

In the matter of the *Police Act*, R.S.A. 2000, c. P-17 and
In the matter of the *Police Service Regulation*, Alta. Reg. 356/1990

And in the matter of a complaint and disciplinary proceedings against

Reg. No. 2174, CONSTABLE PATRICK HANNAS
Reg. No. 2210, CONSTABLE LAEL SAUTER
Reg. No. 2402, CONSTABLE GRAHAM BLACKBURN

Decision

Procedural background

On February 16, 2010, the above noted officers were individually charged with a number of disciplinary misconducts.

Constable Hannas' Notice and Record of Disciplinary Proceedings reads as follows:

Count #1:

It is alleged that on or about May 20, 2005, in the City of Edmonton, in the Province of Alberta, you detained and transported a group of Aboriginal, intoxicated and/or homeless persons from Old Strathcona to North Edmonton, whereupon you released them. The displacement of these persons from Old Strathcona to North Edmonton was without justification in law or EPS policy, and constitutes the offence of Discreditable Conduct pursuant to s. 5(2)(e)(viii) of the *Police Service Regulation*.

Count #2:

It is alleged that on or about May 20, 2005, in the City of Edmonton, in the Province of Alberta, you detained and transported a group of Aboriginal, intoxicated and/or homeless persons from Old Strathcona to North Edmonton and failed to take notes of the incident, contrary to EPS Policy and Procedure Part 7, Chapter B, Section 5, Paragraph A, constituting Insubordination pursuant to Section 5(2)(g)(ii) of the *Police Service Regulation*.

Count #3:

It is alleged that on or about May 20, 2005, in the City of Edmonton, in the Province of Alberta, you detained and transported a group of Aboriginal, intoxicated and/or homeless persons from Old Strathcona to North Edmonton, and released intoxicated persons without taking them to a specific residence, or leaving them in the care of a responsible person or agency, contrary to EPS Policy and Procedure Part 2, Chapter J, Section 2, Paragraphs C(2) and (3), constituting Insubordination pursuant to Section 5(2)(g)(ii) of the *Police Service Regulation*.

Constable Sauter's Notice and Record of Disciplinary Proceedings reads as follows:

DETAILS OF ALLEGATIONS:

Count #1:

It is alleged that on or about May 20, 2005, in the City of Edmonton, in the Province of Alberta, you detained and transported a group of Aboriginal, intoxicated and/or homeless persons from Old Strathcona to North Edmonton, whereupon you released them. The displacement of these persons from Old Strathcona to North Edmonton was without justification in law or EPS policy, and constitutes the offence of Discreditable Conduct pursuant to s. 5(2)(e)(viii) of the *Police Service Regulation*.

Count #2:

It is alleged that on or about May 20, 2005, in the City of Edmonton, in the Province of Alberta, you detained and transported a group of Aboriginal, intoxicated and/or homeless persons from Old Strathcona to North Edmonton and failed to take notes of the incident, contrary to EPS Policy and Procedure Part 7, Chapter B, Section 5, Paragraph A, constituting Insubordination pursuant to Section 5(2)(g)(ii) of the *Police Service Regulation*.

Count #3:

It is alleged that on or about May 20, 2005, in the City of Edmonton, in the Province of Alberta, you detained and transported a group of Aboriginal, intoxicated and/or homeless persons from Old Strathcona to North Edmonton, and released intoxicated persons without taking them to a specific residence, or leaving them in the care of a responsible person or agency, contrary to EPS Policy and Procedure Part 2, Chapter J, Section 2, Paragraphs C(2) and (3), constituting Insubordination pursuant to Section 5(2)(g)(ii) of the *Police Service Regulation*.

And, Constable Blackburn's Notice and Record of Disciplinary Proceedings reads as follows:

Count #1:

It is alleged that on or about May 20, 2005, in the City of Edmonton, in the Province of Alberta, you detained and transported a group of Aboriginal, intoxicated and/or homeless persons from Old Strathcona to North Edmonton, whereupon you released them. The displacement of these persons from Old Strathcona to North Edmonton was without justification in law or EPS policy, and constitutes the

offence of Discreditable Conduct pursuant to s. 5(2)(e)(viii) of the *Police Service Regulation*.

Count #2:

It is alleged that on or about May 20, 2005, in the City of Edmonton, in the Province of Alberta, you detained and transported a group of Aboriginal, intoxicated and/or homeless persons from Old Strathcona to North Edmonton, and released intoxicated persons without taking them to a specific residence, or leaving them in the care of a responsible person or agency, contrary to EPS Policy and Procedure Part 2, Chapter J, Section 2, Paragraphs C(2) and (3), constituting Insubordination pursuant to Section 5(2)(g)(ii) of the *Police Service Regulation*.

The following exhibits were entered:

1. Three memorandums dated 2010 February 9, over the signature of the Chief of Police appointing Inspector Paul Manuel of the Calgary Police Service as the Presiding Officer.
2. Three memorandums dated 2010 February 9, over the signature of the Chief of Police appointing Mr. Derek Cranna as the Presenting Officer.
3. Notice and Record of Disciplinary Proceedings issued to Constable Blackburn.
4. Notice and Record of Disciplinary Proceedings issued to Constable Sauter.
5. Notice and Record of Disciplinary Proceedings issued to Constable Hannas.
6. Excerpts of Edmonton Police Service Policy, Part 9, Chapter E, Transportation of Prisoners. Part 7, Chapter B, Notes and Notebooks. Part 2, Chapter J, Adult Public Inebriates.
7. Unit history 3G84 for May 20, 2005.
8. Excerpt of unit history for 3G82 for May 20, 2005.
9. Event Chronology #05120611 dated May 20, 2005.
10. Payroll attendance record for week ending 2005 May 21, Old Scona Beats.
11. South Division Roster as of May 2, 2005.
12. Off-line CPIC Query Search. Range of date and names for May 20, 2005.
13. Environment Canada Printout. Hourly Data Report for May 20, 2005.

14. Letter from Laura Kozack of the George Spady Centre dated April 16, 2007.
15. Statement of Joseph McLaughan, Manager Hope Mission Intox Centre.
16. Transcript of Communications Recordings South Division Whyte Ave Beats, 2005 May 20 – 19:30 hrs to 21:55 hrs and North Division, 2005 May 20 – 21:45 hrs – 23:30 hrs.
17. Email from Det. Hilton to Deborah Csongradi dated June 6, 2005
18. Package of three reports authored by Constable Groenenboom. R-16 Report dated 2007 February 02. Investigator's Notes of Constable Groenenboom #1773 re IA file #2006-1239. Scale Drawing.
19. Photo Album containing twenty-three photos of EPS Wagon #913.
20. Chronology prepared by the RCMP
21. Transcript of an interview with Thomas Robillard, held February 2, 2007, with Detective Chris Boehnke
22. Statement of Thomas Robillard given to Karen Pelletier of the Royal Canadian Mounted Police on April 18, 2007
23. Interview with Phyllis Pasquayat conducted by Detective Melanie Grace of EPS PSB on February 2, 2007
24. Statement given by Phyllis Pasquayat to Constable Karen Pelletier of the RCMP, dated April 29, 2007

Testimony

Testimony of Harold Manuel

Harold Manuel is 46 years old, currently unemployed and a resident of the Fort Saskatchewan Correctional Facility. He is a long term resident of Edmonton.

When asked if he knew of the incident he was being asked to testify to he replied that he did.

He and his girlfriend Audrey were in front of the Strathcona Hotel when an Edmonton Police Service wagon pulled up. There were three police officers present. They told them to jump in. He did not know what time of day it was but it was daylight and he believes it was in the afternoon. He had drank a few beer and he and Audrey were just walking around. They had been panhandling earlier but not at the time they were picked up.

He states that they were not handcuffed and when they got in the wagon there were already six or seven other people in the back. All were street people that Audrey knew.

The back of the wagon was very crowded and there was no more room. He stated that it was pretty warm that day, he said above 30 degrees. It started getting very hot in the van, people were dripping sweat. As the van was being driven, they were sliding to the front and back. He believes they were in the van for about an hour and people were starting to get angry and upset. They tried to talk to the officers but they did not respond.

The van stopped and he believes it was in the area of Fort Rd and 156 Avenue. They were let out of the van and told not to go back to the avenue. Everyone then went their own way. He said that he and Audrey went to a house to use a phone to get a ride. They eventually took a bus back downtown.

Cross examination

When asked if he knew when this had occurred, he replied about five years ago. He had read the date somewhere.

He had been picked up before and taken downtown, usually to the drunk tank.

When asked about panhandling, he replied that Audrey might have been. He admitted that he had a problem with alcohol and that back then he was also using drugs.

He was not sure if they had been picked up in the afternoon or evening and he also did not remember what the police officers looked like.

When asked if he remembered one of them asking the officers to be taken up north to a residence he replied "not that I recall." When asked if he remembered directions being given he replied "no."

When asked if anyone was drinking in the wagon he said no and when asked if there was a ghetto blaster or music he again said "no, there was no partying in the van." He stated if anyone was drinking he would have seen it. He never saw anyone with a bottle of beer. There were three police officers in the van across a row.

He was asked if the business people in the area had been upset with them and he replied that he had no idea. He said they didn't go into any of the businesses.

He stated that he grew up on the south side and that he didn't know the north side. When asked if he knew where Fort Rd and 156 St was he said "not really, he saw a sign." He was then shown a statement he had given RCMP Staff

Sergeant Jespeson where he had stated that they had been dropped off in the west end out on Stoney Plain Road and 157 Street. He stated that he was not sure what road it was and it was quite a ways out.

He was asked if anyone from the van peed when they got out and he replied "probably, I don't know." When asked if one of the women dropped her pants and mooned anyone he stated he never saw that.

He was asked if they had pooled their money to buy a flat of beer and he replied no and when asked if the police had come by he also replied no.

When questioned about going to someone's house asking for water and being told to get away from the house, he didn't recall that. He stated that he didn't have a good memory of anything. He had been drinking too much. They took either the bus or LRT back to downtown.

He was asked if he knew the Robillard brothers, Diane Wood, Phyllis Pasquayak or James Nipshank and replied no to all of the names.

Testimony of Audrey Faithful

Audrey Faithful is 48 years old and has lived in Edmonton for the past thirty-two years. She currently lives in the Castledowns area but has been homeless off and on for a number of years.

When living on the streets, she prefers the south side of Edmonton particularly in the area of Whyte Avenue. When on the streets she states it's safer in a group. She spends her time with her common-law husband Harold Manuel, as well as friends such as Diane Woods and the Robillard brothers.

She stated that she is an alcoholic and has been so since the age of fourteen. She added that she had not a drink for a full day and a half prior to her appearance at the hearing.

In the past she had been picked up by the police wagon on several occasions. In regards to this incident, she believed it was two to two and a half years ago. She has a hard time remembering, that's part of being a drunk.

She says that she and Harold were by the Strathcona Hotel near the back alley. She believed there were two officers in the van, they were told to get in the wagon and that they knew the drill. The wagon was "packed" with up to seven other people already in the back. She stated that inside the van were Phyllis Pasquayat, Diane Woods, Chris Robillard, Thomas Robillard and a couple more. Some had to sit on the floor. She believed there were seven people in the van prior to them getting in. When asked what she and Harold were doing prior to getting in the van, she replied "drunk, probably arguing."

When asked if anyone had to use the washroom, she said that Diane Woods urinated in the van.

They were later let out of the van in the area of 127 Avenue and 82 Street near the McDonald's where she immediately urinated outside of the van.

She stated that they were probably dropped off in that area because the police probably didn't want them to go back to the Avenue, then she added, "that's usually why." She stated that she did not know anyone in that area and that no one had asked to get dropped off there. When she got into the van she believed they were going to be taken to the Spady.

She and Harold went to the McDonald's and started panhandling. They got enough money to head back south. They got back to the south on their own, not in a police vehicle.

