revealed that he thought he told Maloney about the incident inside the Corner Stone in his earlier statements. On this interview, Evans described being punched and kicked in the head inside the club first by Woolridge and then by Woolridge and Parsons together. Evans indicated that after being hit inside the club he was bleeding down his pants, shirt and shoes. Maloney was apparently surprised by Evans change in his version of events. The third statement taken from Corey Evans by Maloney on April 23, 1997 was in a question and answer format and was remarkably different from the previous two statements which were in a narrative format and had been significantly more detailed.

At the end of his regular shift on April 23, 1997, Maloney received permission to work overtime in order to continue his investigation. That evening, he interviewed four additional witnesses, including Matthew Kean, Trevor Ryan, Robert Kurtsman and Doug Hayes. It would be fair to say that none of these witnesses could corroborate Evans' version of events. Some of these witnesses stated that Evans was intoxicated and injured as he left the Corner Stone Club. None of the witnesses indicated that Parsons had been involved in the physical assault on Evans in the club.

Trevor Ryan, the hot dog vendor on George Street on the night in question, indicated in his recorded statement that a guy who was bleeding and his companion came along from the direction of the Corner Stone to his hot dog stand at about 11:00-11:30 p.m. Ryan said he gave tissues to the bleeding chap to help him clean up. Ryan said he was told by the bleeding fellow's companion that two or three other fellows had the bleeding fellow down inside a club punching and clawing at him. The companion indicated they had gotten thrown out of the club by bouncers. Ryan indicated that three or four other fellows came along from the area of the Corner Stone while the bleeding fellow and companion were still at the hot dog stand. The bleeding guy took off running down George Street towards the Sundance and three or four of the additional fellows chased him. Ryan didn't see anymore after that. Ryan was told by the bleeding guy's companion that one of the three or four fellows chasing the injured chap was Parsons. Ryan indicated he could recognize Parsons from television.

As a result of this further investigation, Maloney met with Wayne Gorman and Colin Flynn of the Crown Attorney's Office on April 24, 1997. All acknowledged that the case against Parsons was much weaker and with the Crown's consent on April 25, 1997, Parsons was granted Judicial Interim Release.

Maloney telephoned Brian Peddle, the taxi driver, to advise him he would not be needed to testify at Parsons' Bail Hearing. In the call, Peddle told Maloney that he had not seen Parsons on George Street the night he picked up Evans as a passenger.

Maloney's investigation continued following Parsons' release from jail. On April 28, 1997, he interviewed Jason Hollett, the companion of Evans. Hollett indicated that Evans had been intoxicated at the Corner Stone Club and that there had been a fight inside the Club on the evening in question.

Maloney contacted other witnesses present at the time of the incident, during the period May until September, 1997. The trial on the charges against Parsons was scheduled to commence on September 16, 1997. In this period, Maloney also obtained inconclusive blood stain test results from the crime lab (Consent #14, Tab 40) and a forensic opinion from Dr. Avis concluding the injuries of Evans were equally consistent with a blow from the fists of one person or of two persons. The witnesses contacted during this period gave statements supporting both Parsons and Woolridge versions of events.

Following its review of the investigation file, the Crown Attorney's office on September 15, 1997, one day prior to the commencement of the trial, stayed the charges against Parsons.

III. SUMMARY OF ORAL TESTIMONY

A. David Camp

David Camp outlined his training and experience during 37 years between 1962 and 1999, which included first training and policing with the Dartmouth City Police for 11 years; 5 years as the Chief Instructor and Course Coordinator at the Atlantic Police Academy in Charlottetown, P.E.I., 3 years as Chief of Police in Bathurst, New Brunswick; 14 years as investigator for all institutions with the Correctional Service of Nova Scotia; and 4 years with the Police and Public Safety Division of the Department of Justice in Nova Scotia. After his retirement in 1989, he has had a private consulting business which includes investigative technique training and policy consultation relative to investigative techniques for the Province of Nova Scotia, Department of Justice. The extensive experience allowed him familiarity with investigative techniques and standard operating procedures used in assault investigations.

Camp testified as an expert witness concerning investigative techniques and standard operations in assault cases with police. Camp testified that a police officer's job is to investigate and take the case to Court, but not prove beyond a reasonable doubt, guilt or innocent. He indicated that preparing a case to the investigation stage, the police officer's job was to ensure that they take a complete package to the best of their ability to

the Crown Attorneys. He indicated that during the initial stages of an investigation, the police officer's job is to interview the complainant and any other witnesses involved, interview medical personnel, obtain a medical release form from the victim, photographing visible injuries, obtaining statements in as much detail as possible from everybody involved, including the victim, witnesses, medical personnel and the accused.

Camp also offered his view on what a police officer's duty is with respect to statements taken after a charge of a assault is laid. In this regard, he testified that in a best case investigation, all of the information would be at hand before the charge is actually laid. However, he indicated that if new evidence after the charge is laid comes to light, the police officer would be expected to promptly follow up taking statements or gathering other evidence in order to update the Crown's file and provide disclosure to the Defence. He said at page 27 of the November 6, 2000 transcript,

> "The objective is to do a thorough and complete investigation geared towards prosecution, if I could term it that way. The investigation must be fair to both sides and conducted in an opened minded way, so they are not dropping surprise evidence into the Court at the last moment."

Camp also gave evidence on the factors the police officer would take into account concerning an arrest without a warrant. These in his view included: a) the likelihood of repetition or continuation of the offence; b) whether the accused was likely voluntarily appear in Court; c) whether the good of the public is best served by having the accused in custody or not; and d) whether the accused is already bound by a recognizance or judicial interim release order.

Camp testified that prior to laying a criminal charge, a police officer is not permitted to ignore other information relevant to the allegations, simply because he or she has met the reasonable and probable ground standard, subjectively.

B. Gregory Parsons

Inside the Corner Stone

Parsons described the events on the evening of April 17, 1997. He was at the Corner Stone Club on the Corner of George and Queen Street in downtown St. John's. He had gone there with Woolridge and met up with another couple of guys, namely Junior Lush and Martin Kennedy. Parsons indicated that prior to going to the Corner Stone that evening they had been at Woolridge's house.

Parsons indicated that by the time the fight between Woolridge and Evans occurred he had had two beers. Parsons had seen Evans inside the Corner Stone that evening. He said he knew Evans because he had had trouble with him before on many different occasions. Parsons indicated Evans was in the upper section of the club; but he and Woolridge were down by the bar. He indicated that Evans moved down to the table right next to where he and Woolridge were seated. Parsons believed Evans was coming down to bug him. Parsons believed Evans knew about his bail condition and started "jeering" him because he knew Parsons couldn't fight due to those bail conditions. Evans apparently called Parsons a "murderer" and taunted him that he "deserved all of the time he would get". After this jeering or taunting went on for a while, Parsons says he told Evans to go away. According to Parsons, Evans made a "gesture" to grab him or push

him. At this point, Parsons said Woolridge intervened to stop Evans. He testified that Evans hit Woolridge with a punch and very quickly Woolridge hit Evans a few times. Parsons' evidence was that Evans went down and Woolridge hit Evans a few more times. At that point bouncers at the club intervened and the fight was over. Parsons testified he had been in the Corner Stone no more than 30 minutes prior to the fight occurring.

Parsons elaborated that Evans got a good beating about his face. After the fight he said Evans was marked up and blood was coming from his mouth. Parsons testified that bouncers at the Corner Stone intervened to stop the fight and calm people down after the altercation between Evans and Woolridge. The bouncers took Evans out of the bar and escorted him downstairs. The bouncers also asked Woolridge to leave the club. Parsons said he calmed Woolridge down then he, Woolridge and the rest of their party left the Corner Stone. Parsons' evidence was that the Corner Stone that night was not very busy. It was a Thursday night with only about 15-20 people in the place. He indicated that about 15 minutes following the fight he left the Corner Stone with Woolridge and the others in his party.

Outside the Bar on George Street

Parsons testified that when he and Woolridge exited the Corner Stone side door, they saw Evans and another fellow standing talking to a hot dog vendor. He indicated that at this time Evans and Woolridge had exchanged some words. Apparently Woolridge said something like, "You want to finish this", and Evans started to make his way up George Street, a short distance which he estimated to be about 200 paces. At this point, Parsons

indicated that Evans jumped in a cab and Woolridge was behind him and went up to the cab window saying things to Evans like, “Get out and come on, you want to finish this”. Parsons stated that he observed this exchange as he was walking up George Street with a group of about 6-7 people who had left the Corner Stone together.

Parsons’ evidence was that he said nothing and had no physical contact with Evans outside the Corner Stone on George Street. He testified there was no physical fighting on George Street at all. Parsons testified Woolridge trotted up George Street after Evans, as Evans had run from the hot dog stand to the taxi cab stand, and entered a cab. Parsons was emphatic that he was no where near Woolridge or the cab when Evans entered the cab.

Parsons testified that the cab with Evans inside drove away. He said that he and Woolridge with the rest of their party continued up George Street to Benders, another bar, for awhile.

