

SUPREME COURT OF NOVA SCOTIA

Citation: Jarrett v. Halifax (Regional Municipality), 2014 NSSC 116

Date: 20140403

Docket: Hfx. 212943

Registry: Halifax

Between:

Carole Elizabeth Jarrett

Plaintiff

v.

Halifax Regional Municipality, Charles Naugle, Tom Shannon, Charles Bruce,
Ken Burton, Steven Guzzwell and Sarah Smith

Defendants

Judge: The Honourable Justice Arthur W.D. Pickup

Heard: January 6, 7, 8, 9, 13, 14, 15, 16, 20, 2014, in Halifax,
Nova Scotia

Written Submissions: February 5, 2014 (post-trial submission, for the
Defendants)
February 14, 2014 (post-trial submission, for the
Plaintiff)
February 24, 2014 (rebuttal submission, for the
Defendants)
March 5, 2014 (sur-rebuttal submission, for the Plaintiff)

Counsel: Mark Knox, Q.C. and Niall Burke (A/C), for the Plaintiff
A. Jean McKenna and Andrew Gough, for the
Defendants

By the Court:

[1] During 2001/2002 the Halifax downtown core experienced several arson-related fires. There was public upset and concern over these fires, and, in response, the Halifax Police Department launched “Operation Heat” and later “Operation Meltdown” to locate the person or persons responsible for these fires.

[2] Throughout the police operations, the plaintiff, Carole Elizabeth Jarrett (now Hanrahan) was a prime suspect. As a result, she was under surveillance at various times. She was charged with several allegations of arson during this time.

[3] Ms. Jarrett has a lengthy criminal record in relation to arson dating back to 1994. She admits to mental health difficulties, including a diagnosis of Associative Identity Disorder, which is a condition formally known as Multiple Personality Disorder. Ms. Jarrett allegedly had several different personalities, with separate identities. These difficulties were known to the police and it was suspected that she may not have been aware of having set any fires.

[4] As a result of the police investigations, Ms. Jarrett was arrested, underwent several police interviews, and was charged, incarcerated and later acquitted on all counts at trial and released from custody. Ms. Jarrett has brought this action against the Halifax Regional Municipality and several Halifax Regional Police officers alleging negligent investigation, false arrest and detention, malicious prosecution and misfeasance in public office. In particular, Ms. Jarrett claims:

- i. negligent investigation by Cst. Charles Bruce resulting in her arrest and detention on November 8, 2001;
- ii. negligent investigation and false arrest and detention by Sgt. Ken Burton, Cst. Sara Smith and Cst. Steven Guzzwell, in respect of her arrest on December 18, 2001;
- iii. malicious prosecution by Cst. Tom Shannon and Cst. Charles Naugle with respect to allegedly giving misleading evidence at a show cause hearing on May 26, 2002;

- iv. negligent investigation, malicious prosecution, false arrest and false imprisonment by Cst. Charles Bruce with respect to her arrest and charges on December 20, 2002; and
- v. misfeasance in public office by Cst. Charles Naugle, Cst. Tom Shannon, Cst. Charles Bruce, Cst. Steve Guzzwell, Cst. Sara Smith and Sgt. Ken Burton for their respective roles as set out above.

[5] The parties have agreed that this proceeding will determine liability only, and the issue of damages will be heard at a later date, if necessary.

[6] The matter was heard over nine days in January 2014. Ms. Jarrett testified on her own behalf. No other witnesses were called for the plaintiff.

[7] The defendants called as witnesses several police officers, including Charles Bruce, Ken Burton, Sara Smith (now Nordqvist), Steven Guzzwell, Brian Johnston and Charles Naugle. One of the named defendants, Tom Shannon, was out of the country and unavailable to testify.

[8] Ms. Jarrett claims she was unfairly targeted by these police officers on the basis that she was ultimately acquitted at trial. The specific allegations against each police officer are set out in the amended statement of claim. I will discuss the parties' positions respecting each of these allegations.

Tort #1 - Negligent investigation by Cst. Charles Bruce resulting in the arrest and detention of the plaintiff on November 18, 2001.

[9] The allegation of negligent investigation by Cst. Bruce is set out at para. 9 of the amended statement of claim:

9. On or about the 18th day of November, 2001, Bruce arrested the Plaintiff for a fire that had occurred earlier in the same month. The Plaintiff states that Bruce conducted a negligent investigation of that fire which led to the arrest and detention of the Plaintiff.

[10] Canadian case law has indicated that a duty of care exists between an investigating officer and a suspect under investigation. The standard of care is a "reasonable police officer in similar circumstances".

[11] Ms. Jarrett and Cst. Bruce each testified as to the events leading up to her arrest on November 18, 2011.

[12] Constable Bruce has been with the Halifax Regional Police for 21 years. In 2001 he was working with the General Investigation Section (GIS), and was responsible for “Operation Heat”. “Operation Heat” began as a response to a string of fires that had plagued the south end of Halifax beginning in the summer of 2001. There was much public concern about the number of fires, and a public meeting was arranged in the fall of 2001. Constable Bruce and Superintendent Stephen Sykes attended on behalf of HRP to reassure the public that the police had commenced an operation to stop the fires, and to identify those responsible.