Cross Examination

Ms. Faithful agreed that she was probably drinking pretty heavily the day she was picked up in the van. She qualified that with the statement "not enough not to remember that I was driven to the north side." She also agreed that she had a problem with drugs around that time but stated that she did not do any drugs that day. When asked if she was drunk when the officers picked her up she replied yes.

She stated that she was pretty sure she and Harold had been picked up behind the Strathcona Hotel; they were walking and maybe pushing a cart.

She was asked how many police officers were in the van and she stated that she was sure there were only two.

Testimony of Staff Sergeant Doug Fedechko

Staff Sergeant Fedechko has been a member of the EPS for 24 years. In May 2005 he was the Sergeant in charge of the Old Scona Beats, an area which included Whyte Avenue. The three cited officers were under his command at that time.

He described the duties as they related to dealing with the people who frequented the area of Whyte Avenue and in particular the homeless community. He described the issues relating to the businesses in the area and how the homeless people affected those businesses. He described how the EPS and the homeless had an on-going relationship. The officers knew the people who frequented the area very well. He stated that public and personal safety was always a consideration when dealing with all members of the community.

Staff Sergeant Fedechko then described the EPS policy as it related to the identification and transport of adult inebriates on Whyte Avenue. He stated that if an individual was intoxicated, one of the first steps in the policy was if they couldn't care for themselves, they would attempt to try to transport them home if there was a home to take them to. Secondly, if they didn't have a place of residence and somebody to care for them, they would try to find a secondary residence and someone to care for them. If those first two options were not available, they would then look at shelters that are available in the city. Barring that third option not being a viable opportunity, they would also look at incarceration which would be transporting intoxicated individuals to the EPS holding facilities. He added that based on his experience there was no need to incarcerate. Incarcerating homeless people would be inappropriate.

If a person was to be taken to a shelter, he stated that the George Spady Centre was the common place they would go. The next alternative was the Herb Jamieson and on occasion they would use a medical facility if attention was required. Transports to these facilities were done on a regular basis.

The Staff Sergeant then spoke about the patrol wagons used for these transports. He stated that loading a large number of people into a wagon would be less than optimal. He went on to say that often, the homeless would be in groups of six, seven or eight. They were a family and to break them up was not optimal either. Despite a policy that did not allow the transport of males and females together, in order to maintain these families, they were transported together. He stated that whether on that night there were nine people in that wagon or not, he couldn't comment on the accuracy of that. It had occurred previously on Whyte Avenue on busy nights or busy afternoons.

He then went on to describe that most of the time homeless people being transported were not handcuffed or restrained in any way. He described how when the wagon pulled up to a call related to the homeless, the homeless people that were in the group would casually walk right over to the back of the wagon where the doors would be opened and they would just load themselves. They would joke with the officers and say they will be back. It was not uncommon to transport some individuals two to three times a day.

Staff Sergeant Fedechko then spoke about documentation and note taking regarding transports. He stated that he had given direction on parades that documentation was to be done when they were transporting people in the wagons. He did qualify that by saying that due to the frequency of the occurrences, the on-going documentation of every single transport was not documented to the highest degree as it would be in other scenarios. The wagons were not used exclusively for transporting homeless people. He added that he had put forward some documenting methods that included a clipboard that was kept in the wagons. It was a means of documenting mass numbers. He instituted

it when shortly after he became the Sergeant for the Whyte Avenue beats. He could not say if they were used to their fullest.

Speaking to documenting when the option of dropping off a person at a residence or released to the care of a responsible person he agreed it would be important to do so. He went on to state that when transporting homeless people into a residential community because an address has been provided, he would hope that those particular avenues of the investigation would be appropriately completed and that there would be a residence that actually does exist at an appropriate location and that there would be a homeowner or somebody who is responsible for that home that would be willing to accept these additional visitors into their home and he would hope that there would be some documentation associated with that.

Staff Sergeant Fedechko stated that if a group of people was to be dropped off at a particular residence, the officers should have verified that there was someone there who would approve the arrival of those people. If that wasn't done, than that wasn't the most appropriate judgment.

He had been made aware of the incident shortly after it occurred however he did not recall how. He spoke to Constable Hannas to clarify some of the facts and about not confirming an accepting residence. He stated that it was absolutely necessary and that he believed it was poor judgment not to go that far in the investigation. He dealt with the matter as a coaching situation. He described Constable's Hannas, Sauter and Blackburn as three very passionate, decent individuals

Cross Examination

Staff Sergeant Fedechko stated that he started on the Whyte Avenue beats around 2003. He described the homeless people in the area as a community. He then spoke of the issues that the homeless presented to the businesses on Whyte Avenue and the types of issues that arose including aggressive panhandling, congregating in front of businesses and the large consumption of alcohol.

He spoke about how when he arrived on Whyte Avenue there was a practice of charging the homeless with various offences. To him it made no sense so he instituted a problem solving model that instead of charging, the individuals would be removed from the Avenue with the hope that they would not come back that day. He said that they would transport them, sometimes multiple times in one day. He stated that there was a mutual respect between the police and the homeless. The homeless understood that the police were conducting a role in the community. They rarely had confrontations and there was often humour and joking involved. They would agree to get in the van and go.

Staff Sergeant Fedechko then spoke of the nature of Whyte Avenue in 2005. This incident occurred on the Friday evening of a long weekend which would have been incredibly busy.

Many of the transports of homeless people were the result of businesses calling the police. The businesses had been given a direct telephone number for the beat officers which would bypass the regular complaint line.

When asked if it would be fair to say that the emphasis on taking notes really started after this incident, Staff Sergeant Fedechko replied:

"No, I wouldn't say that is entirely correct. There had been direction prior to that time. Was it something that was monitored closely on a daily basis or a weekly basis, sir, no. But there had been previous discussions and direction in relation to note taking."

When asked whether the use of the clipboard had been initiated after this incident he replied he thought it was before but he was not clear on that. He also stated that he was not in the practice of viewing his officer's notes.

Referencing EPS policy, he was asked if he viewed it more as a guideline given that at times common sense was needed and each situation was unique. He agreed with that statement.

He was then shown Exhibit #6, the policy relating to the transport of adult public inebriates. It was pointed out that the policy says transported to a residence with no reference to having to leave the person in the care of a responsible person. He was asked if he added that interpretation onto the wording. Staff Sergeant Fedechko stated that again common sense applies and that we are dealing with intoxicated individuals and they are going into a residential area, he thinks it requires that. He did agree that the wording itself seemed to indicate that they could simply be taken to a residence.

Testimony of Detective William Allen

Detective Allen has been a member of the EPS for approximately 24 years. In May of 2005 he was assigned to the Whyte Avenue beats. On May 20, 2005 he was the Acting Sergeant for the beat and the three cited officers were under his supervision that evening.

He was asked if there was typically division amongst the members as to who would be working foot patrol and who would be working in the vehicles to which he replied:

"No. I think just everyone kind of took their turn. We would have somebody who would get in the wagon at the beginning of the shift and

we would typically have a round-up of the homeless people where we would go down and check on their status and then transport those down to the downtown core where the services were for them."

He was then asked to expand on his comment regarding the round-up of the homeless people, the steps taken to identify them and the steps taken to address them.

He stated that there were thirty to forty regular homeless people in the area. Once they were identified, they would post their pictures in the station to help members with familiarization. There were expectations placed on the police by the business and interest groups in the area. They were also concerned with the safety of the homeless people. He stated they would sometimes get themselves in a physical way with their alcohol and other addictions in that it would put them in a vulnerable position, especially when you had the type of the younger people that would move in later in the evening. He described the purpose of the so-called round up was twofold: *"It was to pick them up and move them out of the area for the concerns of the citizens and as well for their own safety."*

Detective Allen then spoke of his relationship with the homeless on Whyte Avenue. He told of a homeless individual who had contracted TB and who he visited in the hospital probably being the last person to see him before he died. He empathized with the homeless and often went above and beyond for them.

He was then shown Exhibit #8 which was the unit history for 3G82. He identified his regimental number as one of the three listed. He also indicated that one of the others was likely Constable Blackburn's. He stated normally there would be two numbers but since he was the supervisor and Constable Blackburn was on an overtime shift, he probably paired up with them.,

He spoke further about the work to be done on Whyte Avenue particularly on a Friday or Saturday evening dealing with young drinkers. When asked if the younger drinkers cause problems for homeless, Detective Allen replied:

"Personally, removing the homeless and bringing them down to where the shelters and the services are available downtown saved a lot of problems because not everyone has the same outlook of these people."

"When they got in kind of a bad way, their interactions with these young kids could again put them in a vulnerable position. And as well, they could also be physical and violent with the patrons that were down there if they weren't getting their way."

Detective Allen was then questioned regarding Exhibit # 16, the transcript of the radio communications beginning at 19:43 hrs on May 20, 2005. He was asked if

he had been assigned to 3G82 with Constable Blackburn and Constable Apt to which he replied "Yeah, it could be." He was asked if the wagon being used that evening was the old or new wagon and he stated it was the new one. He recalled this by the fact that they had taken the mobile data terminal out of the old wagon and put it in the new wagon. The new wagon came into service in early 2005 or in 2004. They only used the old wagon for special purposes or occasions.

When read the transcripts of radio communications from 3G82 Detective Allen stated he did not recall the exchange with Constable Hannas.

Cross Examination

When asked if on a Friday or Saturday night of a holiday weekend if there were many homeless people to be transported, Detective Allen agreed. He was asked if the people that he wanted picked up on May 20, 2005 would've done something that they should be picked up for or they were creating a problem of some kind, Detective Allen gave the following response:

"Well, as I indicated before, sometimes it was not so much the problem they were creating at the time, it was just the day of the week and the – and that, you know, this was kind of the early start of our shift. Our shift started at 6 o'clock so at that point I think we were about an hour and 45 minutes into it. It is a little bit slower and the crowds haven't started to gather and the patrons moving along the streets who have been drinking, so this would be the time that we would normally go and do that. It also occurred during day shift as well but not as -- I wouldn't say emergent need but it wasn't as necessary as it was when it got into the early hours of the evening because by 11 or 12 o'clock, if you had to deal with these people again, it just compounded having to deal with the other issues that were arising from people you didn't know. I guess to put that in perspective, is that you knew that these people could become a problem and that they were there and you could identify them readily. The other ones you didn't know where that problem was going to come from."

He was asked if they were picked up because they could become a problem he replied yes, in a pro-active way.

He agreed that this was condoned by the higher-ups and he stated that he didn't think it was a secret and that the superintendent was with them on a couple of occasions when they were doing this type of round-up.

He stated that they were not mistreating them but when they were parked outside of a store, they could only be so humble and gracious and charitable to them when it starts affecting the foot traffic to businesses. The ones that they had on a

regular basis, they kind of knew the rules of how they could operate and really could stay down there.

He agreed that when the van would pull up that the homeless almost invariably would just agree to get into the van. He added that some of them didn't want to go and would end up back on Whyte Avenue within 45 minutes to an hour but eventually once the crowd started to go in, they started to get pushed out.

Detective Allen was then questioned about note taking as it related to the transports of homeless people to places like the Spady Centre. He said speaking or himself he would not be something that he would take notes of. He believed that other officers followed the same practice that he did.

Testimony of Diane Wood

Diane Wood is 49 years old and has been a resident of Edmonton off and on since 1978.

Prior to this time, she had been homeless and living on the streets for about 10 years. During that period she was drinking and it got worse and worse. She typically stayed in the Strathcona area and would make money picking bottles. There were five people in her group. Her common-law was Chris Robillard, and there was Phyllis Pasquayat, Thomas Robillard and Victor Robillard. Others would also join them at times.

She stated that she had recently been ill and had not had anything to drink in the two weeks prior to her testifying at the hearing.

She was asked if she had any recall of a time when the police picked her and several others up in the wagon and did not take them to the Spady. She stated that it was during the day and she had heard it was in 2005 and that it had to be four or five years ago. She believed it was in the summer time and that it was very hot.