Interview at Police Station

Parsons testified that he heard nothing further about the fight between Woolridge and Evans in the Corner Stone, until a few days later when the RNC came to find him at his father-in-law’s house. On that day, Parsons testified that two RNC Constables talked him into getting into the police car to talk to him about an incident on George Street. He recalled this occurred about lunch time. The police, according to Parsons, took him to police headquarters. Parsons said the police told him he was not under arrest, but was

being taken to talk to Maloney concerning the incident. Parsons' evidence was that once at police headquarters, he was put into an interrogation room. Parsons said the next thing that happened was Maloney opened the door and told him he was under arrest for assault causing bodily harm and that he would be appearing in Court at 2:00 p.m. that day. In his testimony, Parsons indicated that he was reluctant to speak to the police. He testified that his previous experience with co-operating with the police had proved not to be in his best interests. He didn't want to give a statement, but he did deny any involvement in the assault on Evans. Further, Parsons indicated that he gave information to the police so that they could "get their facts straight, or verify his version of events". The information he recalled giving to Maloney was as to witnesses in their party and staff at the Corner Stone Bar.

Parsons testified that the exchange which occurred in the interrogation room was fairly reflected in the notes taken by Cst. Donovan in his 1624 Continuation Report included in the Book of Documents entered as Consent #12, Tab 23.

Parsons said he told Maloney that he had nothing to do with the incident. He suggested that Maloney talk to Woolridge and Woolridge's girl fiend, Caroline Downey, and the bouncers at the Corner Stone, who were all there during the fight. It was Parsons' evidence that Maloney told him that they had Woolridge in another interrogation room at police headquarters, and that Woolridge was implicating Parsons in the assault on Evans.

Post-Interview at Police Headquarters

Parsons said later the same afternoon he had been arrested, he was handcuffed and taken by the RNC to a holding cell at Atlantic Place where Provincial Court is located. He said that in the cell with him was Woolridge and another man. Parsons said he later learned this other man was an undercover RNC Constable placed there as a "cell plant". In the presence of the cell plant, Parsons testified that he and Woolridge talked about the incident at the Corner Stone. He stated that he expressed amazement to Woolridge that he had been charged with the assault of Evans. Parsons indicated that Woolridge said he told the RNC that it was Woolridge who had hit Evans and Parsons had nothing to do with the assault on Evans. Parsons indicated that during the discussion with Woolridge at the holding cell he was angry and discussed how his life was crumbling and that his business would be ruined. Parsons recalled that Woolridge indicated that he would help Parsons with his business.

Parsons testified that he was taken from the holding cell to a Courtroom where there were lots of cameras and media present. He made a first appearance on the assault charge and was represented there by Jerome Kennedy. Parsons indicated that while Woolridge was released following the Court appearance, he was remanded into custody pending a bail hearing. He testified that after about a week in custody, he learned he would be released on an uncontested basis under a separate Judicial Interim Release Order. Parsons testified that during his detention he advised his lawyers to get on to pursuing his version of the events with the police and other witnesses to the event. Parsons believed that if these witnesses were interviewed then the charges against him would be dropped. In fact,

Parsons indicated the charges were stayed the day before the trial was to occur and no acquittal has ever been entered.

C. Cst. James Higdon

Cst. James Higdon was on duty on April 18, 1997 with the Patrol Division of the RNC. He was on an 8:00 p.m. to 8:00 a.m. shift patrolling the center of the City on his own. At 2:00 a.m. he responded to a request to see Evans at St. Clare's Hospital. He testified that he went there shortly after receiving the call. Upon arrival at St. Clare's Hospital, Higdon testified that Evans wanted to make a complaint that he had been assaulted.

Higdon recalled how he observed several noticeable scrapes, cuts and abrasions in the facial area of Evans at the time. He testified that Evans did not appear in his opinion overly intoxicated. He indicated that Evans appeared to understand what was going on and spoke coherently, he wasn't noticeably staggered at the time. Higdon testified that he would not have proceeded to take the statement if, in his view, Evans had been impaired at the time.

While testifying, Higdon reviewed the notes that he made during his patrol to speak with Evans as well as the statement he took from Evans which was in evidence.

In addition to obtaining a statement from Evans, Higdon testified that he requested that Evans sign a medical release form and attend the police headquarters later in the morning to have his injuries photographed. Higdon testified that prior to finishing his shift that

morning, he requested an officer in the RNC Communications Centre to contact Gulliver's Cabs to see who the driver may have been who had taken Evans as a passenger from George Street earlier that morning. Higdon testified that Gulliver's supplied the information that they had a car 133 that was operated by Brian Peddle that evening, but that Mr. Peddle had gone home and could not be reached at that time. Higdon testified that he also did a Canadian Police Information Centre ("CPIC") check on Parsons and Woolridge and determined that Parsons was free on a recognizance at that time. Higdon indicated that at the close of his report he recommended that given the extent of the injuries to Evans, and the fact that Parsons was on a strict recognizance, the investigation should be assigned to Criminal Investigation Division for completion. Higdon offered in his evidence that the further investigation which he would have envisioned at this point, would have involved seeking corroboration of Evans' statement and talking to the cab driver, Peddle, for starters. He also indicated that it wasn't in his view necessary to arrest Parsons and Woolridge prior to further investigation.

D. Sgt. Calvin Barrett

On April 18, 1997, Barrett was the officer in charge of the Major Crime Unit in the Criminal Investigation Division of the RNC. He testified as to his role in assignment of files within the Major Crime Division for investigation and continuous review of all the reports and statements throughout such investigations.

Barrett stated a couple times in his evidence that he couldn't recall any specific discussions he had had with Maloney with respect to this particular investigation.

However, he indicated that he believed he was on duty the day this particular investigation was assigned to Maloney. He also recalled his role in arranging for the cell plant, undercover police officer, to be placed in the holding cell with Woolridge and Parsons on April 22, 1997. In this regard, he indicated the reason for putting the cell plant in the holding cell with Parsons and Woolridge was primarily to see if they could get a confession or other evidence incriminating the accused. In this case, where there were two individuals involved in the alleged incident, Barrett indicated that their purpose was to find out who did what and against whom and in as much detail as possible. Also, Barrett indicated that they were aware that Parsons would be heading to a bail hearing and any evidence against him for the bail hearing would add to the likelihood of having his bail denied.

Barrett also suggested that, knowing what he now knows as to the evidence that Maloney had to support his conclusion that he had reasonable probable grounds to arrest Parsons, that if Maloney had not arrested Parsons based on this information, Maloney would have been disciplined.

Barrett was asked whether he agreed with the approach that police officers, if assessing whether to arrest an accused, must work towards the elimination of a person as a suspect, rather than looking towards the guilt of a suspect. Barrett agreed with this approach, concurring that the police, in conducting a thorough investigation would follow up anything to prove an accused's innocence, as well as their guilt.

E. Cst. Sean Donovan

Cst. Donovan was an investigator with the Major Crimes Section of the Criminal Investigation Division at the time Evans' complaint against Parsons was under investigation.

Donovan's testimony revealed that he was not involved in the decision to charge Parsons. However, he assisted Maloney, on the first day of his investigation, April 18, 1997, by accompanying Maloney to the first interview with Peddle, the taxi driver. Donovan was also assisted Maloney on the second day of his investigation, April 22, 1997. On that day he and Maloney arrested Woolridge, interviewed Woolridge at police headquarters. Donovan was also present with Maloney when Parsons was arrested, charged and interviewed.

Donovan recorded these activities and interviews in his continuation reports or 1624s that were prepared on those dates and entered in evidence before me. Without reiterating the entire contents of these reports, suffice it to say that they fairly resembled the interviews and sequence of events as recalled by both Woolridge and Parsons on the days of their arrest and charge.

Donovan's record of the interview and statements from Brian Peddle, the taxi driver, confirm that Peddle identified the name of a person outside his cab when Evans jumped in his cab on the night of the incident. It also stated that Maloney suggested the name Greg Parsons to Peddle in the course of the interview; after which Peddle declined to sign

the statement. From Donovan's testimony and notes, it is clear that he and Maloney were told by both Parsons and Woolridge that the injuries sustained by Evans were not inflicted upon him by Parsons and occurred inside the Corner Stone Bar, not outside on George Street. Donovan's evidence also showed that Parsons was charged with the assault of Evans prior to being interviewed by Maloney. Donovan acknowledged that he was aware of the inconsistencies of the statements made by Woolridge and Parsons compared with the two earlier statements given by Evans.

F. Dr. Craig McIssac

Dr. McIssac was the staff physician working in the Emergency Department at St. Clare's Hospital when Evans arrived for examination and treatment of his injuries in the early morning of April 18, 1997. During his testimony, Dr. McIssac reviewed the Emergency Room Record documenting the injuries apparent on Evans at the time of this examination.

Essentially, Dr. McIssac's evidence is that Evans checked in about 1:40 a.m. and advised the receiving nurse that he had been assaulted by two known assailants outside a club approximately 2 hours previously. In the record reviewed by Dr. McIssac, it was noted that Evans smelled of alcohol and admitted to having 7-8 beers. It was also noted that Evans had superficial lacerations to his upper left and right forehead, welts under his right eye, and across the bridge of his nose and the left side of his nose. Further, it noted that Evans had a laceration to his right upper lip and his lower left lip. Evans appeared to have multiple bruising and contusions to the lower lip, and his jaw was swollen. Evans'

left ear was swollen, bruised and discoloured, and there were large welts around his neck. Evans appeared to have some welts on his posterior chest wall. McIssac observed that Evans had some dried fresh blood in his left ear and the left ear drum was perforated or ruptured. McIssac's report noted that the laceration on his left lower lip was sutured, but that the lower lip didn't require any sutures.