[13] In his testimony Cst. Bruce recalled that most of the individuals at the meeting described a similar type of fire, namely loose debris on their properties piled together and then ignited.

[14] Constable Bruce testified that the primary objective of “Operation Heat” was to stop the fires. Carole Jarrett became the top suspect in the early stages of the investigation because of her prior history of arson, her release from curfew and the fact that she had resided on Church Street, near the area where the fires were occurring. Constable Bruce testified that he was aware of Ms. Jarrett’s history of arson. According to Cst. Bruce, as of the summer of 2001 he knew Ms. Jarrett was living on Church Street and it was during this period that the frequency of fires in Halifax’s south end increased.

[15] Constable Bruce discussed his involvement in surveillance of Ms. Jarrett. He testified that on the night of November 6, 2001, after following Ms. Jarrett and her friend Christopher Bamford from Spring Garden Road, he observed them turning onto Church Street. At that point he went around a building at 5300 Morris Street, climbed to an elevated ground level and was able to see into the alleyway directly across from the entrance to Ms. Jarrett’s building. He said he observed Mr. Bamford standing on the sidewalk at the head of the alleyway, and saw Ms. Jarrett in the vicinity of a dumpster in the alley.

[16] While Cst. Bruce admitted that he did not see Ms. Jarrett light a match, he said he did observe her stand near the dumpster in the alley, return to where Mr.

Bamford was, and then cross the street and enter her apartment. He testified that within one or two minutes he observed a fire break out in the dumpster. Between the time he saw Ms. Jarrett, and when he noticed the fire, he saw someone emerge from 5300 Morris Street with a bucket of water to attempt to extinguish the fire.

[17] Constable Bruce confirmed that he had not seen Ms. Jarrett in the act of lighting the November 6 fire. She was arrested and questioned regarding this fire on November 18, 2001, but was released. Constable Bruce said that the decision to arrest Ms. Jarrett for questioning on November 18, 2001 was made in consultation with his immediate superiors and with the two Crown Attorneys assigned to the case.

[18] In arresting Ms. Jarrett on November 18, 2001, Cst. Bruce testified that he was relying on reasonable and probable grounds arising from his November 6, 2001 surveillance of Ms. Jarrett.

[19] Ms. Jarrett agreed with all aspects of what Cst. Bruce said he observed on November 6, 2001, except that she denied that she had been in the alleyway. She alleged in her testimony that Cst. Bruce “targeted” her as the only suspect in the November 6, 2001 fire in the dumpster fire.

[20] The allegation of negligent investigation appears to be based on the theory that Cst. Bruce ought not to have arrested Ms. Jarrett because she denied being present in the alleyway, or that he should have further interviewed the witness, Stephen Myers, the individual who came out of 5300 Morris Street to extinguish the fire.

[21] In *Hill v. Hamilton-Wentworth Regional Police Services Board*, 2007 SCC 41, the Supreme Court of Canada recognized the tort of negligent investigation. McLachlin C.J., found a duty of care in the relationship between the police officer and suspect and noted:

50 The possibility of holding police civilly liable for negligent investigation does not require them to make judgments as to legal guilt or innocence before proceeding against a suspect. Police are required to weigh evidence to some extent in the course of an investigation: *Chartier v. Attorney General of Quebec*, [1979] 2 S.C.R. 474. But they are not required to evaluate evidence according to legal standards or to make legal judgments. That is the task of prosecutors, defence

attorneys and judges. This distinction is properly reflected in the standard of care imposed, once a duty is recognized. The standard of care required to meet the duty is not that of a reasonable lawyer or judge, but that of a reasonable police officer. Where the police investigate a suspect reasonably, but lawyers, judges or prosecutors act unreasonably in the course of determining his legal guilt or innocence, then the police officer will have met the standard of care and cannot be held liable either for failing to perform the job of a lawyer, judge or prosecutor, or for the unreasonable conduct of other actors in the criminal justice system.

[22] Chief Justice McLachlin went on to discuss that standard:

68 ...At the outset of an investigation, the police may have little more than hearsay, suspicion and a hunch. What is required is that they act as a reasonable investigating officer would in those circumstances. Later, in laying charges, the standard is informed by the legal requirement of reasonable and probable grounds to believe the suspect is guilty; since the law requires such grounds, a police officer acting reasonably in the circumstances would insist on them...

[23] The Chief Justice concluded:

73 I conclude that the appropriate standard of care is the overarching standard of a reasonable police officer in similar circumstances. This standard should be applied in a manner that gives due recognition to the discretion inherent in police investigation. Like other professionals, police officers are entitled to exercise their discretion as they see fit, provided that they stay within the bounds of reasonableness. The standard of care is not breached because a police officer exercises his or her discretion in a manner other than that deemed optimal by the reviewing court. A number of choices may be open to a police officer investigating a crime, all of which may fall within the range of reasonableness. So long as discretion is exercised within this range, the standard of care is not breached. The standard is not perfection, or even the optimum, judged from the vantage of hindsight. It is that of a reasonable officer, judged in the circumstances prevailing at the time the decision was made -- circumstances that may include urgency and deficiencies of information...