She remembered that she and Chris were by the gazebo by the Old Strathcona Farmers Market and were walking towards Whyte Avenue when the paddy wagon came and told them to get in. Chris asked what they had done. They weren't doing anything and had not been drinking. She remembers the police saying they were disturbing the peace. She believes they were down by the Second Cup when they were picked up.

She thinks she also asked the police why she was getting picked up. She said she just wanted to get in there, get to the Spady and get out of there. It was her understanding that that was where they would be going. She had done that trip before and if the Spady was full, they would go to the Hope Mission.

When she was asked how many officers there were she said "they said there was three." She only remembered two and that she didn't see the other one.

When she and Chris got into the wagon they were the only ones inside. She said they drove around a bit then they picked up Thomas who was by himself. They continued driving around until they picked up Victor, then Jimmy Nipshank and then Phillip. The last ones to be picked up were Diane and Harold. She stated that Phyllis and Victor were a couple.

They were in the van and talking about getting out at the Spady. She said that Phyllis really had to go to the bathroom and that Chris and Victor were banging on the window. She ended up peeing in the van.

She stated that normally the ride to the Spady would take about ten to fifteen minutes. She said that when they passed by the area they started banging on the windows. She said they were let off in the area of 137 Ave and 82 St.

She was asked if she knew why it was they were let off in that location and she replied "not really, they just probably wanted us not to be on Whyte Avenue. She said she did not hear anyone ask to be taken to that address or an area in north Edmonton. No one had mentioned that was where they wanted to go and she stated that Phillip thought that they were going to be taken out of town. When asked how long she thought it was from the time they were picked up on Whyte Avenue until they were dropped off, she replied it was a while. She did not think it was an hour but then she stated it was more than an hour.

She stated that after they were dropped off, they went and bought some beer and started drinking. They were in a parking lot near the McDonalds. Later some police cars came and another wagon. They were driven to the Spady then they all went their own ways.

Cross Examination

When asked if this was the first time she had been picked up by the wagon she replied no. She was an alcoholic and she would get picked up because she was drunk and would be taken to the Spady.

She was asked if the day she had been taken up north, had she had already been taken to the Spady twice before. She said no, that this happened earlier and they were sober. She was asked again and this time she replied she was not sure.

She was then questioned on the statements that she had provided to the investigators. She was asked if she remembers drinking before she got in the van that day and she replied she did not remember.

She was again asked if she had been taken downtown on two occasions prior to the ride to north Edmonton and she replied she did not really remember.

She agreed that when the officers were picking up people, she would have missed some of the conversation. She did not remember anyone saying they wanted to go to a residence in north Edmonton, just Spady's.

She was asked if anyone had a beer in the wagon and she replied that she thought Audrey had a beer. She was also asked if anyone had a ghetto-blaster and she said no.

After they got out of the wagon, she stated that they went to get some beer. She was asked if anyone went up to a house and she said no. When asked if Harold could have gone up to a house she replied "maybe Harold."

She was asked if she had seen stories in the newspaper about the matter and she replied that she did. She believes that she had read the stories in the Edmonton Street News as well as the Edmonton Journal before her interviews with the police.

When asked how many people were driven back to the Spady, she stated that Harold did not go back and she wasn't sure that Audrey came back. She said that there was her, Chris, Victor, Phyllis and Phillip and Jimmy.

Testimony of Constable Michael Zacharuk

Constable Zacharuk has been a member of the Edmonton Police Service for approximately ten years. At the time of this incident in May 2005 he was assigned to patrol in North Division.

On May 20th, 2005 he recalled dealing with a group of homeless intoxicated individuals. He was in a marked patrol unit traveling on 127 Ave when he was flagged down by a person at the McDonald's near 82 Street. He was advised that there was a group of transients, panhandling in the parking lot. He saw two people standing in the drive through and another sitting in a circle near by and it was later determined that group was drinking alcohol.

He states he did not speak to the two individuals who were at the drive through but approached the other group that were drinking. He recalls there were six or seven people in that group. He was shown exhibit #10, the event chronology associated with his call at the McDonald's and read the portion that stated:

"Police spoke with 7 intoxicated and transient individuals who were accidentally dropped off in the area. Bravo 58, the wagon, requested to transport intoxicated hitchhikers to the Spady or the Hope Mission."

He described the individuals as intoxicated and cooperative. One of the individuals told him they had been dropped off in the area by the police after they had been picked up in the Whyte Avenue area.

Constable Zacharuk did not make any notes of his dealings with these people.

From his prior statement, he acknowledged that they asked to be taken to a specific area in the north end. He did not have any information on names or locations.

He stated that the individuals had some beer which he did not confiscate. He arranged for transportation to have the individuals taken to a shelter.

From the event chronology he determined that he had arrived on scene at 21:51 hr. He added his comments to the call at 22:44 hrs but he does not believe that he stayed at the scene that long. He was not present when the transport van arrived.

He had not dealt with any of the individuals on a previous basis but after being assigned to south division, he did deal with one of them, that being Chris Robillard.

Cross Examination

Under cross, Constable Zacharuk confirmed that he dealt with seven people at the scene. He described how he assessed their sobriety and stated that if they had to remove themselves under their own power they could.

He had asked them what they were doing there and he was told they had been dropped off at a friend's place who was not at home. They did not say how they knew he was not at home.

Testimony of Bradley Frank

Mr. Frank has been a resident of Edmonton for approximately 30 years. He lives at 7916 127 Ave and has lived at that address for nine years.

When asked if he recalled the date that a group of people had been dropped off near his house, he stated that he had reviewed the transcript of his prior statement and that he believed it was the 20th, in either April or May. He had checked the computer and learned that it had been 20 degrees that day. He stated that it was five years ago and two years since he gave his statement.

When asked to recount what he had seen, Mr. Bradley stated that he had been working in his yard when he noticed a paddy wagon sitting in the commercial parking lot across the street. It had been there for awhile and then it moved to the

extreme southwest part of the lot where it backed up into an opening. He heard some yelling and a verbal confrontation so he dropped what he was doing to see what was going on. He saw officers getting out and opening the doors of the paddy wagon and a bunch of individuals getting out.

He found it odd and questioned why would you drop somebody off of in a parking lot in a residential or commercial area in the middle of the afternoon.

He said some of the people had their shirts off, they were yelling back and forth and grabbing at their clothes and putting them on. He said they let them out, closed the doors, got in the van and drove away.

After that he described where some of the individuals went including one person who came across the street asking him for a cigarette. He said no then the man asked for a drink of water from his garden hose so he gave him a drink of water. After that the man left.

After a conversation with his neighbour, he decided to call the Edmonton Police at North Division to let them know what he had observed. He didn't feel it was an appropriate location to drop individuals off.

Cross Examination

Mr. Frank was asked about the individuals who got out of the van and he agreed that he didn't keep track of where they went. He didn't hear what was being said when they got out of the van, just the initial hollering and what he described as some verbal confrontation.

Testimony of Constable Graham Blackburn

Constable Blackburn has been a member of the Edmonton Police Service since 2003. After initial Recruit Training he was posted to South Division working out of the Old Strathcona Police Station.

On May 20th 2005, he was on a regularly scheduled day off but volunteered for a shift replacement starting at 1800 hours. He did not recall who he was working with but did remember that they had paperwork to do. A call to an intoxicated person came in and he said that either Constable Hannas or Sauter asked him to come along.

Constable Blackburn states that he is positive they took out the old van and he believes that he went out with both Constable's Sauter and Hannas. He sat in the back bench seat and they went to a call at 82 Avenue and 104 Street where they took an intoxicated male who he recalled being Chris Robillard, and placed him in the van.

He was asked if he knew Diane Wood, Harold Manuel and Audrey Faithful and he replied that he knew them all very well having met them after this incident in the course of his work on the Whyte Avenue beats. He was also asked if he knew Phyllis Pasquayat and Thomas Robillard and he stated that he did.

He continued his testimony speaking of the arrest of Chris Robillard and that he was arrested for being intoxicated in a public place. It was not their intention to charge Robillard.

He didn't remember who was in charge of the arrest but he had no input into the decision to charge or not. He described his role as more of a ride-a-long.

After they picked up Chris Robillard they drove west on Whyte Avenue, stopping several times. Constable Hannas and Sauter stopped when they saw people they knew and told them they were heading to the Spady Centre. People were invited to go, some declined and some went. They would stop and people would get in voluntarily. He never exited the van during this time. He was asked if he remembered who they had in the van and he believed at least one of them was Diane Wood and he remembered Chris Robillard. He stated there were five people in the van.

The last person was picked up and Constable Hannas saying the last guy had an address on the north side he would like us to take him to. They went directly to that area and when they arrived in the area, Constable Hannas had indicated that the gentleman had asked not to be dropped outside the house. He stated that rather than stop at the Spady, they went to the north side first as a courtesy for the male.

He then spoke about the conditions in the van. He stated it was a pleasant evening and it wasn't hot by any means. He said that it was a little uncomfortable in the van due to the lack of air conditioning. He did not recall anyone in the back of the van complaining or wanting to get out.

He could not recall the level of sobriety of the others in the van and when asked how long the first person they picked up would have been in the van he replied about 40-45 minutes.

When they arrived at the north side he stayed in the van and Constable Hannas and Sauter let the individuals out. He said they seemed happy and jovial. They all left in the same direction towards the residences.

He stated that no one had asked for badge numbers and no one urinated in the van. He stated that if this had happened they would have gone to headquarters to clean the van and this didn't happen.

When asked if he felt a need to check with the residence or the people that were in the residence to see if they would look after this fellow or the people that were with him Constable Blackburn stated that the male appeared to be self caring, and he had absolutely no concerns in that regard. If someone requests to be taken to an address, he felt no compunction to verify that someone was there to care for him because he could care for himself.

Constable Blackburn states that he did not make any notes of the transport and it was after this incident that the practice changed and the clipboard was put in the van. He distinctly remembers that the clipboard was not in the van prior to this time.

Cross Examination

Constable Blackburn was shown Exhibit #8, the unit history of 3G82 for May 20, 2005 showing him as part of a three person unit with Acting Sergeant Allen and Constable Phillip Apt. He stated that he did not have any recall of that. He was then shown Exhibit #16, the transcript of the radio communications and asked about the communications that indicated that he was with Constable Hannas but not Constable Sauter. He stated that he had no recollection of this.

Constable Blackburn agreed that he did not have a strong recollection of the specific events of the incident.

He was then shown Exhibit #20, the graphical representation of the events and timelines. When questioned as to the call locations as depicted on the exhibit, Constable Blackburn did not recall going to those locations. He believes they were on the south side of the avenue and the locations on the diagram were all on the north side.

He was then questioned about the first male they picked up. He stated that this person was Chris Robillard. He stated that he recalled that he was intoxicated and it was on this basis he was approached. When asked if he responded to that call only with Constable Hannas he replied "I believe, as far as I recall, yes."

After they picked up Chris Robillard they continued down the avenue and he states that he was in the back seat with Constable Sauter and Hannas up front. When questioned about the inconsistency, he says he recalls them being in the vehicle the whole time. He did not remember anyone getting in at a later time. When asked about him talking on the radio to Constable Sauter, he repeated the same prior statement.

They continued down the avenue and picked up some more people. He did not have any contact with those people saying he did not get out of the van. He was certain there were only five people in the van. Other than Chris Robillard, he could not provide the identities of those people.

Constable Blackburn believes from the time they picked up the first person to the last person it wasn't very long. When advised that the unit history showed a forty-five minute time lapse from the time of the first pick up to when they advised they were taking a group to the Spady, he agreed that it did not seem consistent with his recall.

When asked if his route to the north end took them past or near the shelters, he agreed that it did but the priority was to drop the one person off at the north end address. He then added that often times, the people they would drop off at the Spady would get back to the avenue very soon after so he assumes they decided to drop the others off after they dropped off the first person, then go to the Spady so they would have enough time to get back to the avenue before they did.