McIssac's medical record indicated that Evans had x-rays done, he was released with a couple of Tylenol and a head injury sheet. Evans was requested to report back the following day around 2:00 p.m. to be reviewed by an Emergency Room Physician. The medical record also noted that the reviewing the physician on the following day reviewed the x-rays which did not reveal any factors. The reviewing physician referred Evans to an ear, nose and throat specialist concerning the perforation to his left ear drum. McIssac confirmed that the medical record, noted by the receiving nurse, that Evans stated that he had been assaulted by Gregory Parsons and David Woolridge and he wanted the RNC to be notified with respect to pressing charges.

G. Cst. Karl Piercey

Cst. Piercey's involvement with the investigation and the Evans' assault complaint consisted of taking a series of photographs of Evans' injuries on April 18, 1997 and a photograph of some of Evans' clothing on April 25, 1997. During his testimony, Cst. Piercey entered Exhibit KP#1, photographs he had taken on these two dates which were entered into evidence before me. The photographs of the injuries to Evans provided

a photographic record of the injuries described by Dr. McIssac, with the exception of perhaps the perforated ear drum.

Piercey's only other role in the investigation of the assault complaint was suggesting that Maloney forward one of the photographs taken of a palm print to the RCMP Crime Lab to be examined.

H. Brian Peddle

Brian Peddle was the taxi driver working on April 18, 1997 at Gulliver's Taxi Stand on the George and Adelaide Streets in St. John's. Peddle testified that he was parked in his cab at that corner facing towards City Hall at about 1:00 a.m., April 18, 1997. He noticed two people running past the front of his cab. He could not see either of their faces. The next thing he noticed was a male jumped in the cab, and sat beside him in the front seat. Peddle couldn't say if either of the two people who ran past his cab was the passenger who jumped in the cab with him, or the person he saw standing outside the cab.

Peddle was shown KP#1, which were pictures of Evans entered into evidence, and did not recognize the individual in these photographs. Peddle stated that the passenger told him to drive him home. He observed the passenger was intoxicated, because he was being a nuisance and shouting to the person standing outside the cab. Although he recalled it was dark at the time, Peddle said the passenger was breathing hard when he entered the cab. He thought the passenger may have "taken a few bangs". Peddle could not recall seeing any blood on this passenger.

Peddle confirmed that he observed only one other person outside the cab who he thought may have been trying to open the door. He testified that the person outside appeared to want to fight with the passenger. Peddle said the passenger told him the person outside was Woolridge. He could not see the face of the person outside his cab.

Peddle also testified that although he currently knows Greg Parsons to see him, in 1997 he did not know him. Further, Peddle was definitive that he did not see Parsons on George Street on April 18, 1997.

Peddle indicated that he drove his passenger to Mundy Pond Road. He said the passenger did not have much to say because he was “pretty well drunk”.

Peddle recalled the two police officers, one of them he identified as Maloney, came to the cab stand to question him the next day. He was interviewed while seated in an unmarked police car. The police asked him about the incident and if Parsons was present when the passenger came into his cab. Peddle testified that the mention of Parsons name had no effect on his declining to sign the statement given to police, and that he had no reason to fear Parsons.

Peddle indicated that Maloney called him after the interview of April 18, 1997, some days later. During the conversation, other than learning he didn’t have to attend Court, he couldn’t recall what else he may have discussed.

Peddle was asked about the fact that his statement to the police on April 18, 1997 said he saw two fellows chasing his passenger down George Street. Peddle replied that he suspected the police wrote that down in the statement because he told them he saw two people running across the front of his cab.

I. David Evans

David Evans is the brother of Evans. He confirmed that Maloney contacted him on April 22, 1997 and had him attend at police headquarters to give a statement. David Evans told Cst. Maloney that in the summer of 1995 he and his brother encountered Parsons on George Street. David Evans described how Greg Parsons, after a verbal exchange with Corey Evans he charged at Corey. David Evans stated that he jumped in between his brother and Parsons, at which point Parsons grabbed hold of David Evans while trying to get at Corey Evans. The encounter was brief and according to David Evans, he and his brother left the area with Parsons uttering something to the effect that his brother "better watch his back". David Evans confirmed that he has had no dealings with Parsons either prior to or since this occasion. David Evans indicated that it was his brother that informed him who the man was that they had encountered on George Street.

J. David Woolridge

Woolridge testified that on April 22, 1997 in the morning, he was picked up at his home by Maloney and another RNC Officer. He was cautioned and taken to police headquarters. During the drive to police headquarters and while he was interviewed by

Maloney at police headquarters, Woolridge testified that he did not provide a formal written statement. However, he admitted to Maloney and the other police officer that it was him, not Parsons, that got into the fight with Evans on April 18, 1997 inside the Corner Stone Bar. Woolridge testified that he told police that Evans had started the fight inside the Club and that he had been punched first by Evans and in self-defence gave Evans several punches. Further, Woolridge said that he told police Evans had a prior history of criminal convictions for assaults. Woolridge testified that Evans was drunk at the time of the encounter and physical altercation inside the club. Woolridge was clear that he told the police that Parsons had not hit Evans. Woolridge's testimony was that he described to police the second encounter with Evans outside the Corner Stone after both and he and Evans had requested to leave the Corner Stone. Woolridge testified that he told police that this encounter was verbal only and that Evans was not hit outside on George Street by anyone in their party, and it was simply a verbal exchange between he and Evans.

In the second encounter, Woolridge described to police how he chased Evans up George Street until Evans jumped in a cab at the Gulliver's cab stand. Woolridge described that in the group of his party which left the Corner Stone later than Evans, Parsons was present and at least two other males and some girls.

Woolridge's testimony confirmed his previous statements to the RNC, which were in evidence before me and were consistent with Parsons' testimony with respect to their transport to the holding cells and appearance in Provincial Court. Woolridge testified

that following the first appearance in Provincial Court on April 22, 1997, he was released.

K. Stephen Dawson

Dawson is the Crown Attorney with the St. John's since 1991. He was assigned the file with the charges against Parsons and Woolridge in late July 1997. He gave evidence as to the handling of the file prior to the stay of the charges against Parsons in September 1997, the respective roles of the Crown Attorneys and the police in processing criminal charges, and his understanding of the standard for reasonable grounds to arrest and charge individuals with a criminal offence in Canada. His evidence as to the law on requirements for reasonable grounds was consistent with the law presented before me, which will be summarized below.

Dawson indicated that the standard for reasonable grounds that a police officer has to meet are lower than the more stringent for Crown Attorneys for reasonable likelihood for conviction. He testified that once a police officer has met the standard of reasonable and probable grounds, it is not mandatory that the officer proceed to lay the criminal charge.

Dawson confirmed that as a general practice, Crown Attorneys in Newfoundland do not review files prior to charges being laid. He stated that the general rule is that the police investigate and the Crown prosecutes and the Crown generally gets the file after the charges have been laid. Dawson indicated that he did not have any concerns in this case about the reasonable and probable grounds for laying the charge. However, he was more

concerned about the strength of the evidence and whether or not there was a likelihood that they could get a conviction. Further, he stated that when he got the file he was not putting his mind to what information or evidence was available to Maloney at the time he made the arrest. Dawson confirmed he was more concerned with what would need to be done in order to proceed with the trial.

Dawson also testified that once a criminal charge is laid, neither the complainant nor police office can withdraw the charge; only the Crown decides whether or not a charge proceeds to trial.

Dawson confirmed that in the weeks immediately prior to the scheduled trial date, he directed further investigation on the file and ultimately, when it was assessed, it became apparent that the matter shouldn't proceed, because there was not a likelihood of conviction. The decision to stay the charges made on September 15, 1997.

L. Colin Flynn

Flynn was at the time of giving his evidence and the 1997 Director of Public Prosecutions. This was the position he held since 1988. He originally joined the Department of Justice as a Crown Prosecutor in 1982. He testified that the Crown Attorney's Office is rarely involved in the laying of charges. He also indicated that in many cases, once the police have laid the charge, the investigation continues. He indicated that once the Crown becomes involved in a file post-charge, the Crown does

look at it to see if there were reasonable grounds for the charge to have gone ahead, and secondly, with respect to the issue of probability of conviction.

Flynn became involved in the file April 24, 1997 in the meeting with Wayne Gorman, then Senior Crown Attorney for Special Prosecutions and Maloney. Gorman asked Flynn to attend a meeting to consider further evidence which Maloney had brought since he had laid the charge against Parsons. This was Flynn's only role in this particular file. He recalled that Maloney laid out for he and Gorman the objective evidence which he had prior to charging Parsons. Flynn could not recall whether he actually read the statements obtained by Maloney, but he confirmed that they discussed it. He recalled the evidence as being the statement from the complainant's evidence, medical evidence as to Evans' injuries, the statement of the taxi driver Peddle and the statement of David Evans. It is clear from Flynn's evidence that he assumed Peddle in particular would be able to corroborate Evans' allegations, that two guys were chasing Evans prior to Evans entering the taxi on the evening in question. Flynn said at page 27 of the November 10, 2000 transcript as follows;

> "He (Maloney) had also interviewed a Mr. Peddle, and the statement of Mr. Peddle was, at least as we have it (emphasis added), was to the effect that this fellow, Evans, did enter his vehicle, and there were two guys chasing him. That was in his statement, at least, which appeared (emphasis added) to corroborate what Mr. Evans was saying."