[24] Ms. Jarrett claims that Cst. Bruce relied on mere speculation as the grounds for his investigation and her arrest. She alleges that he was unable to provide any evidence of her involvement in the fire, except that she was in the general vicinity of the fire; she says a suspicion on account of her presence in the general vicinity

cannot form a proper basis for investigation. With respect, Cst. Bruce gave an eyewitness account of Ms. Jarrett's connection to the fire at 5300 Morris Street.

[25] I find no evidence before me which would suggest the arrest of Ms. Jarrett was unreasonable. I conclude that a thorough investigation was conducted by Cst. Bruce despite the claims of Ms. Jarrett to the contrary.

[26] It must be remembered that Cst. Bruce had Ms. Jarrett under surveillance at the time of the alleged offence. He saw her in the alleyway close to the dumpster. The circumstances leading up to this observation are not in dispute, as Ms. Jarrett confirms Cst. Bruce's testimony, except that she denies being in the alleyway.

[27] Ms. Jarrett's counsel put Cst. Bruce's investigation "under the microscope". For example, on cross-examination, counsel pointed out to Cst. Bruce the absence in his notes of any mention of Ms. Jarrett being in the alleyway, nor was it mentioned by Cst. Hennebury, who was the note-taker that night for the surveillance team. I am not satisfied that this in any way impacts the investigation. The clear recollection of Cst. Bruce, which I accept, is that he observed Ms. Jarrett in the alleyway. He had Ms. Jarrett under surveillance. I accept his evidence of his observations, which I found to be straightforward and responsive to the questions being asked of him. With respect, to expect a high level of note-taking on the part of Cst. Bruce would not be reasonable, given that he was conducting a covert operation in an alleyway very close to Ms. Jarrett at the time.

[28] Counsel for Ms. Jarrett also pointed out that Cst. Bruce did not speak to Stephen Myers, the person who came out the door of 5300 Morris Street on November 6, 2001. Counsel for Ms. Jarrett suggests that Mr. Myers would be a very important witness and that the fact that he was not interviewed was an error on Cst. Bruce's part. With respect, I accept the testimony of Cst. Bruce in reply that Mr. Myers only arrived on the scene after the fire had started, and therefore he would provide little, if any, evidence to Cst. Bruce as to who had lit the fire.

[29] On cross-examination, counsel for Ms. Jarrett referred Cst. Bruce to the Crown sheet. Counsel pointed out that Cst. Bruce wrote, "the writer at this time had suspicious (sic) however again at this time there were insufficient grounds to arrest the accused at this time". Constable Bruce testified that what he meant to

say was that he did not feel that he would have enough evidence against Ms. Jarrett at that time to secure a conviction. He testified that in his mind he had reasonable and probable grounds to arrest, even though he chose not to, because the surveillance on Ms. Jarrett had not yielded direct eyewitness evidence of her lighting the fire. I accept the evidence of Cst. Bruce in this regard.

[30] The essence of the alleged negligent investigation appears to be that Cst. Bruce ought not to have arrested Ms. Jarrett because she denied being present in the alleyway, or that he should have further interviewed the witness Mr. Myers. In other words, the allegation is that Cst. Bruce carried out an improper investigation and ignored evidence that could have determined the cause of the fire.

[31] Ms. Jarrett's counsel suggests that Cst. Bruce's suspicions were based largely on his knowledge of Ms. Jarrett's previous convictions. With respect, based on Cst. Bruce's own observations, Ms. Jarrett was close to the dumpster, which ignited within minutes of her exiting the alleyway where it was situated.

[32] I am satisfied that on the evidence before me the claim of Ms. Jarrett fails. I am not satisfied that Cst. Bruce breached the standard of a reasonable police officer in the circumstances. In fact, I am satisfied that he conducted a proper investigation, despite the allegations by Ms. Jarrett. It is important to further emphasize that Ms. Jarrett was under surveillance, was observed in the alleyway, close to the dumpster, and then was seen exiting the alleyway. Shortly thereafter, the fire started in the dumpster. In addition, Ms. Jarrett's history of arson and her mental health condition were within Cst. Bruce's knowledge. I find that Cst. Bruce was acting reasonably in the circumstances, and I dismiss Ms. Jarrett's claim under this heading .

Tort #2 - Negligent investigation by Cst. Bruce leading to the arrest and detention of the plaintiff on December 18, 2001.

[33] This allegation is set out in paras. 12 and 13 of the amended statement of claim as follows:

12. Early in the morning of December 18, 2001, Bruce became the primary investigator on the file concerning the multiple fires in the Halifax Regional Municipality which led to the Plaintiff's arrest. Prior to her release on December 18, 2001, Bruce and other police officers interviewed the Plaintiff.

13. The Plaintiff states that the arrest of the Plaintiff (referred to above) was unlawful, as was her subsequent detention. The Plaintiff states that Burton, Smith and Bruce are responsible for the negligent investigation leading to the arrest of the Plaintiff, and for the illegal arrest and subsequent detention of the Defendant. Bruce is also responsible for the illegal arrest and false imprisonment of the Plaintiff once he became the chief investigator after the Plaintiff's arrest that morning.