Constable Blackburn agreed that he felt that the group could be let off in the north end because there was the insinuation there was a specific address and most of the people looked like they could take care of themselves. Also, when asked if he thought to check with the homeowner as to how impressed he would be to have this group of people dropped on his front door he replied "in retrospect, that probably would have been the right idea; however, at the time, it never crossed my mind."

Constable Blackburn was asked why all of people were allowed to get out at the north end address if in fact they were going to be taken to the Spady. He replied that when they opened the door, they voluntarily exited.

Testimony of Constable Lael Sauter

Constable Sauter has been a member of the Edmonton Police Service for over ten years. He is currently assigned as a School Resource Officer. In May 2005 he was assigned to the Whyte Avenue beats. He worked the beats from 2005 to 2007 and described his relationship with the homeless population in the area as very good.

Prior to May 20, 2005 he stated he had been involved in almost daily transports of homeless people taking them to various shelters or campsites. They also often just had them come into the van to stay warm in the cold weather or cool in the hot weather. He said the only time they transported the homeless was as a result of a complaint. They would usually ask them where they wanted to go and no one would have a problem with going with them.

On May 20, 2005 he states that he started shift at 1800 hours. In referring to the statements he provided regarding the complaint, the first statement was given in January 2008 and the second in March 2009. He states that his memory was vague and that many of the shifts were much the same. When he gave the statements he did not have the benefit of seeing any of the exhibits or other documents that would allow him to recall more of the event. He did not make any

notes of the event that would aid him in his recollection. The fact that this incident involved a transport to the north side aided in the recall as that was the only time he did such a transport.

On May 20th, he recalled being the driver of the beat van and receiving complaints about a couple drinking and causing some disturbances. They located the couple who he believed was Chris Robillard and Diane Wood. He took them to the Spady Centre. He returned to the Avenue and received another call about a couple again causing problems. When he responded, he again found Chris Robillard and Diane Wood and again took them to the Spady Centre. He returned back to the avenue and responded to a call at 104 St just south of 82 Ave involving four people. Among them again were Chris Robillard and Diane Wood.

He recalls from that point on, Constable Hannas and Blackburn were at that location with him. He did not talk to the four people but spoke with Chris Robillard and Diane Wood. It was his understanding that they all wanted to leave the avenue at that point and everyone had agreed to leave in the van with them. They were helped into the van and he understood from Constable Hannas they all wanted to go to the north end.

When asked what van they were using, he stated he was not sure nor was he certain whether they had switched vans during the evening.

His recollection was that they had transported six individuals all picked up at the same location. He did not know the other four persons saying they were new to the avenue. He did not recall having anyone else in the van prior to these six people and he does not recall picking anyone else up afterwards.

He described the route they took to the north side and where they stopped in the area of 127 Ave and 81 Street. He stated they did not protest or voice any concerns about the conditions in the van.

He does not recall anyone indicating they wanted to get out of the van or having to urinate during the transport.

Constable Sauter then spoke about a personal connection with the homeless as well as his prior employment in the field of social work.

Speaking about when they arrived, he said that one person went to a corner to urinate. They helped everyone else out along with their belongings and they went in their own directions. He believes that several split up. He said no one had urinated in the van, they would have noticed that. No one asked for their badge numbers either. They were wearing uniforms that had their names prominently displayed.

When describing the level of intoxication, he stated that Chris Robillard and Diane Wood were always intoxicated to some degree. As for the other four, he could not recall. He stated they all seemed like they were able to function, walk on their own and they seemed like they were capable of taking care of themselves, including Diane and Chris.

He was asked whether he considered checking with the resident of the house to see if they would look after the people they transported. He replied he didn't consider it. He saw the transport as no more than a courtesy ride. At the time there was no reason to go to the residence to confirm that anyone was there.

When questioned about not taking any notes, he replied that at the time they were required to take notes on investigations, but not anything that wasn't an investigation or courtesy rides. He added that it was common practice not to take notes for transports. After this incident there was a policy that required them to make note in a binder that was kept in the van or make notes in their notebook.

Cross Examination

Constable Sauter was then questioned about the complaints he responded to bringing him to deal with these particular people. He described that when they would arrive they would see if there was any alcohol, if there was actually a disturbance being caused, are they actually on the business property or city property, they would look at all the whole circumstances. When asked if this was investigating to a degree he replied "Yeah, if you want to take that term investigating in that sense, yes."

Constable Sauter agreed that it was often the case the people on Whyte Avenue could be arrested for Criminal Code and or Gaming and Liquor Act but in many cases a decision was made not to do that. He agreed that in these situations it was his view that notes were not required. They were not in an investigative phase but a problem solving phase.

Constable Sauter was then shown Exhibit #20 which depicted a series of pick ups over a period of forty to forty-five minutes. He agreed that with parade and other duties, he may not have been out on the street until about 7:00 p.m., but it was still possible to have transported Chris Robillard and Diane Wood to the Spady Centre on two occasions before he took the first call 7:43 p.m.

He was then asked whether or not they booked on in the van using the mobile work station. He stated that on the Whyte Avenue beats they always booked on by phone and they never used the mobile station at all.

He was asked since he had stated earlier they were in a condition where they could make their own choices and decisions in a responsible way, why couldn't they be left alone on Whyte? Constable Sauter replied because they were

subject of several complaints. Whyte Avenue stakeholders had an issue with them there.

He stated that he had determined that they were committing an offence but would not be charged. They were given a choice of where they wanted to go. They did not want to go to the Spady Centre and it was his understanding they were willing to go to the address in north Edmonton. He stated that was their adult choice and it was something they respected.

When asked about the choice they made about taking them and dropping them off as opposed to leaving them with a responsible adult Constable Sauter made the following statement:

"Yeah, I could just leave them where they are and then let the stakeholders continue to complain about them, but then I'm looked at doing neglective duty, so the choice really is against the member of what are we choosing to do, neglect our duty or to find a solution. And this is a community problem that has been placed upon us and we are the ones to blame, but nobody gives us the right options. So to answer your question, we're the ones that are left with no choice. They are left with a choice. But it gives us the option of may."

Constable Sauter is then taken through the communications transcripts and agrees that Constable Hannas was on foot patrol and indicates that Constable Blackburn is with Cst. Hannas at that time. Constable Sauter was patrolling in the van and came to assist when they called. He is not sure if Hannas joined him at that call but then Sgt. Allen requested Hannas to attend to assist with some more people. After detailing the various call for individuals to be picked up, Constable Sauter agreed he was still of the view that the six people they took to the north side were all picked up at the same time and location.

Testimony of Constable Patrick Hannas

Constable Hannas is a member of the Edmonton Police Service with over 11 years of experience. Prior to that he had been a teacher with the Edmonton Board of Education for three and a half years. He is currently assigned to the School Resource Unit but in May of 2005 was assigned to the Whyte Avenue Beats. At the time of the incident, Constable Hannas had been working the beat for almost two years.

He was interviewed by the RCMP in relation to this matter in January 2008 and gave a second statement to the Edmonton Police Service in March 2009. When he provided these statements he had not been provided with any materials or any of the documents that had been entered as exhibits in these proceedings. He provided his statements solely from memory. He has since reviewed these documents.

When asked if he recalled the matter he stated that there was only the one time that he had transported people to the north end from Whyte Avenue and he believes it was around May 20, 2005.

When asked about the date in question and the time he started shift that night he only knows from the documentation that he started at 1800 hours that evening. He did not know what he was doing that night and he did not remember the parade. When asked if Staff Sergeant Fedechko or someone else gave the parade that night he replied "I have no idea".

He was asked if he remembered becoming involved in the transport of some homeless people that night and he said he did. He recalled that there was a small group of people sitting on the sidewalk in front Chicago Deep Dish Pizza which was south of Whyte Avenue on 104 Street. They had open and closed liquor. They were very cooperative and easy to deal with. He believed that Chris Robillard and Diane Wood walked by as well and joined the group.

He said the conversation with the group included asking where they would like to go. It was his experience that although they would offer to take them to the Spady Centre, they would often get the response that they did not want to go there.

One of the individuals indicated that there was a home in the north end that they could go to and party. When they asked the rest of them if they wanted to go there he recalled cheering and clapping. All of them then voluntarily got into the van without assistance.

At that time he was with Constable Sauter and Constable Blackburn. He believes he was on foot but did not have specific recall.

He said they started driving north and he heard music and said they were dancing in the back. It was the first time he had seen something like that. They stopped in the area of 97 St and 127 Ave but were told to keep going. They were directed to stop near 81 St and 127 Ave. They opened the van and everyone got out. He said that the person who had asked to drive them to the north end pointed across the street and they all left in that direction.

He was asked if there were any people in the van prior to the group from the 104 St and 82 Ave location or picked up after and he stated he could not remember. He believes that they picked up six people from in front of the Chicago Deep Dish. Of that group the only two he actually knew were Chris Robillard and Diane Wood.

When they arrived at the north end and opened the doors he assisted Diane Wood out of the van offering her his hand. He said a number of them said thank you and he recalls one of them saying it was hot in the van. Answering a

question on their sobriety, he said that they were they were lucid, coherent, cooperative and could easily take care of themselves.

He was asked about checking with the house that the individuals were going to and he stated that when they did courtesy transports, they never once approached someone's house. He said if they were able to take care of themselves, as a courtesy, they would bring them to the best location possible, as per their request, and politely let them go to that location. When asked if someone was intoxicated to a point where they could not look after themselves would that change the decision they would make and he replied "absolutely" and went on to describe various methods of dealing with such people. When asked if he felt any one of the individuals they transported were in that condition he stated "not at all."

Constable Hannas was then questioned about notes. He said that in relation to the transports there was no known practice of anyone at any time on Whyte Avenue to take notes. After this incident, Staff Sergeant Fedechko placed a clip board in the van for the purpose of recording the names of homeless persons transported.

Cross Examination

Constable Hannas stated that he recalled they had transported six people however when asked if he was certain about that he was not. When asked about whether the evidence tendered that stated there was nine people jogged her memory he stated it did not. When asked if any of the other Robillards or any other people he knew from Whyte Avenue were among the people being transported he stated "not that I recall, no." Regarding the other four people in the van, he stated he had never seen them before. He stated that he didn't remember if he took any steps to identify these people and didn't recall doing any CPIC checks on them.

He was asked what was his impression of their state of intoxication and he replied that they had open and closed liquor and he believed at least some of them were drinking, but they were very cooperative and lucid, good communication and happy.

Constable Hannas was questioned on Exhibit #7, the unit history for 3G84 which has his regimental number as assigned to the unit. He was asked if he was able to say with any certainty that he was in the vehicle or on foot or a bicycle. He couldn't say, it could've been all three. At some point in the evening he did get in the van. He believes that when he came upon the six people they transported, he was on foot.

When shown Exhibit #20, the chronology diagram, and asked if it assisted him in his memory as to whether there other pick ups other than the six he stated he couldn't say if there were other pick ups because he didn't remember.

Speaking about the group they ended up transporting he stated that this was not a public complaint, they came across them and dealt with the individuals. He agreed that the individuals were committing an offence but it was not appropriate to charge them and he was going to deal with them in a non-formal manner. He was asked if in doing this type of work it was normal to put people into a police vehicle without knowing who they were and he replied absolutely. He did not think that there was any risk or safety issue in dealing with people this way and he agreed that there was no search conducted on these people.

He stated that he came to the conclusion that all of the people wished to go to the north end address because of their reaction when it was mentioned. He did say he didn't know if Chris and Diane knew the other four people.

He agreed that he had transported Chris and Diane as a courtesy in the past. He had taken them to the various centres and to other locations in the city including their campsite in the river valley. He stated the basis of this particular transport was to fulfill their desire, provide them a courtesy and to keep them safe. He did not agree that the purpose of the transport was to get them off of Whyte Avenue and to move them away from the complaints of the local businesses. He stated they could've stayed. It was up to them but they chose to go.

When asked if why it was they would consider taking them to a place other than a shelter, he said that one of them had mentioned that their personal safety was in jeopardy if they went to the Spady Centre.