Flynn then testified at page 28

> "from my perspective, where the standard is reasonable grounds to believe, in my view, and we discussed it, and I think we both came to the same view that, indeed, he did have reasonable grounds at that stage to lay the charge."

Flynn recalled the focus of the April 24, 1997 meeting was to consider the fact that Maloney had talked with further witnesses after the charge was laid against Parsons. Flynn testified that it appeared that there certainly were some concerns raised by Maloney at that time about Evans' statement. Specifically, he recalled that Evans had not indicated that there was any altercation inside the club on the night in question. Flynn testified that this caused Maloney some concern because there were witnesses who indicated that there was an altercation inside the club. Flynn indicated that at this stage they had to decide what they should do given that Parsons was imprisoned pending a bail hearing. Flynn indicated that after discussion it became apparent that Parsons should be released because at page 26,

> "in our view, what appeared to be a case where you had grounds to lay the charge, now looks like there may be some difficulties with it. So we should release Mr. Parsons right away, and Mr. Gorman was in charge of that part of it, so I think, within a day or two, I don't know when, whenever they could get the process in gear, Mr. Parsons was released."

Flynn gave evidence as to his understanding of the law in Canada with respect to reasonable and probable grounds for police to arrest and charge individuals. He agreed with the state of the law in Canada as cited by Dawson. Flynn did note that rather than describing the standard as "reasonable grounds to believe in the guilt of the accused", he preferred to recall it as "an honest belief that the individual probably committed the offence."

Flynn agreed that if a police officer learned of information between arresting an individual and charging an individual, that could happen and circumstances might arise in

which the reasonable and probable grounds had existed to arrest the person but may no longer exist to charge the person.

M. Thomas Mills

Mills at the time of the hearing was Senior Crown Attorney for Special Prosecutions. At the time of the incident, he was Senior Crown Attorney for Eastern Newfoundland, a position which he had been in for approximately 8 years at that time. Mills was called to the Bar in 1981, and has been a Crown Attorney ever since. Mills gave evidence as to his understanding of the concept of reasonable grounds for a police officer to arrest and also charge an individual with a criminal offence. Mills provided a same understanding of reasonable grounds as the other two Crown Attorneys had essentially in their evidence. At page 123 of the Transcript of November 10, 2000, Mills said,

> "reasonable grounds used both as an object and subject test, but in simple terms what it means is that the investigator, the peace officer has to be able to say that he subjectively believes that a set of events may have occurred and that there are objective grounds to believe it as well, and that at that stage, once a peace officer is making an allegation . . . there are reasonable and probable grounds to believe that the offence has occurred."

Mills also made essentially the same distinction between the standard applicable to the police officer at the arrest and charge stage, and the Crown Attorney standard of beyond a reasonable doubt in making the decision of whether a charge will proceed to trial.

Mills testified as to his involvement with this file. He indicated that on April 28, 1997 the file was forwarded to him from Wayne Gorman's office with Special Prosecutions. From his initial look at the file, he stated that he understood that two gentlemen had been

arrested on April 22, 1997, and had made a first appearance in Provincial Court, St. John's, at which time another Crown Attorney had appeared. He recalled Mr. Gorman's notation on the file that arrangements had been made in relation to the release of Parsons and that there was a copy of the Order of the Superior Court in relation to judicial interim release of Parsons. Mills indicated that he recorded on the file that there was a next appearance on April 30th for one of the accused, and on May 12th for the other accused. My mid-May of 1997, Mills recalled that both accused had elected a trial before a Provincial Court Judge, and that trial dates had been set for September 16th. Mills explained the file assignment following the next Court appearances which resulted in the file being assigned to Sheldon Steeves at the Crown Attorney's Office. Steeves reviewed the file and sent it back to Mills for a review with a notation that the file should be reviewed more closely. Mills indicated he did review the file more closely on May 26, 1997. Mills testified that as a result of this review,

> ". . . it was apparent to me, particularly because of the notation for Mr. Steeves that an analysis would have to be done in terms of conviction – in terms of beyond reasonable doubt. That standard at that point would need to be looked at. So I specifically asked in writing that Mr. Steeves address the strength and weaknesses of the case, and to get back to me."

Mills indicated that at this stage he did not have any concerns about the reasonable and probable grounds to lay the charge, but that the matter had progressed passed that point by this stage.

Nevertheless, Mills indicated that the statements that were on the file to that point gave an apparent corroboration to Evans' complaint.

Mills testified that ultimately Steeves' opinion came back to Mills for review on July 26, 1997. Steeves indicated that it was obvious that several of the statements were conflicting. Mills indicated that Steeves' view was that it was a difficult case to call since the case against Woolridge appeared to be a lot stronger than the case against Parsons, but, Woolridge may have had a self-defence claim and that there was an issue emerging as to where this assault had actually occurred. Mills testified that since the Memo from Steeves suggested that the matter could be left for a Trial Judge to decide, he opted to get a second Crown Attorney to review the file and given an opinion. Mills therefore passed the entire file to Steve Dawson for a second opinion.

Dawson provided a second opinion to Mills in writing on July 30, 1997. Mills indicated that the opinion was somewhat different than what Mr. Steeves had been. At page 170 of the November 10, 2000 Transcript, Mills said,

> "Steve Dawson put forward the suggestion, well, you know, gee, the description of the incident inside the Bar from all parties who say that an incident occurred inside the Bar, plays down this and says this was almost of a minor nature. . . but yet the injuries on this person are pretty serious, so, you know, perhaps we are talking about an incident that occurred outside the Bar as well."

Mills indicated that Dawson's recommendation to him was that there was an opportunity to find out more through investigation. Mills agreed with the recommendation that the police should check into further evidence. Rather than simply referring it on to trial for a judge to decide. Mills noted that at this stage he and Dawson discussed having Simon Avis, the Chief Forensic Pathologist, to determine whether these injuries were consistent with two assailants or one, or whether there was any kind of objective medical evidence that could be offered that would indicate how Evans' injuries had been sustained.

Mills recalled that by early September, all further avenues of investigation had been completed. Specifically, he recalled Dr. Avis providing a two-page letter which essentially told the Crown that he was not able to tell whether the injuries suffered by Avis were consistent with an assault by one assailant or two. Mills recalled that Dawson sent him a follow-up memo by the 5th or 6th of September indicating that the different avenues of further investigation had now been followed and the Crown was no further ahead. Mills indicated that Dawson had a face to face interview in early September with Evans to test his recollection and judge his credibility. Mills said that Dawson indicated in his memo that Evans had gaps in his memory and serious conflicts in terms of his recollection of what had happened the night of the incident. Mills concluded therefore, that there would be extreme difficulties using a reasonable doubt standard based upon Evans' testimony. Therefore, in weighing the probability of conviction, Mills said that they found that to be low, and in those circumstances, the best course of action was to enter a stay of the proceedings. Mills testified that he signed the stay of proceedings on Dawson's recommendation and the police and defence counsel were written and advised of the decision. In his testimony, Mills did agree that a police officer can learn after arrest of an individual additional important information and facts which might effect the assistance of reasonable probable grounds before a charge is laid against that individual.

N. Dr. Simon Avis

Dr. Avis testified that the Crown had forwarded the book of photographs of Evans, Exhibit KP#1 to him with a letter on August 12, 1997. In the letter, he was asked two

questions. The first question was whether the injuries of the victim were consistent with injuries caused by more than one person. The second question was whether Evans' injuries were consistent with having been caused by several punches to the head area. Dr. Avis recalled his opinion as to whether or not the injuries were caused by more than one person was a question he couldn't answer. Further, he indicated that the injuries could just as easily have been caused by one assailant, as by two. As to the second question, Dr. Avis testified that the injuries exhibited were typical of those you would expect to see in an altercation, particularly a fist fight. He testified that the injuries would have been caused by more than one blow or multiple blows, but he couldn't specify how many blows would inflict the injuries exhibited. Dr. Avis also testified that his report implied that the injuries were consistent with having occurred when Evans stated that they had occurred.

O. <u>Cst. Charles Shallow</u>

Cst. Shallow was first assigned to the Major Crime Unit of the Criminal Investigation Division in January 1997. In April 1997 he was part of that unit and working on April 22, 1997. He testified that on that day he was asked to assist Maloney by going to get Parsons and return him to police headquarters for questioning concerning the incident. Shallow testified that as a police officer, prior to making an arrest he would need grounds to make the arrest. Shallow indicated that in this case he obtained a comfort level as to the grounds for making the arrest from Maloney who was conducting the investigation. Shallow testified that this was not an uncommon practice. Shallow

also testified that while he went prepared to arrest Parsons, he and the officer with him, Cst. Dowden, did not actually arrest Parsons.