[34] Ms. Jarrett alleges negligent investigation with resulting harm to her after her arrest and subsequent detention until her release later in the day on December 18, 2001.

[35] The law of negligent investigation has been set out above.

[36] I am satisfied that there is no evidence before me of Cst. Bruce's involvement with the events of the south end fires the night of December 17/18, 2001. In fact, there is no evidence that he was any way involved with the decision to arrest Ms. Jarrett that night. Cst. Bruce testified that when Ms. Jarrett was arrested that night, "Operation Heat" had already been concluded. He testified that Steven Guzzwell and Sara Smith were the two officers who entered Ms. Jarrett's apartment and that Steven Guzzwell effected the arrest. The evidence at trial was that the arrest was ordered by Kenneth Burton.

[37] There being no evidence to support this allegation, and Ms. Jarrett having advised she has "abandoned this claim", the claim of negligent investigation by Cst. Bruce is dismissed.

Tort #3 - Negligent investigation by Burton, Smith and Guzzwell regarding the December 18, 2001 arrest of Ms. Jarrett

Tort #4 - Illegal arrest by Burton, Smith and Guzzwell on December 18, 2001

[38] I will deal with these two allegations together, as they arise out of the events leading up to the arrest of Ms. Jarrett on December 18, 2001.

[39] Ms. Jarrett has acknowledged mistakenly naming Cst. Bruce in these allegations, which she confirmed are properly against Burton, Smith and

Guzzwell. I will deal with the allegation against these three individuals, the officers involved in the Jarrett matter on the night of December 18, 2001. I am satisfied that Cst. Bruce had no involvement in the arrest or events leading up to the arrest of Ms. Jarrett on December 18, 2001.

Evidence

[40] The evidence for the defendant was given by Sgt. Ken Burton, Cst. Steven Guzzwell and Cst. Sara Smith, now Sara Nordqvist. All of these officers testified that on the night of December 18, 2001 there were numerous fires reported in the vicinity of Spring Garden Road and South Street, which resulted in a strain on the resources of the police and fire services. Officers were called to assist from outlying areas, including Cst. Smith and Cst. Guzzwell. Sgt. Burton was in charge of the area in which the fires occurred.

[41] The first fire Sgt. Burton became aware of was in the back of the Fid restaurant at 1569 Dresden Row. Additional fires were reported at 1341 Dresden Row, 1256 Queen Street, 1136 South Park Street, 5653 Fenwick Street and 5661 Victoria Road. Photographs placed in evidence illustrated the severity of the fires and the damage they caused. Sergeant Burton described intense radio traffic that night and observed that the scene contained numerous police cars and fire trucks, resulting in a chaotic situation.

[42] Sergeant Burton testified that his thoughts turned to Carole Jarrett as a potential suspect that night. He recalled hearing over the radio that Ms. Jarrett was being viewed as a suspect. He was aware that the initial fire was in the vicinity of Spring Garden Road and that the other fires reflected a south-moving pattern. He testified that in his view the fires appeared to be moving closer to Ms. Jarrett's residence.

[43] Sergeant Burton said he received a call from an officer reporting that a taxi driver had told him that a woman was seen heading for Church Street. At this point, Sgt. Burton instructed officers to attend Ms. Jarrett's residence on Church Street in the hope of intercepting her as she returned from setting the fires.

[44] Constable Smith testified that she went to Ms. Jarrett's apartment building and parked on Church Street, a few houses down from, and on the opposite side of

the street from Ms. Jarrett's apartment. She recalled Cst. Nauss driving up Church Street past her. Constable Guzzwell testified he was on foot, having parked his patrol vehicle on Morris or Queen Street. He positioned himself in the alleyway across from Ms. Jarrett's apartment, where she had been observed by Cst. Bruce in November. He had only been in that location for a few minutes when he observed Cst. Smith and Cst. Nauss on Church Street, where he joined them.

[45] Constables Guzzwell and Smith decided to go into Ms. Jarrett's apartment building to see if she was there.

[46] Constable Fong was also in the vicinity. He told Cst. Smith that he would go around the back of Ms. Jarrett's apartment building to look at the rear entrance. Both Cst. Smith and Cst. Guzzwell testified that neither they, nor Cst. Nauss, had been surveilling the back door of the building or had gone to the back prior to their entry into the building.

[47] Constables Smith and Guzzwell entered Ms. Jarrett's building with the assistance of the superintendent. They went to her apartment, listened for a time at the door and then knocked. At first there was no response, then they heard movement and Ms. Jarrett came to the door. Both Cst. Smith and Cst. Guzzwell testified that Ms. Jarrett did not appear to be surprised by their presence at her door at approximately 3:00 am. They were invited into the apartment. Constable Guzzwell testified that Ms. Jarrett appeared groggy when she first answered the door, but this very quickly wore off.

[48] Both Cst. Smith and Cst. Guzzwell testified that they could see into Ms. Jarrett's bedroom, and they noticed that her bed was lightly disturbed, which appeared to be inconsistent with her having slept there for over an hour and a half.