He was asked if it occurred to him to contact or get more information about the address prior to the transport and he said it wasn't common practice. When asked if he thought it would be a problem dropping off six intoxicated people on a doorstep without checking first and he stated that it would depend. In this situation he stated that they all could take care of themselves. When asked could they have not done that on Whyte Avenue he replied yes. In response to the statement that they were moved nonetheless he replied that they asked to go so we did whatever they wanted.

Having been shown Exhibit 16 Constable Hannas was asked having used the call sign 3G84, could he have not been in the van with Constable Sauter and he stated that was possible. They could've split up. He agrees that the exhibit supports that he was with Constable Blackburn at that time and that they were on foot. He was asked about the request that he made to have the van brought to 103 St and 82 Ave and that it appeared he had people there to be picked up. He replied that he did not know. He is then asked about when Sgt. Allen called him saying he had two in front of Starbucks, and he replied "I'll swing by there."

When asked if that jogged his memory that he was in the van at that time he replied it did not.

He was then asked if it was a practice to circulate Whyte Avenue until there was a sufficiently large enough load to take all of them to the Spady at once. He replied that they tried to be efficient without going back and forth to many times. Constable Hannas is then questioned more about the radio communications where he uses the call sign 3G84 and whether that jogged his memory as to when he go into the van. He replied:

"I think I can explain what the issue is here, why this doesn't jog my memory. Because when this issue came up, they wanted to know about the specific issue with these people, where did you meet them, and this was a long time after. So that is where my mind started. I am -- here I am with them and this is what occurred afterwards. And then when I see all this information, this is like mish mash or hodge podge of days and days and days of events of the same routine over and over again. And so I know that's the only thing you are focusing on, but when I see it, it's like, I don't even remember this, but I only remember where they told me what happened from this point on. And that's what I recall the best. I just don't remember this."

Evidence of Thomas Robillard (Deceased)

The evidence of Thomas Robillard is contained in two statements provided to investigators and was admitted as relevant evidence pursuant to Section 47(1)(e) of the *Police Act*.

In an interview with Detective Chris Boehnke held February 2, 2007, Thomas Robillard stated that five or six of them were in the area of the Commercial Hotel. He stated that he was with Chris, Diane, Victor and Phyllis. They had split a case of beer. They had been panhandling and this was their first drink of the day. They were picked up by the police who were driving the van numbered 913. He was positive about this stating that they always picked us up. The old van was number 944 but it was 913 that picked them up. They were told to jump in the back and they were not searched. They then went to the area of Chapters where Audrey and her old man were picked up. He described them as "kind of high, drunk" On a scale of 1-10 they were a nine, pretty tanked. He said the last one to be picked up was Jimmy Nipshank who was about a 6 on his 1-10 scale. He said they drove around for a half hour, went over the Walterdale bridge past Epcor and then were dropped off. They were told to make their own way back.

In an interview with RCMP Constable Karen Pelletier on April 18, 2007, Thomas Robillard he stated he believed that Chris and Diane were picked up first followed by Victor and Phyllis, then Audrey and her boyfriend. Phil and he were then picked up and he states he thinks he was picked up near Chapters. Jimmy was

the last one to be picked up. He said that when the van stopped, two police officers got out and one stayed in the van. He said there was no reason for them to go to the north end. He said "they told me to get in van so I got in the van., cause there's no sense arguing with them, cause, then you're really going to be in trouble. Well some of them, they get pretty mad too."

Evidence of Phyllis Pasquayat (Deceased)

The evidence of Phyllis Pasquayat is contained in two statements provided to investigators and was admitted as relevant evidence pursuant to Section 47(1)(e) of the *Police Act*.

In an interview conducted by Detective Melanie Grace of the Edmonton Police Service on February 2, 2007 Phyllis Pasquayat stated that when they were picked up they spilled out their beer and they were all told to get in. They drove around and picked up a couple more people. There were nine of them including her, Victor, Thomas, Chris and Diane. Audrey, her old man and one other person were also in the van. They were not told why there were detained, just to get in. She urinated in the van and she felt degraded.

In an interview conducted by Constable Karen Pelletier of the RCMP, dated April 29, 2007 Phyllis Pasquayat stated that they had been picked up in mid afternoon and it was really hot. They kept speeding up then slamming on the brakes. She had to go to the washroom and peed in the van. They started picking them up from different places. They couldn't squish any more in.

Final Arguments

Submission by the Presenting Officer

The Presenting Officer states that this is a case involving two counts of insubordination for breach of policy and procedure with respect to the alleged failure of the officers to take notes respecting the transport of these individuals. As well, an insubordination premised on a failure to deliver these persons in their intoxicated state to either an appropriate residence or shelter or to the care of a responsible person. In addition to that, there is an allegation of discreditable conduct. The emphasis in this count is on conduct that is likely to bring discredit on the reputation of the Police Service and that is in respect of two issues. The first is the manner in which these persons were transported in the wagon, the time it took to transport them, the manner in which they were transported, being packed into the back of a police wagon, the uncomfortable conditions in which they were transported. As well, it is an allegation that addresses the reasons why these people were transported and left in the manner that they were. It is his submission that in the totality of the circumstances in applying the correct legal test, this conduct, in fact, went beyond a likelihood of bringing discredit to the reputation of the Service, but actually did bring discredit to the Service.

Mr. Cranna then speaks to the reliability of evidence. The question of reliability spans a number of witnesses both in the cases presented by the Service and that of the members.

The incident happened over five years ago. A number of the witnesses suffered from long-term substance abuse. They had been transported by the police from Whyte Avenue on numerous occasions prior to this incident occurring,

Speaking about the reliability of the testimony of the cited officers he states their evidence is equally problematic. The officers are not in a position to accurately recall what took place during this transport in part because of the lapse of time, but in greater measure, due to the failure of any of the members to take notes of what occurred with that being one of the primary allegations.

With respect to the insubordination issues it is his submission, the lack of any notes and the clear admission of a failure to deliver to a residence or a responsible person are in and of themselves sufficient to make out the breaches of policy.

With respect to the third allegation of discreditable conduct the legal test is an objective one and it permits the Presiding Officer, to step into the shoes of a reasonable and well apprised person in the community to assess what the expectations of that community are concerning the conduct of its officers. He states there are more than sufficient established facts here to allow that to be done.

He then speaks about the documentary record which he submits in light of the oral testimony is the best indicator of what actually occurred that night. The chronology, the unit histories, the communications transcripts, and other documents he submits clearly demonstrate the order in which the van proceeded down Whyte Avenue, responded to specific calls from members and picked up individuals at those different locations upon Whyte Avenue.

The documentary evidence is consistent with the testimony from Harold Manuel, Diane Wood, and Audrey Faithful and from Constable Blackburn, as well as the statements of Tom Robillard and Phyllis Pasquayak. He states that it is the better evidence that there were in fact nine individuals that were picked up that evening and placed in the back of the wagon. The individuals did testify quite precisely naming who was with them in the wagon during this incident and there was degree of consistency in identifying those people.

Mr. Cranna then speaks about the grounds used to place these people in the wagon. The evidence of the officer's is that none of these people were under arrest or under detention and not going to be issued a violation ticket. The officers had approached the scene, they had assessed the circumstances, they had determined that while there may be, in a strict sense, a breach of the law or

a breach of the peace and that they were not going to proceed under the Criminal Code or under provincial regulation to arrest those people. They did that for the reasons that in their view, it was an inappropriate response to simply arrest intoxicated homeless persons for the purposes of processing them through the system and then releasing them again.

In the assessment of the officers that picked them up and by their own admission, many of the people that were picked up were not intoxicated. If they were not being charged or arrested and they were not intoxicated, then he asks why they are in the van at all.

Some of the members testified that there had been an invitation extended to these people to give them a ride to wherever they wanted to go. He states that he doesn't think that invitation line of argument plays out there in light of the other circumstances and evidence.

From the chronology it is clear; the wagon was specifically called by different members over a period of 45 minutes to respond to different situations on the Avenue. There was no group at one time that was invited at one time to get into the wagon and go on a ride.

He states that the members may have viewed the presence of the wagon and their attendance as an invitation for the homeless to go elsewhere. It is clear from the evidence of those individuals they did not view this as optional.

Mr. Cranna states that as soon as the members chose to transport these intoxicated people, the EPS policy respecting adult inebriates was engaged.

He submits that upon doing the individual assessment as per the policy, and it is determined that although intoxicated they could still function, communicate and look after themselves in a basic way, that does not entitle them to just release them anywhere. Their safety must still be taken into account and that is why they must be taken to a specific place or to a specific location.

Mr. Cranna then speaks about the address that the members testified about.

The information that the members had was extremely sketchy about a possible residence on the north side of Edmonton. There was no specific address that was identified. There was no individual at this residence that was identified, and there is no specific information as to what person provided this information to the constables. Despite this there is still a transport to the north side where this group of people was dropped off in a parking lot in a commercial strip opposite 127th Avenue from a residential area and left there. They are released into the community. He submits that is a clear breach of the policy.

He further submits that when intoxicated people are being delivered in that fashion by the police to a residence or to a person responsible, they are to make a note of that. It is clearly described in the policy that a note should be made on an R-1 report or a comment should be made in a mobile work station entry upon the delivery of those persons to a shelter or a responsible person. That was not done here either and it was frankly admitted by all of the members involved. That is a clear breach of the policy.

There has been some suggestion that there was a common practice that members typically did not take notes of transports at all, and in particular, did not take notes of these so-called courtesy transports.

The direction from the Chief in the policy is clear and it requires the members to make a note when they have dropped people off that are in this condition, and that did not occur. The fact that other members, whether constables or even more senior members on the Whyte Avenue beats did not follow that policy does not absolve these members from following it.

Mr. Cranna then speaks to the discreditable conduct charge which he says they are proceeding on the basis that the conduct here was likely to bring discredit on the reputation of the Police Service in accordance with the language of the PSR.

He states that as the language implies, there is no need to actually demonstrate discredit; the likelihood of it is sufficient. But it is his submission that this conduct did go further than likelihood and actually did bring the reputation of the Service into disrepute.

He provides a decision, Hassan and Peel Regional Police, that he states provides some guidance on the analysis for determining discredit on the reputation of the Service in circumstances like this of this issue. The test contained within has been subsequently utilized in a number of disciplinary Decisions here in Edmonton.

Mr. Cranna then reviews what he terms the facts of the case.

He states that there are nine individuals placed in the back of a police wagon in various states of intoxication. Staff Sergeant Fedechko has said that he would have been concerned about the transport of that number of individuals at one time.

At least two of these nine adults were placed in this context for a period of approximately 90 minutes. Then as the other individuals were placed in the van, the shortest period of time they would have been in the van is approximately 40 minutes, until they were dropped off in the north end.

The transport was done in conditions that were warm and there is consistency throughout the testimony that it was a warm day. The Environment Canada data in the record demonstrating the temperature, which was approximately 20 degrees, but it was made particularly warm because of the close conditions and the number of people in the back of the wagon for that period of time. There is no confirmation whether the ventilation fan was turned on in the rear of the wagon, although the members have testified that it was common practice to do so.

There was testimony that they came upon this group of people as a group, and as a group, they agreed to go to the north end location by virtue of their conduct.

Mr. Cranna submits that the record demonstrates that this group never existed, that these people were picked up in a far more piecemeal fashion than that, and that there was in fact no consensus amongst them as to where they were going to go aside from that expectation that they would go to the George Spady Centre.

At least two of these officers had prior experience with some of the passengers in the van and they were aware that those people frequented the Whyte Avenue area. They knew they were not from the north side of Edmonton, they did not frequent that area and there seemed little reason for them to be transported there. After picking everyone up, Constable Hannas contacts Control and says, we are going to the Spady Centre, and Control says, I will show you going to the Spady Centre. Control is never advised where the wagon is actually going. There is no communication with Control or Dispatch when the officers reach that location on 127th Avenue and 81st Street to drop those people off. When the wagon comes back on the air and Constable Hannas advises that they are 10-1 back in service, there is no indication of their location. The next indication on the unit history is they're back at 100th Street and 82nd Avenue after all of this time.