Shallow testified that prior to going with Cst. Dowden to pick up Parsons, he understood that Evans had made a complaint given the statement to Maloney. He also understood that there may have been some deceptiveness on the part of the co-accused Woolridge. Shallow indicated that he understood there was a taxi driver on George Street who had seen some things which made it seem likely that Parsons had been involved in the altercation. Shallow testified that prior to arresting someone he would need a comfort level in terms of grounds for the arrest. In this case he obtained that from Maloney and had no hesitation to go pick up Parsons.

Shallow recalled from his contemporaneous notes of the day the events that transpired on his attending to pick up Parsons. He and Cst. Dowden went to Parsons' home and told him they were there to see him concerning an altercation between he and Evans. He recalled that Parsons asked if Evans had told them he hit him because he had witnesses to the incident. Shallow requested that Parsons come with them to the police vehicle. Once in the vehicle, Shallow said he read Parsons his rights and caution, and proceeded to drive him to the police headquarters. Shallow noted that Parsons asked if he was under arrest, and Cst. Dowden told him that he could speak to Cst. Maloney and Donovan, who were the investigators, and that they would inform Parsons what the situation was. While Shallow did not recall the significant conversation during the drive to police headquarters, he did recall that Parsons said he didn't want to speak to the police unless

his lawyer was present. Shallow indicated that once they returned to police headquarters, Parsons was placed in one of the interview rooms. Shallow indicated that after placing Parsons in the interview, he had nothing further to do with this part of the investigation.

On cross-examination, Shallow was asked to review the notes that he had provided to Maloney in connection with this involvement in the investigation. These documents are included the book of documents entered as Consent #14, Tab 5. They consisted of three pages of notes, the first page was a continuation report with the subject line "Assault/Woolridge-Parsons" under the date it indicated 97 04 22 and started off as a general statement, "on this date, I was asked by Cst. D. Maloney to assist in the above-mentioned file." Cst. Shallow confirmed that this note was prepared some time after the date to simply record his understanding from that date as to the grounds for arrest of Parsons at that stage of the investigation. Cst. Shallow confirmed that he believes Maloney requested him to make this note after the fact and that this was an unusual practice. The remaining two pages at Tab 35 are another continuation report by Cst. Shallow with the subject line, Assault/Evans. The date on these two pages of notes is 97 04 22, and there are three time entries matched up with the notes. Cst. Shallow testified that these were in fact the contemporaneous notes that were made on the date that he and Cst. Dowden went to pick-up Parsons. Cst. Shallow acknowledged that these contemporaneous notes did not contain any of the reasons which Cst. Shallow had been given by Maloney for the grounds to arrest Parsons on that day in question. Several times in the hearing these "after-the-fact" notes received attention because Shallow suggested they may have been requested after Parsons filed his complaint against Maloney.

However, it became clear from later evidence (Transcript January 8, 2001 page 143 and January 11, 2001, pages 54-55) that they were prepared sometime in May, 1997 which was several months before Parsons filed his complaint. In any event, the fact that these notes were requested later by Maloney and that Shallow testified that such request was unusual is not determinative to the issues before me.

P. Cst. Donald Maloney

Maloney testified on three days during the hearing being January 8th, 9th and 11th, 2001. The sequential steps of Maloney's investigation are outlined above in the section II, The Facts. Therefore, this section of my decision will highlight portions of Maloney's testimony concerning his investigation which I found determinative to the issues.

A. Pre-Arrest

Prior to the arrest of Parsons, Maloney was indeed aware of evidence extensive prior criminal record and testified that it did not impact in how he proceeded with his investigation (Transcript January 8, 2001, pages 17-18).

Maloney testified that at this stage of the investigation, he had no concerns with credibility of Evans (Transcript January 8, 2001, page 24). Further, he testified that in his view, police officers do not consider the criminal record of a complainant when assessing their credibility as a complainant or witness during a criminal investigation. Although, Maloney acknowledged that the criminal record might come into play if there was some indication that a complainant were

leading the police into a false investigation. (Transcript January 9, 2001, pages 92-93).

As to Evans' injuries, Maloney testified that Evans' physical appearance on the day following the alleged assault were consistent with his complaint and an assault causing bodily harm. Further, Maloney testified that he did not address his mind or concern himself with whether the injuries which he had observed might not be consistent with the manner in which Evans described the assault to have been inflicted. (Transcript January 8, 2001, page 17, 198-201)

As to any urgency to arrest Parsons on April 18, 1997, Maloney testified that he was aware that Parsons was already on an undertaking with reporting conditions and that he had no concerns for the safety of the complainant, Evans. Further, Maloney indicated that following the three day weekend on April 22, 1997, by lunch time that day he had completed his investigation and concluded he had reasonable and probable grounds to arrest Woolridge and Parsons and to lay a charge. Maloney testified that he believed he could stop his investigation once he had his reasonable probable grounds that an offence had been committed. (Transcript January 8, 2001, pages 171-175)

Concerning the statement of the taxi driver, Peddle, Maloney confirmed that he had concluded from his interview with Peddle that Peddle could identify Parsons as one of the people who chased Evans outside on George Street on the night in

question. (Transcript January 8, 2001, pages 25-29 and pages 168-170) Specifically, Maloney stated that,

> "It meant to me that it further corroborated the story of the complainant that he had been assaulted, and that he had been assaulted by two persons, and that this gentlemen has identified one of the persons as being Mr. Woolridge, and subsequently, the second person who has been identified by the complainant as being Mr. Parsons involved in the incident." (Transcript January 8, 2001, page 28, lines 20-25 and page 29, lines 1 and 2)

It is evident from Maloney's testimony that he placed such reliance on Peddle that it precluded any further investigation prior to the arrest of Parsons. Specifically, Maloney stated

> "at this point in the investigation, I felt I had an independent witness which was Mr. Peddle, and that there was reasonable probable grounds to lay a charge at this time, right." (Transcript January 8, 2001, pages 46-47)

Under cross-examination it became evident that Maloney had not done a very thorough investigation or interview to determine exactly the evidence Peddle could provide. Maloney acknowledged that he did not pursue with Peddle the details of what he actually witnessed on the evening in question, for example, whether Peddle actually saw two fellows chasing Evans. (Transcript January 9, 2001, pages 119-120). It was also apparent that Maloney did not follow the suggested components for investigation of criminal offences as noted in the Criminal Investigation Division, Part 10 Organizations and Functions, which was before me in evidence at Consent #12, Tab 40. (Also see Transcript January 9, 2001, pages 175-179).

Maloney testified that by mid-day, April 22, 1997, he had decided that he had reasonable probable grounds, and further that he had no obligation to interview the two accused prior to their arrest and charge in these circumstances. (Transcript January 8, 2001, pages 31-32, 41-42, 175, 177-178 and 184-185; January 9, 2001, pages 105, 172-173) Further, Maloney testified that even reflecting upon his entire investigation post-arrest and pre-trial, there was no other evidence he could have obtained prior to arrest in these circumstances. (Transcript January 8, 2001, page 149)

B. <u>Post-Arrest / Pre-Charges Laid</u>

Maloney testified as to his assessment of Woolridge and Parsons during the time of their pre-charge detainment at police headquarters on April 22, 1997. Maloney indicated that both Woolridge and Parsons declined to give statements. However, Maloney in assessing the utterances that both Parsons and Woolridge made while they were detained contained some inconsistencies. For example, Maloney noted that Woolridge took responsibility for physically hitting Evans single handedly, yet Parsons was referring to more than one person, i.e. “they”, defending him in the face of verbal harassment by Evans. Maloney testified that in declining to give a full and frank disclosure by way of statement and through such inconsistencies in their version of events, Woolridge and Parsons were being “deceptive” to the police. (Transcript January 8, 2001, pages 37-40; January 9, 2001, pages 17-18) Notwithstanding that Maloney found Woolridge and Parsons to be deceptive in their interviews during the initial investigation, Maloney testified that this really

did not factor into his forming reasonable probable grounds for arrest. Maloney had made up his mind before he talked to Woolridge and Parsons that indeed he had reasonable and probable grounds to arrest, based on other evidence. (Transcript January 11, 2001, pages 30-31)

Maloney testified as to why he did not do follow-up investigation in face of the differences in the versions of events of the night in question between Evans, the complainant, and both of the accused, Woolridge and Parsons. Maloney confirmed that he had been told by both Woolridge and Parsons that the fight on the night in question had occurred inside the Corner Stone, that Woolridge had acted in self-defence having being struck by Evans first, and that both accused provided names of other witnesses present during the altercation. However, Maloney testified that because of his view of Woolridge and Parsons he didn't believe that there had been a fight inside the club. Rather he believed the complainant, Evans, as to the events on the night in question. (Transcript January 8, 2001, pages 183-186) Nevertheless, Maloney acknowledged that if he had contacted Evans on April 22, 1997 he may have had another day to assess the evidence. Under cross-examination the following exchange of questions and answers between Commission Counsel and Maloney are recorded in the Transcript January 8, 2001, page 177-178, lines 24, 25 and 1-11:

> "Question: Well, did you attempt to contact Mr. Evans, Mr. Corey Evans, on the 22nd, after these gentlemen told you that the fight had been inside the bar? Answer: No, sir, I did not. Question: Why didn't you do that? Answer: At the time, I just -- I didn't think about doing it. Question: Okay. Answer: I wish, you know -- probably I wished I would have had

> to because it would have gave me another day to look into it, but I just didn't think of it at the time."