[49] Constable Smith described Ms. Jarrett as being co-operative. Ms. Jarrett answered questions put to her. Constable Guzzwell testified that he did not believe that he had reasonable grounds to arrest Ms. Jarrett at the time. Constable Smith testified that she was undecided. Before they finished speaking with Ms. Jarrett, however, Sgt. Burton radioed an order that she be arrested.

[50] Ms. Jarrett said it appeared to her that the arrest order from Sgt. Burton caught Cst. Smith and Cst. Guzzwell by surprise and caused "their jaws to drop".

In contrast, both officers testified that they had no concern about Sgt. Burton's order, as they had no reason to doubt that he had a fuller picture of both the nature and locations of the fires burning that night than they did. Constable Smith stated that she had total confidence in the order from Sgt. Burton and did not doubt its legality.

[51] Sergeant Burton recalled Cst. Smith informing him that it appeared that Ms. Jarrett could have been sleeping. Sergeant Burton was clear in his testimony that whether or not Ms. Jarrett was in her apartment, or appeared to have been asleep, would not affect his view that reasonable grounds existed to arrest her. He stated that when he ordered her arrest he knew that Ms. Jarrett was the prime suspect for numerous south end fires, that her *modus operandi* was to gather debris behind buildings and set them on fire, and that she had mental health issues such that she might not remember having lit the fires. He also considered that the locations of the fires were close to her residence, that they were debris/garbage fires lit close to buildings, and that he had heard over the radio that a report had come in of a woman spotted running towards Church Street.

[52] Sergeant Burton testified that the fact that Ms. Jarrett was found in her apartment was not exculpatory, and was not inconsistent with her having lit the fires between 1:30 and 3:00 am, the latter time being when officers first confirmed her presence in her apartment.

[53] Constable Guzzwell arrested Ms. Jarrett. Constable Smith escorted her to the police vehicle and Cst. Guzzwell knocked on the doors of adjacent apartments, intending to determine whether anyone might have heard Ms. Jarrett's departure or return. No one answered.

[54] Sergeant Burton testified that in his view it would have been negligent not to arrest Ms. Jarrett in the circumstances. As shift supervisor he had a responsibility to protect the citizens of HRM. He said Ms. Jarrett was the prime suspect based on the facts before him that evening, there were reasonable grounds to arrest her, and ignoring these grounds would have been negligent on the part of the police given the great danger posed to the public by the fires.

[55] Ms. Jarrett testified on her own behalf regarding the events of the night of December 18, 2001. She stated that on the night of December 17 - 18, she

watched *Titanic* on TV and made Christmas cookies. She took medication at about 10:00 pm, did her nails and went to bed at around 1:30 a.m. She said she awoke to Cst. Smith and Cst. Guzzwell knocking on her door at a little after 3:00 a.m.

[56] According to Ms. Jarrett, the police officers came into her apartment and advised her that they were investigating fires in downtown Halifax and wanted to know where she had been and what she had been doing. She said she told them she had baked cookies, done her nails and went to bed at 1:30 a.m. She testified that Cst. Smith went on the police radio and said something to the effect, “we’re with her now, doesn’t appear to be who we are looking for”. Ms. Jarrett then stated that there was a brief pause and the radio came back on with a voice saying “arrest her”. Ms. Jarrett said she was removed from her building through a back entrance to the parking lot. Constable Smith denies that Ms. Jarrett was taken out the back entrance.

[57] Ms. Jarrett was questioned at the police station but was not charged.

Analysis

Tort 3 - Negligent Investigation

[58] With respect to this allegation, the question is whether Ms. Jarrett has established negligent investigation against Sgt. Burton, Cst. Smith and Cst. Guzzwell in connection with her arrest and detention on December 18, 2001.

[59] The law of negligent investigation has been set out earlier. The comments of McLachlin, C.J. at para. 73 of *Hill, supra*, bear repeating:

73 I conclude that the appropriate standard of care is the overarching standard of a reasonable police officer in similar circumstances. This standard should be applied in a manner that gives due recognition to the discretion inherent in police investigation. Like other professionals, police officers are entitled to exercise their discretion as they see fit, provided that they stay within the bounds of reasonableness. The standard of care is not breached because a police officer exercises his or her discretion in a manner other than that deemed optimal by the reviewing court. A number of choices may be open to a police officer investigating a crime, all of which may fall within the range of reasonableness. So long as discretion is exercised within this range, the standard of care is not

breached. The standard is not perfection, or even the optimum, judged from the vantage of hindsight. It is that of a reasonable officer, judged in the circumstances prevailing at the time the decision was made - circumstances that may include urgency and deficiencies of information. The law of negligence does not require perfection of professionals; nor does it guarantee desired results...Rather, it accepts that police officers, like other professionals, may make minor errors or errors in judgment which cause unfortunate results, without breaching the standard of care. The law distinguishes between unreasonable mistakes breaching the standard of care and mere "errors in judgment" which any reasonable professional might have made and therefore, which do not breach the standard of care (*Lapointe v. Hôpital Le Gardeur*, [1992] 1 S.C.R. 351; *Folland v. Reardon* (2005), 74 O.R. (3d) 688 (C.A.); [Lewis N. Klar, *Tort Law*, 3d edn., Toronto: Thomson Carswell, 2003] at p. 359.)