These people were dropped off shortly after 9:00 p.m. in the evening in the parking lot of a commercial strip on 127th Avenue. Once they were dropped off, the preponderance of the evidence is that the people did not disembark and leave as a group that in fact a number of individuals that were dropped off went off in their own directions. In fact, they did not cross the street towards the residential area, but walked down 127th Avenue away from the drop off point. That puts into question the stated goal of this transport which is to get this group to one residence to party. It seemed that some of the partiers weren't interested in going there.

When these people were dropped off, they did not go to a residence. They in fact went to a local outlet, purchased more liquor and stopped at a McDonald's nearby where the police from North Division were then called to deal with them again. In dealing with them, they took them to the George Spady Centre without complaint, and the result being that we have numerous members from the Whyte Avenue beats and numerous members from North Division using significant

police resources and taking up the time of the wagon in both jurisdictions to deal with the same problem twice.

He asked would a reasonably informed member of the public thinking dispassionately; believe that all of these actions were appropriate in the circumstances? He suggests they would not. He also states that there is the direct evidence of the reasonable expectations of the community from Mr. Frank.

He states that the only element of discretion that was available to these members in this entire scenario was whether to arrest these people or not. That is the only instance in this entire transaction where the officers had discretion. They made an appropriate decision to not arrest these people and process them through the regular system because to do so would have been useless. Once they exercised that discretion and they determined that instead of arrest they would transport these people to a safe place to go, there were no other discretionary choices to be made. They were then engaging a policy of the Chief in transporting these people. They had made their assessment of their medical condition, they had made their choice, and they had determined that they should be transported to a safe place. That is the end of their discretion. Once they've made that choice, they have to follow through with it in accordance with the policy.

They did not have the discretion to leave them at an unspecified location to look after themselves. They did not have the discretion to not make a note of that. They did not have the discretion to simply take this group of people from one area of the city to another. These officers could very well have had the best intentions in the world when they started this transport, but their good intentions cannot be taken into account in a situation where there is a clear policy and procedure in place and they failed to follow it.

Submissions of Counsel for the Cited Officers

Mr. Pringle states that this is a very unique area of policing with unique problems policing where the members had to adapt to these types of situations. The whole concept is to be creative and to try to solve the problems on Whyte Avenue. He states that the problems are difficult and it requires different police responses than what normally occurs in a lot of situations.

He states that it is clear that these police officers were acting in good faith and with good intentions. They're ability to recall detail was handicapped by the time that has gone by here before these complaints came forth and the passage of time. It has been difficult for them to recall details because they don't have notes. He states that this disciplinary hearing is taking place five years after the events and it's been a problem for everybody involved in this case. The officers in particular are dealing with a relatively routine event because they are transporting individuals on a regular basis during the time they were down on Whyte Avenue. He adds that just like the witnesses the Crown has called; there

may be some merging of one event with another from previous times or times that occurred at the same time.

They were taking these people out to the north end because that is where the group wanted to go. Constable Blackburn emphasizes that also but what is very significant is that Constable Zacharuk confirmed that some of the people he talked said that they wanted to go to a residence in the north end.

Mr. Pringle asks if they weren't taking them to a residence, why take them out to the north end otherwise. As Constable Hannas indicated, if they were trying to take them somewhere so they couldn't back to Whyte Avenue, there are a lot better places to take them other than where there is bus service and rapid transit. He states that I would have to conclude on the evidence that they took them there because that is ultimately where they all agreed to go.

In addressing the assertion that there were nine people in the van Mr. Pringle disputes that. He states that a couple of the complainants may have testified there were nine, but not even all the complainants are unanimous on that. Secondly, the officers deny that there were nine individuals in the van.

The Presenting Officer has taken it as a given that there were nine people in the van and that is a big part of his argument why being inside the van is uncomfortable.

He states that the evidence of the three people who testified that they were inside the van must be closely examined as their evidence it is not reliable. There are tremendous issues with respect to the reliability of the other witnesses where the statements have been introduced.

He states other than the conflict of where the people were picked up and the conflict between their testimony and the communications tape, the testimony of the officers is straight forward and credible.

Mr. Pringle states that it clearly wasn't too hot for the conditions. Some of the witnesses testified it was over 30 degrees and he states we know what the weather was like. It wasn't too hot.

He says we cannot conclude that these people were in the van for an hour and a half from the records. Looking at the communications tape, perhaps somebody else was picked up at a different time and taken over to the Spady.

When it comes to the situation of the conditions in the van, clearly the officers are more credible on that issue.

Mr. Pringle then speaks to the credibility of Harold Manuel, Audrey Faithful and Diane Wood. He points out inconsistencies in their testimony, details their lifestyle and describes them as unreliable witnesses.

Mr. Pringle then speaks to the issue with respect to the members not taking notes. He states that obviously at this point, he is sure that they wish they had taken notes, but this was a relatively routine matter. The only thing that wasn't routine was where the people ultimately were delivered to. They are transporting people such as this on a regular basis, sometimes two, three times a shift.

Sergeant Allen gave evidence in this regard that notes were not taken of these transports and that was the practice. Superintendents, who accompanied them on some of these transports did not make any comment about the lack of notes or suggest that there should be notes being made.

With respect to notes involving courtesy transports, Mr. Pringle states that there is nothing in the principles of note taking or the section dealing with notes that indicates for that type of situation notes have to be taken.

Mr. Pringle then asks even if it is determined through an interpretation that they should have taken notes in these circumstances, is it a disciplinary matter?

He states that there has to be a continuum in policing where people make mistakes and yet it doesn't reach the stage of discipline. If they clearly thought that they didn't have to take notes and they had actually followed the example of senior officers, it shouldn't be discipline.

Mr. Pringle states the type of police work being done is more trying to deal with social problems rather than crimes and there's a lot of informality involved. If an officer made a mistake in not making notes in that respect, he submits it shouldn't be a disciplinary offence.

Mr. Pringle then addresses the evidence of Staff Sergeant Fedechko. He states that when he talked about the notes he thought that maybe they had been instructed to take some notes with respect to these transports, but he wasn't sure. Sergeant Allen and the rest of the officers make it clear that there was no instruction to take notes of these courtesy transports until after this occurred. He states that he doesn't believe that Staff Sergeant Fedechko's evidence is strong enough.

He then speaks of Staff Sergeant Fedechko's manner of dealing with Constable Hannas after the incident was first brought to his attention in May 2005. He dealt with it as a mentoring opportunity, not one that should attract discipline.

Mr. Pringle then speaks to the Presenting Officers assertion that all of these people being intoxicated. He states that is not the evidence. Some of them

indicated that they were not intoxicated. The officers provide varying accounts as to who is intoxicated and who isn't, but there is no evidence from anybody really that people were intoxicated such that they couldn't look after themselves,

Then the question is asked if they were not intoxicated, why are they being removed? Mr. Pringle states that the thrust of the evidence is they are being removed because they are interfering with businesses. They are interfering with businesses or pedestrian traffic on Whyte Avenue. They have become a nuisance; they are committing either regulatory offences or causing a disturbance. It is not the evidence isn't that they are being removed because they are drunk in a public place.

The thrust of the evidence is that they were causing problems with respect to the operation of businesses and with respect to the flow of traffic and flow of pedestrian traffic, and they then agreed to leave and they wanted to go the north end.

He states that the section of the policy where it is required to check with the owner of the residence is only applicable if the persons being transported are intoxicated and to the point where they are incapable of caring for themselves. He submits in this situation there is insufficient evidence of intoxication to allow that particular section to come into play.

Mr. Pringle then speaks about the wording of the policy. He states the word "may" contained in sub-section 2 is open to interpretation and allows for other options.

Mr. Pringle then sets out his position on the charges. With respect to the discreditable conduct charge he first speaks to the conditions in the van. He submits that the officers' evidence with respect to conditions in the van should be preferred. The problems with the testimony of the three witnesses and then the problems with respect to Thomas Robillard and Phyllis Pasqueyak are quite evident from the transcripts that have been provided.

The evidence is that from time to time there has been nine people in the vans and it is not a great situation. He disputes that there is evidence that there were nine people in the van but even if I found that to be the case, that does not seem to be a concern to other members that worked Whyte Avenue.

The other part of the allegation for discreditable conduct is the reasons for the transport. He submits that the officers' reasons for the transport should be accepted. They indicated that the people in the van all agreed to go out to the north end. One person apparently had a place to go to where they could party and everybody else seemed to think that was a good idea. That is very believable. In any event, it seems quite credible that they would all agree to go to some place where somebody had a place for them to go, rather than going

back to the Spady Centre, that they would go to some place where they could have a party. So the reason for the transport was to take them out to the north end, with their consent, and as a courtesy transport, and it solved the problem that was occurring on Whyte Avenue. He submits that to transport them out there is not something that involved discreditable conduct.

The issue with respect to the members not taking notes, it is his position that with respect to the general provisions involving taking of notes, there is nothing specifically that indicates the requirement to take notes of courtesy transports. They did not feel this would involve any civil ramifications. There were no criminal charges and it's something that they are doing all the time, and if they were taking notes of all these transports, there would be a significant time being spent taking notes. But after this event, it became clear that they should take notes of these types of transports and that is when it became clear, but it wasn't clear at the time.

With respect to the general provisions of note taking, he submits the policy is ambiguous on the issue and the fact that there's ambiguity and other police officers aren't taking notes in these type of situations creates a situation where if the officers failed to create notes, it certainly shouldn't be a disciplinary offence.

Mr. Pringle states that the policy gets more specific when dealing with intoxicated people as there is a requirement for a notation in the R-1 or on the Mobile Work Station. He states this does not come into play as there is insufficient evidence that the individuals were intoxicated.

He takes the same position on the requirement to leave them in the care of a responsible person or to a residence.

Mr. Pringle closed his submission stating that the policy isn't clear enough that they were under a duty to take notes in this situation; and secondly the policy doesn't clearly indicate that they had to drop these people off, and knock on the door, and go in and see if there is a responsible person there. We haven't reached the situation where these people are that intoxicated. It is for those reasons, that he submits that the charges in this case should be dismissed

Further Submissions by the Presenting Officer:

Mr. Cranna speaks to Mr. Pringle's assertion that policing the Whyte Avenue area presents a unique policing environment. The somewhat unique problems that are presented in that area have been present for some time. With respect to the adult inebriant policies, he strongly suspects that Whyte Avenue was front of mind when these kinds of policies were created, to deal with that situation presented by that particular policing environment. He says we're dealing with a situation that is squarely within the policy in dealing with inebriates on Whyte Avenue.

Mr. Pringle is relying on intoxication in part to dispute the reliability of the evidence of the homeless, but at the same time he's saying that they are not so intoxicated that they can't be let go in the north end in the parking lot, that they are able to look after themselves, they're able to do basic things. He says Mr. Pringle cannot have it both ways. He states that the logical and practical assumption to be made here is that these people were being transported because they were intoxicated. And if they are being transported for that reason, then it logically flows into the policy about the requirement to take notes and about the requirement to drop them off at a precise place or with a precise person.

The question of an option in the policy that the members may choose to transport people is an important one. The policy subsumes intoxicated persons who are otherwise able to take care of themselves are caught in the policy. It says that intoxicated persons that are conscious, responsive, without apparent illness or injury and able to care for themselves still may be transported by a police vehicle to a residence or left in the care of a responsible person. It is quite right to say that that gives the officers an option as to how to handle these people. But they chose their option. They chose to transport them. Once they made that choice, they have got to follow through with the rest of the policy. They have got to follow the procedure. They have to drop them off in an appropriate place and they have to make a note of it.

Further Submissions by Mr. Pringle

Mr. Pringle then states that the liability of each of these officers's is going to have to be determined individually. Constable Blackburn is in a little bit different position with respect to that issue because of the fact that this was his first time there, than the other officers.