Maloney testified that in the post-arrest pre-charge stage of a criminal investigation, a police officer can continue to investigate prior to laying a charge. In this case, at that stage of the investigation, Maloney testified that one thing he had left to do was to contact Evans' companion on the evening in question, Jason Howlett. However, Maloney testified that he didn't contact Mr. Howlett to verify whether the fight had occurred inside or outside the club prior to charging Parsons and Woolridge, because at that point, he had an independent witness, Mr. Peddle, and reasonable and probable grounds to lay the charge. (Transcript January 8, 2001, pages 46-47)

As to not re-interviewing or confronting Evans prior to charges being laid against Parsons, with respect to whether the fight had occurred inside or outside, Maloney testified that he didn't have to go to Evans to re-interview him with respect to this critical issue. (Transcript January 9, 2001, pages 172-173) Maloney testified that it occurred to him on April 23rd, that he should reinterview Mr. Evans and follow-up with the witnesses who were in fact in the club on the night in question. (Transcript January 9, 2001, pages 179-180) On this date, April 23, 1997, Parsons was in jail awaiting a bail hearing on the charges which Maloney had instigated the previous day.

Under cross-examination on the issue of doing the further investigation on April 22nd, prior to charging Parsons with the offence, Maloney replied as follows:

> "I told you already because of the evidence I had collected, and because of the deception, I believe there was reasonable and probable grounds to lay the charge. I laid the charge. Question: Would it have done any harm, would it have taken any great amount of resources or time to have checked out those other points, which subsequently when you did check out, came to show all this other field of evidence which clearly indicated Mr. Parsons did nothing wrong? Would it have taken any great resources or time to have done that? Answer: No, sir, it would not have taken any, but . . . on the 23rd, I did – the resources weren't a question. I was allowed to do this, to go out and get these other statements." (Transcript January 11, 2001, pages 107-108, lines 2-17)

C. Charges Laid and First Appearance

Maloney testified as to the role Cst. K. Fitzpatrick has in reviewing the information and police report to accept that there are reasonable and probable grounds for the charge prior to swearing the information before it is placed before the Court. He confirmed that the report Cst. Fitzpatrick would have reviewed for this purpose included a brief account of the witness' involvement. Maloney acknowledged that the brief account of the witness' involvement concerning Peddle was as follows: "Peddle is a taxi driver with Gullivers, who observed the captioned (Evans) being chased by the accused." (Transcript January 9, 2001, page 99, lines 21-23) Maloney acknowledged under cross-examination that Peddle testified before this panel that he could not identify Greg Parsons as one of the individuals who chased Evans down George Street on the night in question. As a result of Peddle's testimony, Maloney acknowledged that the statement in

the brief account of witnesses reviewed by Cst. Fitzpatrick was not true. (Transcript January 9, 2001, pages 102-103)

Prior to Parsons' first appearance in Court on April 22, 1997, Cst. Augustus was present in the holding cell when Woolridge and Parsons discussed, the incident and complaint of Evans. Cst. Augustus observed that the two accused maintained their version of events during the alleged assault. Both accused's version of events were inconsistent with those alleged by Evans. Maloney testified that he was not privy to the results of Cst. Augustus' observations in the holding cell until after Parsons' Court appearance on April 22, 1997. (Transcript January 8, 2001, pages 44-45)

D. <u>Pre-Stay of Charges</u>

Maloney testified that, similar to the brief account accompanying information to Cst. Fitzpatrick, his report to the Crown Attorneys accompanying Peddle's statement, indicated that Peddle could identify Parsons as one of the people chasing Evans on George Street, as alleged by Evans. (Transcript January 8, 2001, page 169)

In his testimony, particularly under cross-examination, Maloney acknowledged the significant changes in the level of detail and the account of Evans between his first two statements to the police and his third statement to Cst. Maloney on April 23, 1997. (Transcript January 9, 2001, pages 157-159) He acknowledged

that the third statement which he took from Evans did not impact, in his view, his reasonable and probable grounds, he had no concerns with respect to Evans' earlier complaint, however, he did acknowledge that it would impact Evans' credibility in Court. (Transcript January 8, 2001, pages 50-51) Maloney believed Evans' story was still credible to the extent that he had been assaulted. (Transcript January 11, 2001, page 65) Further, Maloney acknowledged that as a result of Crown Attorney Steve Dawson's interview of Evans on September 9, 1997, Evans' credibility as a witness in the upcoming trial had become an issue. (Transcript January 8, 2001, pages 119-121)

Maloney testified that Evans' credibility was questioned by the Crown in his meeting with Mr. Gorman and Flynn on April 24, 1997. As a result of the information gleened from Maloney's investigation after Parsons had been charged, the Crown was willing to release Parsons from custody. (Transcript January 8, 2001, pages 65-66) Maloney confirmed that request for him to conduct further investigation for evidence supporting the charges were made May 27, 1997 and August 8, 1997. (Transcript January 8, 2001, pages 86-88, 107) Maloney acknowledged under cross-examination that following his further investigation he had obtained no evidence from any witnesses other than Evans as to Parsons assaulting Evans either inside or outside the Corner Stone on the night in question. (Transcripts January 9, 2001, pages 86-87; and January 11, 2001, page 36)

Maloney testified that he still holds the belief, even subsequent to the stay of charges against Parsons, that both Woolridge and Parsons were involved in the assault against Corey Evans on the date in question. (Transcripts January 9, 2001, pages 31-32, 79, 80, 83; and January 11, 2001, pages 34-35)

IV. ANALYSIS

A. Submissions of the Parties

Mr. Piercey, Counsel for Maloney, argued that Maloney had lawful grounds to arrest Parsons. Piercey argued that the factors upon which Maloney had acted were sufficient. He argued that these factors were: Maloney's subject honest belief that Parsons was probably guilty; Evans' two consistent statements to police prior to Parsons' arrest; Evans' physical injury; Evans' clear identification of Parsons and Woolridge as the accused; Peddle's statement that two people chased Evans to his cab; Maloney's assumption that Peddle would identify Parsons as one of these two people; and David Evans' account of past trouble between Evans and Parsons.

Piercey argued that it was reasonable for Maloney to delay investigation of Parsons' and Woolridge version of events until after the charges have been laid against the accused. He argued this is so because: subjectively Maloney did not believe the two accused who had declined to give written statements upon arrest; there was conflicting evidence as to how many persons chased Evans; in the circumstances, that Parsons was free on an undertaking pending a trial on the charge of murder and that Woolridge had no criminal record from his police

experience, that it was not unusual for an accused in less jeopardy to lie to protect the accused in greater jeopardy. Piercey argued that to say now that other investigations should have been conducted by Maloney prior to the arrest of Parsons would be an exercise in "Monday morning arm-chair quarterbacking". He argued that Maloney, in addition to the evidence in hand, had to consider the fact that Parsons was on an undertaking pending the murder trial. Therefore, he argued that, while the consequences to Parsons of being arrested were serious, the consequence to society, upon release of an accused murderer following new charges of assault causing bodily harm, could have been greater.

Finally, Piercey argued that Maloney's supervising officer, Sgt. Barrett, had testified that Maloney would have been in dereliction of duty had he not charged Parsons in the circumstances. Further, he asserted that other officers, Cst. Shallow and Donovan, also saw reasonable grounds to arrest Parsons. With respect to this particular argument, I recall the evidence of Cst. Shallow that he relied upon Maloney's advise with respect to reasonable grounds prior to the arrest of Parsons. Also, it was Donovan's evidence that he was not involved in the decision to charge Parsons for the arrest and charges against Parsons. Barrett in his evidence focused on what Maloney had at the time of forming his grounds for arrest not what Maloney could have had to achieve the level of completeness required in the circumstances. The evidence before me is that Maloney received permission post-arrest and charge to obtain overtime to continue the investigation in light of the change in circumstances. I find it difficult to accept that if Maloney

had gone to Sgt. Barrett or an other superior to explain that he required further time to investigate Evans' complaint prior to any arrest and charge in order to justify on an objective basis his subjective grounds, that he would have been disciplined for doing so. In my view, to suggest that Maloney would have been disciplined for not arresting Parsons, is not consistent with the evidence that it was Maloney's judgment alone, as the investigating officer, as to reasonable and probable grounds that was significant.

Piercey offered several cases in support of his submissions. He cited *Storrey* v. *Queen* (1990), 53 C.C.C. (3d) 316, in support of the proposition that the police officer prior to arrest must have a subjective belief that the accused is probably guilty and this must be justifiable from an objective point of view. He urged that all that is needed is the probability of guilt, which is a lesser standard than the probability of conviction, prima facie case or proof beyond reasonable doubt.