[60] Sergeant Burton and the other officers involved in the investigation of the December 17/18, 2001 fires faced a dangerous and fast-moving series of events. The standard of care is that of a reasonable police officer, in the circumstances prevailing at the time the decision was made, and may take into account urgency and deficiencies of information. The defendants submit that there is no evidence before me that would show a breach of that standard on the part of Sgt. Burton or Cst. Guzzwell or Cst. Smith. Further, in situations where an arresting officer does not necessarily have reasonable grounds to arrest, but is instructed to arrest by another officer, they submit that the arresting officer may rely on the good faith of the ordering officer. The ordering officer's reasonable grounds thus becomes relevant to the inquiry into the lawfulness of the arrest. Here, the question is whether Cst. Smith and Cst. Guzzwell could rely on Sgt. Burton's reasonable and probable grounds for arrest, and whether Sgt. Burton had reasonable and probable grounds.

[61] Ms. Jarrett's position is two-fold. She argues that (1) Cst. Smith and Cst. Guzzwell lacked subjective and objective beliefs in reasonable and probable grounds, thus establishing negligent investigation; and (2) that Sgt. Burton did not have reasonable and probable grounds to order the arrest, having ignored the opinions of Cst. Guzzwell and Cst. Smith.

[62] I will review Ms. Jarrett's allegations under these headings.

i. Constables Smith and Guzzwell lacked subjective and objective beliefs in the grounds for arrest, forming the basis of negligent investigation.

[63] The question to be determined is whether Ms. Jarrett has met her evidentiary burden of establishing negligent investigation against Sgt. Burton, Cst. Smith and Cst. Guzzwell, with respect to her arrest and detention on December 18, 2001.

[64] I am satisfied that without the decision to arrest from Sgt. Burton, neither constable had sufficient grounds to make the arrest. Constable Smith testified on cross-examination:

“Q. And let me just understand. When you arrived at her door, before she answered the door did you have reasonable grounds to arrest Ms. Jarrett for something that had occurred? Before she answered the door did you have reasonable rounds [sic]?”

A. Based on my knowledge, no.

Q. Based on your knowledge. Well, your knowledge at the door ... before she opens the door, you did not ... you’ll agree, you did not have reasonable grounds to arrest her?

A. I did not, no.”

[65] Constable Guzzwell testified as follows on cross-examination:

“Q. Now if were to remove the conversation with Sergeant Burton, would you say that you would have had reasonable and probable grounds to arrest Ms Jarrett at that point?

A. Without Sergeant Burton, no, absolutely not.”

[66] Constable Guzzwell went on to comment in his testimony that “I wasn’t there yet”.

[67] Ms. Jarrett submits that Cst. Smith and Cst. Guzzwell lacked subjective or objective grounds for arrest, and therefore they conducted a negligent investigation.

[68] The defendants say that the constables were able to rely on Sgt. Burton, who ordered the search and arrest, and to assume that he had reasonable and probable

grounds to issue the order. The defendants rely on *R. v. Hong*, 2013 ABPC 88, 2013 CarswellAlta. 790 (Prov. Ct.), where the court stated that an officer who stopped and arrested an accused was entitled to rely on the good faith of the sergeant who ordered the search and arrest, and was entitled to assume that the sergeant issuing the order had reasonable grounds to order the arrest. According to the defendants, Cst. Smith and Cst. Guzzwell stood on the specific instruction of Sgt. Burton as their superior officer that evening.

[69] The defendants also rely on *R. v. Debot*, [1989] 2 S.C.R. 1140, where Justice Wilson explained, in the context of an allegedly unreasonable search:

49 The Court of Appeal further suggested, at p. 221, that Constable Birs could also have relied on the order from his superior officer, Sergeant Briscoe, to stop and search the appellant. In my opinion, Constable Birs must rely on Sergeant Briscoe's order. Since the decision to stop and search the appellant was made by Sergeant Briscoe and not by Constable Birs, it is immaterial, in my view, what knowledge Constable Birs had when executing Sergeant Briscoe's request. Constable Birs was simply following orders; he had no decision to make upon which to bring his own knowledge and belief to bear. It would have made no difference had he known nothing about the case and had merely been on patrol in the area at the opportune time.

50 The police officer who must have reasonable and probable grounds for believing a suspect is in possession of a controlled drug is the one who decides that the suspect should be searched. That officer may or may not perform the actual search. If another officer conducts the search, he or she is entitled to assume that the officer who ordered the search had reasonable and probable grounds for doing so. Of course, this does not prove that reasonable grounds actually existed. It does make clear, however, that the pertinent question is whether Sergeant Briscoe and not Constable Birs had reasonable and probable grounds. Regrettably and inexplicably, Sergeant Briscoe did not testify at the appellant's trial. The record only indicates what he was told by others who did testify. We are left in the unsatisfactory position of having to construct the grounds on which Sergeant Briscoe made his decision from the testimony of those who supplied him with the relevant information.