Analysis

Credibility and the reliability of the key witnesses is a very important factor in this matter. Defined, reliability is the ability of the witness to perceive, remember, and accurately recall what they saw. Credibility is whether the witness is doing their best to tell the truth as they perceive it.

It has been five and a half years since this incident. When the cited officers were interviewed and provided statements, over two years and in some cases three years would have passed. In addition they were not afforded the opportunity to review any of the materials currently in evidence prior to giving their statements thus going solely from memory. As well, the work that led to this incident is very routine and the facts of what happened could be confused by prior or subsequent dealings with the complainants. Three of the witnesses are self admitted chronic alcoholics and substance abusers who state they have poor memory recall. In addition, there is evidence that this matter has been discussed at length between

the parties and with third parties who may have influenced what the witnesses remembered about the event.

In these proceedings, the testimony of all of the witnesses must be measured against the known facts as established primarily through the documentary evidence.

To start I will comment on the testimony of the key witnesses that we have heard in this proceeding.

The testimony of **Harold Manuel** is very problematic. He stated that he didn't have a good memory of anything. He had been drinking too much. His response to the question of where they were dropped off differed from his prior statement to the RCMP and differed greatly from where the evidence clearly concludes they were dropped off. He was reluctant in his answers and I do not believe he was a very willing witness. While there are some consistencies between his testimony and some of the other witnesses I do not find Mr. Manuel's testimony very reliable. I place limited weight on his evidence.

Audrey Faithful was able to provide a reasonably clear account of the events as she recalled them. Portions of her testimony are corroborated by other evidence both in testimony and documented in the exhibits. She also states in her testimony that both she and Harold were probably drinking pretty heavy that day. Ms. Faithful is an admitted alcoholic and substance abuser which are causes for concern regarding her ability to recall events. While I believe Ms. Faithful was telling the truth to the best of her ability, I am concerned about the source of her memories. There is evidence that she as well as others read articles about the incident in both the Edmonton Street news and the Edmonton Journal. To what extent this has influenced her testimony is unknown but is a source of concern and a concern I must reconcile is the assessment of her reliability and the associated weight I place on her evidence.

I view the testimony of **Staff Sergeant Doug Fedechko** as very credible. He gave clear and concise testimony. I place significant weight on his evidence.

Detective William Allen testimony was centered on providing general information as it related to the way Whyte Avenue was policed. When asked about specifics about May 20, 2005 he clearly stated that he did not recall. As his evidence relates to the beats and the way members working on those beats dealt with the homeless, I found his evidence very credible.

Diane Wood was able to provide details of the incident that were consistent with other evidence. She is an admitted alcoholic and substance-abuser but stated that she had not been drinking at the time she was picked up. Other evidence suggests otherwise. I believe that Ms. Wood was truthful in her testimony but as was the case with Audrey Faithful, Ms. Wood stated that she had read stories of

the incident in several publications. In her testimony she also made reference to being told when the incident occurred. This raises the question as what she had been told and to what extent has this influenced her testimony. This raises concerns about the reliability of her testimony.

Constable Michael Zacharuk's testimony was based on his review of a prior statement and some limited recall. He did not make notes of the incident but did do a supplement on the complaint history. I believe the passage of time has also affected the reliability of some of his recall.

Mr. Bradley Frank was a very good witness. This was a unique event for him and he was able to provide specifics on what he saw and experienced. I view him as a very credible and reliable witness.

This incident occurred on **Constable Graham Blackburn's** first full shift on the Whyte Avenue Beats which would assist in his ability to recall the events of the evening. I do however have some concerns with some inconsistencies between his testimony and some of the known facts. I believe that the witness is being truthful in his testimony however the lapse in time between the events and when the statements were obtained and when this hearing was held may be having a bearing on his recall. Constable Blackburn agreed that he did not have a strong recollection of the specific events of the incident but not the specifics. I approach his testimony with some caution.

As was the case with Constable Blackburn, I believe the testimony of **Constable Lael Sauter** has suffered from the passage of time. Even more so, the events of May 20, 2005, were routine, one of probably hundreds of transports of homeless people. I am not convinced that some of Constable Sauter's testimony has not been influenced by other similar transports. His testimony must be carefully assessed as to what parts I believe are an accurate recall of what occurred versus what did not.

Constable Patrick Hannas' testimony must also be carefully considered for the same reason as is Constable Sauter's. I believe that the officer is telling the truth in what he believes happened however I am not convinced that his testimony is totally reliable.

The evidence of **Thomas Robillard** is extremely unreliable. It is the untested evidence of an alcoholic substance abuser who has admitted recall issues. While certain aspects of his evidence are corroborated by other evidence, on a whole I place very little weight on his evidence.

The same is the case with the evidence of **Phyllis Pasquayat**. It is also untested and she is well was an alcoholic substance abuser with admitted recall issues. I place very little weight on her evidence.

Standard of Proof

In Alberta, the Police Act does not address the issue of the standard of proof. Therefore the onus is based on the civil standard of a “balance of probabilities” or a “preponderance of credible evidence”.

This standard of proof has been affirmed by the SCC decision called F.H and McDougall which has been subsequently applied to police discipline in the LERB case of Newton.

I hold a “balance of probabilities” or a “preponderance of credible evidence” to be the standard of proof to be met in these matters.

Sequence of events

A thorough review of testimony and documentary evidence allows me to come to a reasonable conclusion as to the circumstances and sequence of events on May 20th, 2005.

The Whyte Avenue area of Old Strathcona in Edmonton is a unique area that requires a unique approach to policing. The demographics of the area change by time of day and day of week. One of the unique aspects of policing is dedicated to the homeless individuals who frequent the area. The residents, public and area businesses have placed a level of expectation on the police to deal with this issue that was most times not reasonable and did not take into consideration the rights of the homeless. The police are also limited in their options on how to deal with these matters.

There was also the issue of the safety of the homeless population when dealing with the late night bar crowd. The police have the responsibility to ensure for the care of these people.

The potential for conflict between the homeless and other patrons of Whyte Avenue was heightened on weekends and evenings and the Whyte Avenue Beats devised proactive policing plans to manage these situations.

One such plan was what Detective Allen referred to as “the round-up” which I believe was the first course of business on the third watch of May 20th, 2005.

Members of the Whyte Avenue beats went out to locate the homeless individuals on the Avenue and then transport them in the van away from the area.

From the chronology, transcripts and testimony, I believe the most likely sequence of individuals being picked up and transported is as follows:

The individuals transported by the cited officers were picked as individuals or in pairs. Chris Robillard and Diane Wood were picked up by Constable Sauter operating van #913 shortly before 19:43 hours. Victor Robillard and Phyllis

Pasquayak were the individuals that Constable Hannas and Constable Blackburn were dealing with at 103 St and 82 Ave. and were the next to be placed in the van. Audrey Faithful and Harold Manuel were the next to be picked up followed by Thomas Robillard and Phillip Dainard. The last individual, Jimmy Nipshank was detained by Detective Allen in front of Chapters at 20:12 hours and picked up in the van shortly after. Constable's Sauter, Blackburn and Hannas left Whyte Avenue to transport the individuals at 20:33 hours.

The nine people were placed in a patrol wagon that had a reasonable capacity for six, sitting three aside on the bench seating. The weather at the time of the first pick up was in the range of 18 degrees Celsius and mostly cloudy. The temperature dropped a few degrees between 1900 hours and 2100 hours. While the temperature was not excessive, nine people in confined quarters for a period of time would create warm and uncomfortable conditions in the van.

The time from when Diane Wood and Chris Robillard was shortly before Cst. Sauter was called to assist Cst. Hannas and Blackburn at 19:43 hours. They along with the seven other individuals left the Whyte Avenue area at 20:33 hrs arriving at the location they were ultimately dropped off at approximately 21:05 hours. The total time that Diane Wood and Chris Robillard were in the van was approximately ninety minutes. The shortest period of time one of the transported persons, believed to be Jimmy Nipshank would have been approximately thirty minutes.

There were nine homeless individuals picked up from the area of Whyte Avenue in Old Strathcona and transported by the cited officers to north Edmonton. This is supported by the fact that Constable Zacharuk noted on his dispatch call that seven individuals were being transported to the Spady Centre. There is evidence from those who were transported that this did not include Audrey Faithful and Harold Manuel. Faithful and Manuel testified they made it back to Whyte Avenue using public transit.

I do not accept the testimony that the persons transported on May 20th 2005, to the north end were four unknown individuals accompanied by Diane Wood and Chris Robillard and that they were transported together from near the Chicago Deep Dish Pizza. This scenario is not supported by the evidence of numerous witnesses and the documentary evidence. It is quite likely that Constable Hannas has confused this transport with one of many others he has done in his time on the beats. I believe Constable Sauter recall of this has been influenced by Constable Hannas.

This also does not support the contention that the individuals were willing participants in the transport and that one of them had requested to go to an address in the north end.

From the testimony of Harold Manuel, Diane Wood and Audrey Faithful I am convinced they complied with the request to get in the van as that is what was expected of them. This was also the evidence of Thomas Robillard and Phyllis Pasquayat. Simply put, they were conditioned to get in the van when it pulled up. They would be transported to the Spady Centre, get out and make their way back to the Avenue to repeat the process.

The only reasonable explanation for the transport to the north end was to displace these individuals at little farther from Whyte Avenue than normal.

Each of the individuals transported were intoxicated in varied states. The testimony varied greatly on the degree of intoxication however I am satisfied that each of the individuals were intoxicated to the extent that they could be detained pursuant to the provisions of the Gaming and Liquor Act.

Preamble

This incident has garnered significant media attention over the past five years. It has been alleged by some who were not directly involved and speaking without the benefit of the facts, that the actions of the police officers were racially motivated and in general an uncaring attitude towards the homeless population.

There is no evidence whatsoever to support this allegation.

While I have indicated I have concerns with the testimony of the cited officers as it relates to their ability to recall the specifics of May 20th, 2005 I totally accept their evidence as it relates to their overall attitudes towards the homeless and aboriginal people. That coupled with the testimony of Staff Sergeant Fedechko and Detective Allen allows me to state unequivocally that the police officers from the Whyte Avenue Beats, who testified before me on this matter, have a genuine concern for the well being of these people.

These police officers come from various professional backgrounds that include social work and teaching. They also come from diverse ethnic and cultural roots and in the case of one individual, part aboriginal.

These men view the homeless people of Whyte Avenue as part of the community makeup, in no different sense than they do the other residents, the business owners and the police officers themselves. I truly believe that they care for their well being. This is evidenced by the hospital visits, the attendance at funerals, participation in aboriginal cultural events and the concerns voiced for their well being at the hands of the drunken youth that frequented Whyte Avenue after certain hours.

The Disciplinary Charges:

Two of the cited officers are facing three counts of disciplinary misconduct and one is facing two counts. All three counts are reproduced below and the culpability of each officer as it relates to each of these counts will be addressed individually.

A general defence to all three charges offered by the cited officers is that they were acting in good faith. A lack of judgment should not attract disciplinary sanctions. In the contemplation of charges, the Edmonton Police Service or the Law Enforcement Review Board would take this into consideration as to what if any sanction or process the misconduct warrants. In this instance, a hearing was ordered. Additionally, such an argument can be raised as a mitigating factor if the charges are proven.

Count #1: Constable Hannas, Constable Sauter, Constable Blackburn

It is alleged that on or about May 20, 2005, in the City of Edmonton, in the Province of Alberta, you detained and transported a group of Aboriginal, intoxicated and/or homeless persons from Old Strathcona to North Edmonton, whereupon you released them. The displacement of these persons from Old Strathcona to North Edmonton was without justification in law or EPS policy, and constitutes the offence of Discreditable Conduct pursuant to s. 5(2)(e)(viii) of the *Police Service Regulation*.