Randall Wiles v. *The Police Complaints Commissioner* (unreported) Ont. Div. Ct., New Market No. 35862/95 was cited by Piercey in support of the proposition that the determination of whether reasonable grounds existed is based on the circumstances apparent to the officer at the time of arrest, not on what is learned later. This case he also cited for the proposition that there is no obligation upon a police officer to weigh and determine the validity of various versions of events and render judgment before effecting an arrest. In support of his assertion that the adjudicator is not entitled to merely substitute their discretion for that of the

police officer, but must find an absence of reasonable grounds, Piercey cited two cases. These were *Tomie-Gallant* v. *Board of Inquiry* (1997), 92 O.A.C. 363, a decision of the Ontario Divisional Court and *Spirak* v. *OPP Commissioner* (1991) 10 C.R. (4th) 77 (Ontario Court of Justice, Gen. Div.). The latter case was also cited for the proposition that other words used to describe reasonable would include fair, legitimate and justifiable as opposed to unfair, unjust, and outrageous.

Finally, Piercey cited the case of *Regina* v. *Golub* (1997), 117 C.C. (3d) 193, or the principle that a police officer can reject evidence where they have good reason to believe it is unreliable.

Piercey submitted that "good and sufficient cause" would be the same as "reasonable grounds".

Piercey also submitted that the conclusion that Maloney's decision to arrest was proper, was supported by the evidence of the four expert witnesses in criminal law. The four expert witnesses did give similar evidence with respect to the standard applicable to arrest and charge and what was necessary to support reasonable grounds for arrest and charge. All of the experts' evidence is summarized above in my decision. I do not find support in their opinions for the conclusion that Maloney's decision to arrest was proper. Each of the three Crown Attorneys, Dawson, Mills and Flynn may have made statements and testified that

they saw no problems with the reasonable and probable grounds. However, all of them had before them summaries of evidence based on Maloney's view of what these witnesses, notably Evans and Peddle, could say. Further, the Crown Attorneys, Dawson and Mills, were involved with the file at a stage when they were more concerned, as noted above, about the strength of the evidence and whether or not there was likelihood of conviction. In other words, as Dawson testified, they would not be putting their minds as to what information or evidence was available to Maloney at the time he made the arrest. Rather, they would address what evidence they would need in order to proceed with the trial. I also note the submission of O'Flaherty on this point with respect to the evidence of Flynn. He recalled Flynn's evidence to the effect that, all of the things that Maloney had to satisfy himself that he had reasonable and probable grounds were assumed to have been the result of a thorough investigation prior to arrest. In addition, Flynn would have had the same information from Maloney as did Cst. Fitzpatrick which included that the taxi driver, Peddle, would identify Parsons as a person chasing Evans up George Street and also the first erroneous statements by Evans. The particulars of Flynn's evidence in this respect are summarized at p. 33 above.

While Piercey acknowledged that there is an obligation on the police officer to consider all available evidence when deciding whether to arrest, he argued that I am not entitled to substitute my own discretion for whether there were grounds to

arrest in this case. He urged that the Adjudicator must analyze the objective reasonableness of Maloney's decision.

Mr. O'Flaherty, Counsel for the Commission, submitted that the circumstances of this case required that a reasonable police officer go further with the investigation than Maloney had at the stage when he arrested and subsequently charged Parsons with assault causing bodily harm on April 22, 1997. O'Flaherty argued that the determination of whether Maloney's investigation met the appropriate standard must be viewed within the context within which he exercised the power of arrest. In this respect, he noted the following factors: that in forming his grounds for arrest, Maloney was acting on the information of private citizens not on personal observation of unlawful activity; that Evans had been drinking at the time of the alleged offence, said to have occurred in a busy and public area of downtown; that Maloney knew Parsons was under reporting conditions and there was no risk of flight; that there was no concerns as to a recurrence of the alleged offence; that the investigation of the complaint waited three days during scheduled days off; and that Maloney knew that if Parsons were charged with assault causing bodily harm while he was on bail pending a murder trial, he would lose his liberty and remain incarcerated pending trial.

O'Flaherty argued that Maloney had been provided with information from Woolridge and Parsons that the fight had occurred inside the Corner Stone between Woolridge and Evans, but Woolridge had acted in self-defence and that

Evans had left the club injured and bleeding. Further, he argued that this version of events could have been readily confirmed, and was of critical importance to the truthfulness of Evans allegations, his credibility as a complainant and determining whether the assaults had occurred either by Woolridge or Parsons.

O'Flaherty submitted that by choosing not to speak to any of the witnesses who could confirm where the fight occurred, and whether Woolridge and Parsons had assaulted Evans prior to the arrest of Parsons or prior to charges being laid; Maloney deprived himself of the opportunity to have a full picture of what happened with respect to the incident. He submitted that a reasonable officer would have considered the information important and continued his inquiry. However, Maloney ignored important information readily available to him, arrested and laid the charge against Parsons before completing a full and thorough investigation. O'Flaherty concluded that Maloney in so doing deprived himself of the opportunity to properly form reasonable and probable grounds. Further, he submitted that an officer is not entitled to rely only on evidence which tends to incriminate an accused while disregarding available exculpatory evidence in forming his grounds.

O'Flaherty argued that Maloney was under a legal duty to make such due inquiry before arresting Parsons that the circumstances of the case would indicate to the reasonable officer was practical and necessary. He noted that Maloney offered no justification for not completing a thorough investigation prior to laying a charge,

other than he believed he had formed reasonable and probable grounds and that no further investigation was necessary. O'Flaherty argued that Maloney's legal error was in ignoring all the other available evidence prior to the arrest and charge. Nevertheless, O'Flaherty conceded that it would be going too far to suggest that in each case every available witness must be interviewed prior to the arrest and laying the charge or that in each case the accused must be interviewed, as there would be cases where this could be to the destruction and taping of evidence. However, in this case, in the circumstances which Maloney faced prior to arresting Parsons, he chose to ignore critical statements by the accused, and declined to interview witnesses critical to confirming the allegations or to reinterview Evans on April 22, 1997, thereby clearly failing to thoroughly investigate the matter prior to the laying of charges against Parsons.

O'Flaherty submitted, at paragraph 25 of his written brief, that

> "The obligation to carry out a full and thorough investigation is distinct from but in practice directly related to the principle of reasonable and probable grounds. Thus, if an officer fails to conduct the inquiry which the circumstances reasonably permits and which reasonable prudence requires, the officer can have formed an honest belief in the guilt of an accused, but the officer may have deprived himself of the opportunity to properly access the issue of whether the accused was probably guilty of the offence charged. Furthermore, without a properly formed subjective belief, the objective requirement that a reasonable person placed in a position of the officer must be able to conclude that there were indeed reasonable and probable grounds for the arrest will generally not be satisfied, rendering the arrest unlawful."

O'Flaherty supported his submissions in this matter with relevant case law on the law on reasonable and probable grounds. He reiterated what the expert witnesses

on criminal law and practice indicated; that the power to arrest persons without warrant and charge them with criminal offences may only be exercised where a police officer has formed reasonable and probable grounds on which to base the arrest, and where those grounds are justifiable from an objective point of view. In stating that the process of forming reasonable and probable grounds carries with it the duty of making due inquiry before arrest, O'Flaherty cited the case *Chartier* v. *Quebec (Attorney General)* (1979) 104 D.L.R. (3d) at page 341-342, where the Supreme Court of Canada stated as follows:

> "For a peace officer to have reasonable and probable grounds for believing in someone's guilt, his belief must take into account all of 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 of descriptions provided by the eye witnesses should have been checked out before he was incarcerated."

O'Flaherty argued that this means in practice the police officers are required to thoroughly and diligently investigate allegations prior to the arrest of citizens and the laying of criminal charges. I note the caution made by Piercey with respect to the *Chartier* case that the context was significantly different than the case before me. However, I do not believe that Mr. O'Flaherty argued that the *Chartier* case could be taken to mean that everything has to be done prior to the charges being laid in every case.

Mr. O'Flaherty also cited the case *R.* v. *Storrey* (1990) 105 N.R. 81 at 92 where the Supreme Court of Canada stated:

> "In summary then, the Criminal Code requires that an arresting officer must subjectively have reasonable and probable grounds on which to base the arrest. Those grounds must, in addition, be justifiable from an objective point of view. That is to say, a reasonable person place 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 an arrest."

Piercey was in agreement with and also quoted the same passage from the *Storrey* case in his submissions. He indicated that the *Storrey* case was the leading case in Canada on reasonable grounds. O'Flaherty noted that the Supreme Court of Canada in the *Storrey* case quoted from *Dumbell* v. *Roberts* (1944) 1 All E.R. 326 at 329 (Court of Appeal) in addressing the duty of making due inquiry before arrest. The Court quoted from that case as follows:

> "The power possessed by constables to arrest without warrant, whether at common law for suspicion for felony or under statute for suspicion of various misdemeanors, provided always they have reasonable grounds for their suspicion, is a valuable protection to the community; but the power may easily be abused and become a danger to the community instead of a 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 shall before arresting 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 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."

Similarly, Mr. Piercey had no quarrel with Mr. O'Flaherty quoting from another case *R.* v. *Golub* cited above, in which the Court confirmed the law as found in *R.* v. *Storrey* and regarding the duty of due inquiry stated as follows:

> "In deciding whether reasonable grounds exists, 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 is unreliable."