[70] Further, *Debot, supra*, is referred to in *R. v. Chervinski*, 2013 ABQB 29, where the court applied its reasoning in the context of arrest:

21 The Crown maintains that if Constable Fassnidge reasonably decided to arrest the appellant and directed Constable Webster to do so, Constable Webster

can assume the direction to be based on reasonable grounds and make the arrest whether or not he has reasonable grounds for doing so, analogizing from *R. v Debot* (1989) 52 CCC (3d) 193 SCC, at para 50:

The police officer who must have reasonable and probable grounds for believing a suspect is in possession of a controlled drug is the one who decides that the subject should be searched. The officer may or may not perform the actual search. If another officer conducts the search he or she is entitled to assume that the officer who ordered the search had reasonable and probable grounds to do so.

22 I accept the analogy as applicable to arrest. I have accepted that Constable Fassnidge had reasonable grounds for arrest. I accept that his statement to his partner that "we better arrest her" is direction enough to Constable Webster.

[71] Ms. Jarrett has not provided any substantial case law to the contrary. I am satisfied that if Sgt. Burton had reasonable and probable grounds to make an arrest, then the order given to Cst. Guzzwell and Cst. Smith to arrest would be lawful. Whether or not Ms. Jarrett has established an illegal arrest by Sgt. Burton and Cst. Smith and Cst. Guzzwell, will be discussed under Tort 4.

[72] The negligent investigation allegation brought forth by Ms. Jarrett appears to rest on certain alleged omissions in the investigation raised by her counsel on cross-examination. Constables Smith and Guzzwell were asked in cross-examination whether someone should have returned to Ms. Jarrett's apartment building the following day to check the adjoining apartments. The defendants suggest, and I agree, that evidence that she was not heard leaving after 1:30 in the morning would not help her, as one could assume that if she left to engage in criminal activity she would leave quietly and return quietly. If she was heard, on the other hand, this would tend to incriminate her.

[73] Ms. Jarrett had told the officers that she was baking cookies during the evening of December 17, 2001. Constables Smith and Guzzwell were questioned as to whether they should have checked her garbage or her freezer for evidence that she was baking. The defendant submits, and I agree, that this is not of assistance to Ms. Jarrett because baking residue or cookies, if found, would only establish that at some point she had made cookies. Likewise she indicated that she had done her nails that evening and put the nail material in the basket and the

officers should have checked for that. Again, all this would establish is that at some point she had done her nails.

[74] It was also suggested to these officers in cross-examination that they should have checked her clothing or footwear to see if the clothing was wet from the elements. However, it was the evidence of Cst. Smith, confirmed by Ms. Jarrett, that it was not raining or snowing that evening.

[75] I am satisfied that none of the alleged omissions in the investigation point to a negligent investigation. In fact, I am satisfied that the nature of the investigation and the actions of the police officers on that night are justifiable and understandable, and that they point to no other conclusion than that sensible police work was done in the circumstances. It must be remembered that Sgt. Burton was faced with a chaotic situation that evening. Several fires had been lit and caused serious damage. At the same time, Halifax Regional Police and Halifax Regional Fire and Emergency resources were stretched to the limit. It was in this context that Sgt. Burton made his decision to arrest Ms. Jarrett.

[76] Two decisions are relevant to the issue of the circumstances that faced Sgt. Burton that evening. In *R. v. Clayton*, 2007 SCC 32, Abella J., for the majority, discussed what constitutes reasonable grounds where an arrest is made contemporaneously with events:

30 The justification for a police officer's decision to detain, as developed in *Dedman* and most recently interpreted in *Mann*, will depend on the "totality of the circumstances" underlying the officer's suspicion that the detention of a particular individual is "reasonably necessary". If, for example, the police have particulars about the individuals said to be endangering the public, their right to further detain will flow accordingly. As explained in *Mann*, searches will only be permitted where the officer believes on reasonable grounds that his or her safety, or that of others, is at risk.

...

32 In my view, both the initial and the continuing detentions of Clayton and Farmer's car were justified based on the information the police had, the nature of the offence, and the timing and location of the detention.

[77] Further, in *R. v. Golub*, (1997), 117 C.C.C. (3d) 193, [1997] O.J. No. 3097 (Ont. C.A.), Doherty J.A. said, for the court:

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

[78] On the basis of this reasoning, I dismiss the allegation of negligent investigation against Sgt. Burton, Cst. Smith and Cst. Guzzwell.

[79] The next claim arising out of these circumstances is the allegation of illegal arrest in Tort 4. Ms. Jarrett alleges that Sgt. Burton did not have reasonable grounds to arrest her. This allegation is summarized as follows:

ii. That Sgt. Burton did not have reasonable grounds to arrest Ms. Jarrett, on the basis that Sgt. Burton ignored the opinions of Cst. Guzzwell and Cst. Smith and thereby failed to conduct a thorough investigation.

Tort 4 - Illegal Arrest

[80] This allegation is of an illegal arrest by Sgt. Burton and Cst. Smith and Cst. Guzzwell on December 18, 2001.