5(2)(e)(viii) of the *Police Service Regulation* states:

“Doing anything prejudicial to discipline or likely to bring discredit on the reputation of the police service. “

The facts in issue on this count relate specifically to the detention, transportation and the displacement of Aboriginal, intoxicated and/or homeless persons from Old Strathcona (Whyte Avenue) to the north end of Edmonton. There has been a great deal of focus in the testimony about the conditions those people experienced in the van, the time they spent in the van and the number of people transported. While this information provides some of the context to the incident, it does not form part of the allegation and therefore it is not relevant to proving or disproving this allegation.

I hold that the nine homeless individuals previously identified were intoxicated and lawfully detained by the cited officers. Once the intoxicated individuals were detained, the officers determined that charges would not be appropriate given the circumstances. They opted to resolve the matter by means of a transport from Whyte Avenue.

Up to this point the officers were lawfully placed and acting within policy. Then, instead of following Edmonton Police Service policy as it relates to Adult Public

Inebriates, the officers opted to transport the intoxicated individuals to the area of 127 Ave and 82 St. Edmonton. The intoxicated individuals were not taken to a residence or left in the care of a responsible person, but released into the community where they purchased beer and became the subject of calls and concerns from the public. There is no justification for these actions either in law or in Edmonton Police Service Policy.

The evidence of Mr. Bradley Frank was quite compelling. He clearly articulated what he thought about the situation having witnessed the police drop off the intoxicated individuals in his neighborhood. His concerns were such that he called North Division to complain. The Edmonton Police Service also received a call into its communications centre complaining about the individuals who were dropped off by the officers. It is clear that the conduct of the officers brought the reputation of the Service into disrepute.

In addressing the culpability of the cited officers in relation to this charge I make the following findings:

Constable Patrick Hannas was the senior member both in service and time spent on the Whyte Avenue Beats. He actively participated in the detention of seven of the intoxicated persons ultimately transported. He was party to the decision to transport the individuals to the north end.

On a balance of probabilities, I find that count #1 as it relates to Constable Patrick Hannas has been proven.

Constable Lael Sauter detained and transported both Chris Robillard and Diane Wood. He also was the operator of the van that transported them and the other seven people to the north end. By virtue of being the operator of the van, Constable Sauter was a party to the decision to transport the individuals to the north end.

On a balance of probabilities, I find that count #1 as it relates to Constable Lael Sauter has been proven.

Constable Graham Blackburn was working a replacement shift on the Whyte Avenue beats. This was the first full shift that he had worked on the beat. He was on foot patrol with Constable Hannas when they detained Victor Robillard and Phyllis Pasquayak. When the three officers got into the van, Constable Blackburn sat in the back seat and did not exit the van after that time. He was not involved in placing any of the other individuals in the van. He did not get out of the van when the people were dropped off in the north end. Constable Blackburn characterized his involvement as being a ride-a-long and I agree with this characterization.

On a balance of probabilities, I find that count #1 as it relates to Constable Graham Blackburn has not been proven.

Count #2: Constable Hannas, Constable Sauter

It is alleged that on or about May 20, 2005, in the City of Edmonton, in the Province of Alberta, you detained and transported a group of Aboriginal, intoxicated and/or homeless persons from Old Strathcona to North Edmonton and failed to take notes of the incident, contrary to EPS Policy and Procedure Part 7, Chapter B, Section 5, Paragraph A, constituting Insubordination pursuant to Section 5(2)(g)(ii) of the *Police Service Regulation*.

Section 5(2)(g)(ii) of the *Police Service Regulation* states:

5(2) For the purposes of subsection (1),

(g) "insubordination" consists of one or both of the following:

(ii) omitting or neglecting, without adequate reason, to carry out a lawful order, directive, rule or policy of the commission, the chief of police or other person who has the authority to issue or make that order, directive, rule or policy;

The issue required to be proven in this charge is whether or not the matter being attended to by the officers was one that attracted application of Edmonton Police Service Policy. The policy alleged to have been breached is:

Part 7, Chapter B, Notes and Notebooks. Section 5, states:

"Without exception, notes must be taken at every investigation. During the preliminary stage, common logic will dictate the type and extent of the notes necessary; however, the importance of recording detail cannot be over-emphasized."

The cited officers contend that their involvement with these homeless individuals was nothing more than a courtesy transport and therefore did not attract the application of the Edmonton Police Service policy on note taking. I do not agree. Previously in this decision I have held that the individuals being transported were detained for being intoxicated therefore the Adult Public Inebriates policy applies.

Whether the officers detained these individuals as a result of a call for service, an on-view situation or as the result of a pro-active policing initiative this is an investigation. The Edmonton Police Service Policy in Part 2, Chapter J, Adult Public Inebriates, sub-section (3) makes reference to the duties of "*the investigating members*." This obviously lends itself to the fact the Edmonton

Police Service holds that when members are dealing with Adult Public Inebriates they are conducting an investigation.

The testimony of Staff Sergeant Fedechko was quite clear that notes in these situations were required and appropriate.

From a practical perspective the necessity of proper notes cannot be over-stated. When dealing with persons from vulnerable sectors of society under which the homeless or Adult Public Inebriates can be characterized, proper notes are a must. The documentation of existing injuries, obvious medical issues can provide valuable information for future reference. A homeless person dying in police custody or in a shelter subsequent to a police transport is not an unheard of scenario. Notes of the detention and transport would be crucial.

As well, proper notes help defend against allegations against the officer. The cited officers own counsel spoke to that when he stated:

“in hindsight we would all agree that they should have taken notes if they had known what was going to develop out of this situation.”

The cited officers also contend that the practice employed by other members working the Whyte Avenue Beats was not to take notes of transports. I hold that this is not an adequate reason not to follow policy, but is an argument suitable to mitigation of penalty.

As soon as Cst. Patrick Hannas responded to a call for service or had an on-view complaint where he stopped the homeless persons to determine their level of intoxication or what activities they were involved in, he entered into an investigation. At that point he was required to follow Edmonton Police Service policy. This policy required him to make notes of his investigation. His discretion in the taking of notes is limited to the type and extent of the notes necessary, not whether or not to take them.

It has been shown that on a balance of probabilities that Cst. Hannas did not make any notes of the detention and subsequent transport of nine homeless, intoxicated people to north Edmonton on May 20th 2005. Accordingly I find that this charge has been proven.

Under the same circumstances and with the same requirements to follow Edmonton Police Service policy, it has been shown that on a balance of probabilities that Cst. Sauter did not make any notes of the detention and subsequent transport of nine homeless, intoxicated people to north Edmonton on May 20th 2005. Accordingly I find that this charge has been proven.

Count #2: Constable Blackburn, Count #3: Constable Hannas, Constable Sauter

It is alleged that on or about May 20, 2005, in the City of Edmonton, in the Province of Alberta, you detained and transported a group of Aboriginal, intoxicated and/or homeless persons from Old Strathcona to North Edmonton, and released intoxicated persons without taking them to a specific residence, or leaving them in the care of a responsible person or agency, contrary to EPS Policy and Procedure Part 2, Chapter J, Section 2, Paragraphs C(2) and (3), constituting Insubordination pursuant to Section 5(2)(g)(ii) of the *Police Service Regulation*.

Section 5(2)(g)(ii) of the *Police Service Regulation* states:

5(2) For the purposes of subsection (1),

(g) "insubordination" consists of one or both of the following:

(ii) omitting or neglecting, without adequate reason, to carry out a lawful order, directive, rule or policy of the commission, the chief of police or other person who has the authority to issue or make that order, directive, rule or policy;

The cited officers have presented two separate arguments in relation to this charge. Their first point is that this was a courtesy transport, not a transport of *Adult Public Inebriates*. As such, the policy does not apply. I have previously held that the nine people transported to the north end on May 20th, 2005 were intoxicated and therefore were being dealt with as *Adult Public Inebriates* and therefore the policy does apply. This argument fails.

The second argument is based on an interpretation of the wording of the policy.

Part 2, Chapter J, Section 2, *Adult Public Inebriates*, states:

(C) Members encountering an intoxicated person in a situation where a criminal offence is not involved, shall evaluate the person's condition and follow these guidelines.

(2) Intoxicated persons that are conscious, responsive, without apparent illness or injury, and are able to care for themselves, may be transported by police vehicle to a residence or left in the care of a responsible person. An evaluation of the person's history can be based on interviews of friends, family members, witnesses, and by looking for a medic alert bracelet, etc.

There was significant discussion surrounding the phrase "may be transported by police vehicle to a residence or left in the care of a responsible person." I hold

that the word “may” provides the officer with the discretion to transport or not. Nothing more and nothing less. The phrase “to a residence” was also discussed at length. The officer’s contention is that intoxicated people can be transported to any residence and left, not necessarily in the care of a responsible person. The Presenting Officer states that common sense dictates that this is not the case.

Subsection 3 contains the words “when an intoxicated person cannot be taken home or left in the care of a responsible person” and is used in the same context.

Although the wording in subsection 2 and 3 is different, it is my belief and I hold that in subsection 2 when the words “to a residence” are being used, they are in fact referring to the residence (home) of the intoxicated individual, not a general residence. To believe otherwise makes no sense. The testimony of Staff Sergeant Fedechko supports this interpretation of the policy.

Subsection 3 states:

“When an intoxicated person cannot be taken home or left in the care of a responsible person, the investigating members shall determine whether they can be taken to a social service agency. (i.e. the George Spady Centre, or Women’s Emergency Accommodation Centre).

In this situation, the officers transported nine individuals to the north end of Edmonton and dropped them off in a commercial parking lot near the intersection of 127 Ave and 82 St. Even with the officers assertion the intent was to take them to a residence, this did not occur. Leaving them nearby a possible residence does not fulfill their obligations or the requirements of the policy. None of the individuals had a residence at all let alone in this area. If the member’s intention was to leave them in the care of a responsible person, this did not occur either. Since the officers did not take the individuals to a residence or leave them in the care of a responsible person, it became their duty to determine if they could be taken to a social service agency as per the policy. This did not occur, the individuals were left in the parking lot and the officers departed the scene.

Constable Graham Blackburn was working a replacement shift on the Whyte Avenue beats. This was the first full shift that he had worked such an assignment. He was on foot patrol with Constable Hannas when they detained Victor Robillard and Phyllis Pasquayak. When the three officers got into the van, Constable Blackburn sat in the back seat and did not exit the van after that time. He was not involved in placing any of the other individuals in the van. He did not get out of the van when the people were dropped off in the north end. Constable Blackburn characterized his involvement as being a ride-a-long and I agree with this characterization.

On a balance of probabilities, I find that count #2 as it relates to Constable Graham Blackburn has not been proven.

Constable Patrick Hannas was the senior member both in service and time spent on the Whyte Avenue Beats. He actively participated in the detention of most of the intoxicated persons ultimately transported. He was party to the decision to transport the individuals to the north end. He did not fulfill the policy requirement to transport the individuals to a residence or leave them in the care of a responsible person. Furthermore, upon not being able to take the individuals to a residence or leave them in the care of a responsible person, he did not attempt to determine if they could be taken to a social service agency.

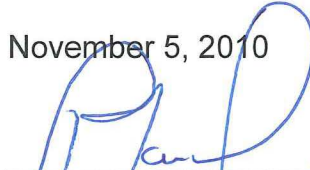
On a balance of probabilities, I find that count #3 as it relates to Constable Patrick Hannas has been proven.

Constable Lael Sauter detained and transported both Chris Robillard and Diane Wood. He also was the operator of the van that transported them and the other seven people to the north end. By virtue of being the operator of the van, Constable Sauter was a party to the decision to transport the individuals to the north end. He did not fulfill the policy requirement to transport the individuals to a residence or leave them in the care of a responsible person. Furthermore, upon not being able to take the individuals to a residence or leave them in the care of a responsible person, he did not attempt to determine if they could be taken to a social service agency.

On a balance of probabilities, I find that count #3 as it relates to Constable Lael Sauter has been proven.

Issued at the City of Edmonton

November 5, 2010



A/Superintendent P. Manuel
Presiding Officer.