Also commended to me as bringing the law in Canada up to date was the case *R.* v. *Feeney* (M.) (1997), 91 B.C.A.C. 1 (SCC). The Court in reiterating the fundamental prerequisite that the police have reasonable grounds to arrest prior to arrest quoted at paragraph 32 of that decision Scott, L.J. in the *Dumbell* case as follows:

> "The duty of the police when they arrest without warrant is, no doubt, to be quick to see the possibility of crime, but equally they ought to be anxious to avoid mistaking the innocent for the guilty . . . I am not suggesting a duty on the police to try to prove innocence; that is not their function; but they should act on the assumption that their prima facie suspicion may be ill-founded."

O'Flaherty also cited *RNCPCC* v. *Jesso and Roche* a decision of Linda Rose, Adjudicator, dated February 29, 2000. The case involved a police officer who had done virtually no investigation and failed to lay charges, which is not the situation in the case before me. However, Adjudicator Rose did comment on the role of the adjudicator with respect to the issue of the thoroughness of the investigation. Her comment cited by O'Flaherty from that case, and which Piercey agreed was appropriate, was as follows:

> "It is not for me to determine whether the conclusion reached by Cst. Roche (not to lay charges) can be supported by the evidence. It is a question of whether the steps he took constituted a thorough investigation."

Mr. Simmonds, Counsel for Parsons, briefly reiterated the case law as outlined by O'Flaherty concerning reasonable and probable grounds and the duty of police officers for completing their investigation prior to arrest. He highlighted the evidence particularly from Maloney and submitted that the complaint against Maloney has been made out. At the conclusion of his oral submissions (Transcript June 21, 2001, page 103, lines 19-23 and page 104, lines 1-15), Simmonds stated as follows:

> "The officer did not do a proper investigation. He did not look at all of the reasonable and relevant evidence that the circumstances dictated, which he could have, and as a result of that . . . Mr. Parsons got arrested when he shouldn't, got imprisoned when he shouldn't, had his future – had his liberty further restricted when he shouldn't, and still operates under the cloud of having this charge just stayed. . . . What adds insult to injury, . . . the officer tells us here when we were here in January and February, I still believe Greg Parsons had something to do with it."

Simmonds also expressed his opinion with respect to two issues which are not relevant to the Reference before me. However, they need to be addressed in my decision so that it is clear in making my decision I did not take into account Simmonds' view with respect to these issues. The first was his assertion that in this case there was use of extraordinary police resources and techniques for investigation of a simple assault complaint. Simmonds' contention was that the investigation included extraordinary measures such as a cell plant, authorized overtime, crime lab analysis, polygraph test requisitions, KGB statements, and medical opinions from the provincial medical examiner. The second issue alluded to by Simmonds was a concerted motivation by the RNC, not just by Maloney, against Parsons because at the time of Evans' complaint Parsons was facing his

second murder trial. On both of these issues Simmonds expressed the view that the RNC demonstrated a "tunnel vision" with respect to the investigation of the allegations against Parsons similar to what he viewed as a tunnel vision on the investigation of the murder charge against Parsons. **I wish to be clear that there is no evidence before me concerning these issues, nor is it part of the scope of the Reference placed before me to consider these issues. These opinions expressed by Simmonds have not been factored into my determination of the issues in the complaint against Maloney.**

Mr. Noble, Counsel for the Chief of Police, made a brief submission with respect to the principles of law relevant to the complaint before me. He urged that in my deliberation I have due regard for the jurisprudence, particularly given that the repercussions for the RNC beyond the interests of the complainant and police officer in this case.

B. Application of the Law / Findings

The case law on the issues of reasonable probable grounds for arrest and charge and the duty of police to conduct a thorough investigation, as submitted by the parties, is fairly consistent and without controversy. The cases which were most useful in my determination I have recited above.

I agree with O'Flaherty that the duty to carry out a full and thorough investigation is linked to the principle of reasonable and probable grounds. So, where a police

officer fails to conduct the investigation which the circumstances reasonably permit and require, that officer may have formed an honest belief in the guilt of the accused, but they may have done so without the opportunity to properly access whether that accused was probably guilty of the offence alleged. As submitted by O'Flaherty, without properly formed subjective belief, the objective requirement to support the reasonable and probable grounds will generally not be satisfied.

I am persuaded to the view that Maloney's conduct in the circumstances of this case clearly consisted a failure to thoroughly investigate the allegations prior to arresting and laying the charges against Parsons. By ignoring all the other available evidence prior to the arrest and charge, he deprived himself of the opportunity to properly form reasonable and probable grounds.

I am also of the view that after the charge was laid against Parsons, Maloney continued to pursue the charges even though his investigation revealed weak support for the charges. I acknowledge that after the charges were laid it was the decision of the Crown, not Maloney, whether to withdraw or stay the charges. However, Maloney in the period after the charges were laid up to the stay of the charges simply continued to submit his written continuation reports on any further investigation to the Crown Attorneys Office and carry out the further investigation, albeit on a reasonably timely manner, on two occasions in July and August requested by the Crown. Maloney did not make any other effort to review the evidentiary support for the charges with the Crown. The Crown Attorneys

testified that they work preparing a case in anticipation of the trial date. The Crown Attorneys did not say Maloney was precluded from flagging any concern with them during the post-charge period that there was weak evidentiary support for the charges. Further, it is evident from the results of the investigation which Maloney conducted after the charges were laid against Parsons that there was critical evidence he could have obtained prior to arresting and charging Parsons.

In finding that the two allegations against Maloney have been made out; one, that he did not have good and sufficient cause to arrest Parsons, and two, that he did not properly and thoroughly investigate the assault complaint by Evans prior to arresting and charging Parsons, I note that there is no evidence before me that such failures were intentional on Maloney's part. It is simply a finding that Maloney had breached his duty to do a thorough and proper investigation before arresting Parsons. If he had done a thorough and proper investigation at that stage, Parsons would not have been arrested, charged or imprisoned. The investigative steps Maloney took prior to Parsons being arrested and charged did not constitute a thorough investigation in the circumstances of this case.

In my deliberations, certain evidence was particularly determinative and will be set out here by way of explanation. I found the statement of Peddle, the taxi driver, which was relied upon by Maloney, particularly scanty. Peddle was not interviewed vigorously enough in order for Maloney to comprehend fully what Peddle had in fact witnessed. He did not establish with Peddle on site at George

Street where the taxi had been located at the time Evans ran to the cab. It was not established what Peddle could have observed and seen from the cab, much less what he in fact did observe. Maloney's interjection of Parsons' name into the first interview with Peddle, by his own admission, changed or stopped short the flow of information from this witness. Peddle declined to give further pertinent information. A mere four or five days after providing his first statement, Peddle told Maloney that Parsons was not present on George Street on the night in question. At the hearing before me, Peddle testified he couldn't actually see the face of the person outside the cab shouting at his passenger inside the cab. There were also obvious discrepancies between Evans' initial statement and Peddle's statement as to how Evans came to be in the cab that evening. Peddle indicated that he was simply parked near the cab stand, whereas Evans in his first detailed statement indicated that the cab had pulled along side and he was able to climb in.

The evidence of Peddle was particularly critical in this case, because it was included in the objective evidence required to support Maloney's reasonable probable grounds. Maloney's view of Peddle's evidence flowed up to both officer Fitzpatrick at the Provincial Court, who swore the information that would attest to reasonable probable grounds, and also to the Crown Attorney's Office who assumed that Maloney had objective support for his reasonable and probable grounds.

Based on the evidence before me, it clearly appears Maloney had made up his mind early in his investigation that he had reasonable and probable grounds to arrest, even without interviewing the accused. He neglected to interview any witnesses that could corroborate Parsons and Woolridge's versions of events. Maloney, or any other police officer in similar circumstances, can't ignore other evidence available to them at the time they are assessing reasonable and probable grounds for arrest. He seemed to focus on the bare minimum of what he needed to have and not on what he should have had in order to give himself a complete understanding of what had occurred and properly support his subjective belief.

My decision reflects the key principle enunciated in the case law, that a police officer has a duty to thoroughly and properly investigate an alleged offence prior to arresting and charging a person. However, my findings concerning Maloney's conduct in this case should not be interpreted to mean as a general proposition that in every case every potential witness must be interviewed prior to the arrest and charging of the accused.

Maloney proceeded to conclude his investigation and charge Parsons and Woolridge very quickly after a day and a half investigation, especially in the context of the three-day delay between the first day of the investigation and the day on which Parsons and Woolridge were arrested and charged. He could have, in the circumstances of this case, taken more time and in fact he acknowledged in his testimony that he wished he had waited another day to do at least the further

investigation which he did do on April 23, 1997, the day after the charges had been laid and Parsons was imprisoned. In so doing, it is apparent that Maloney closed his mind early in his investigation and restricted himself to Evans' version of events.

V. CONCLUSION

In summary, I find that Constable Maloney has conducted himself in the manner unbecoming of a police officer as charged, contrary to Section 3(1)(a) and 3(1)(d) and has therefore committed offences contrary to Section 3(2) of the Regulations. I reserve jurisdiction to hear submissions from the parties as to the appropriate penalty and costs. Therefore, the matter is set over to resume the hearing for those purposes until December 10, 2001, at a place and time to be confirmed, or such other date as shall be agreed upon in writing by all parties.

DATED at the City of St. John's, in the Province of Newfoundland, this day of November, 2001.

_____

JOAN F. MYLES, Adjudicator