[81] Whether or not an arrest in any given circumstances is based on reasonable and probable grounds, subjectively and objectively, will obviously depend on the facts. In *Zareian v. Durham Regional Police Services Board*, 2006 CarswellOnt 1932 (Ont. Sup. Ct. J.), a case alleging false imprisonment and malicious prosecution, the court referred to *R. v. Storrey*, [1990] 1 S.C.R. 241, a case dealing with the issue of false arrest:

35 In *R. v. Storrey*, [1990] 1 S.C.R. 241 at page 250, the test to determine whether an arrest or imprisonment is false is as follows:

In an action for false arrest or imprisonment, a police officer can prove justification by demonstrating that he/she had reasonable and probable grounds to believe that the plaintiff had committed an offence. The test to determine whether

there was reasonable and probable cause is both objective and subjective; there must be both actual belief on the part of the police officer, and that belief must be reasonable in the circumstances. That is to say, a reasonable person placed in the position of the police officer, must be able to conclude that there were indeed reasonable and probable grounds for the arrest.

[82] Further, the court stated at para. 43:

43 There is no obligation on a police officer to weigh and determine the validity of various versions of events and render judgment before arresting or charging an accused. See *Wiles v. Ontario (Police Complaints Commissioner)*, [1997], O.J. No. 6274 (Ont. Div. Ct.).

[83] The law governing the requirements for a warrantless arrest is set out in s. 495(1)(a) of the *Criminal Code*, R.S.C. 1985, c. C-46:

495.(1) a peace officer may arrest without warrant

(a) a person who has committed an indictable offence or who, on reasonable grounds, he believes has committed or is about to commit an indictable offence;

[84] In *R. v. Ing*, 2013 ONCJ 46, in assessing whether an arresting officer had reasonable grounds for an arrest under the Ontario *Liquor License Act*, the court made the following comments:

48 The words, reasonable grounds, are not some magical incantation, or formula, which must be articulated precisely by an officer.

49 Reasonable grounds does not amount to proof beyond a reasonable doubt, or proof on a balance of probabilities, nor is it even the equivalent of a *prima facie* case. Rather, it is where credibly based probability replaces suspicion. It must be more than a guess or a hunch, however.

50 In dealing with probabilities relating to human behaviour, trained officers are entitled to draw inferences, and make deductions drawing on experience.

51 Reasonable grounds is, therefore, not an onerous threshold. However, it must not be inflated to the context of testing trial evidence, nor must it be so diluted, however, as to threaten individual freedom.

52 All too often, however, the Court is invited to engage in minute decisions about an officers' opinion which was developed on the spot, without the luxury of judicial reflection.

53 The existence of reasonable grounds, should not devolve to a simple mathematical exercise of comparing factors supporting the decision versus those pointing in the opposite direction.

54 Therefore, the analysis of the issue of intoxication should not involve the equivalent of a "scorecard", noting which indicia are present and which are absent. In other words, the absence of some factors does not necessarily undermine a determination of reasonable grounds based on the observed indicia, and available information.

55 It is a highly fact-specific exercise to be assessed on its own circumstances.

56 The Court is entitled to take a common sense approach.

57 It is important to note that it is not whether the officer's beliefs or observations were completely accurate, but whether they were reasonable at the time, in the circumstances. Furthermore, the issue is not whether the officer could have conducted a more thorough investigation, but whether he was entitled to draw the inferences and make deductions drawing on his experience and training the way he did.

[85] Ms. Jarrett submits that while Sgt. Burton may have believed that he had reasonable and probable grounds, his grounds would not be sufficient for a reasonable person to ground an arrest. With respect, I am not so persuaded.

[86] Sergeant Burton testified as outlined earlier that his thoughts turned to Carole Jarrett as a potential suspect that night. He recalled hearing over the radio that she was being viewed as a suspect, and he was aware that the initial fire was in the vicinity of Spring Garden Road, and the other fires appeared to move in a southerly direction, apparently towards Ms. Jarrett's residence. He received a call from an officer reporting that a taxi driver had told him that a woman was seen heading for Church Street. Sergeant Burton testified that at the time he ordered her arrest, he knew that Ms. Jarrett was the prime suspect in numerous south end fires, and that her *modus operandi* was to gather debris behind a building and set it on fire. This resembled the patterns being seen that night. He was also aware she had mental health issues such that she might not remember having lit the fires. I

am satisfied that this collection of circumstances gave him reasonable and probable grounds to arrest.

[87] Ms. Jarrett argues that Sgt. Burton's understanding of her *modus operandi* is over-simplified, and that on cross-examination he admitted that at the time he ordered the arrest of Ms. Jarrett he only knew the nature of one of her previous convictions. She points out that in his testimony Sgt. Burton indicated he would have ordered the arrest regardless of what explanation or alibi she might have had:

Q. In other words, if she had told Sarah Smith... that she went to bed [01:30] you said it didn't matter because she's the type of person that could set fires, go home and go to sleep.

A. I'm not saying that she went to bed at [01:30].

Q. I know you're not. But you're saying it wouldn't matter to you if she did because in your mind, based...

A. Right.

Q. ...upon what you knew of her she could have set fires and gone home.

A. I don't think it's that. I think it's more... it didn't matter in my mind what she said. It didn't matter in my mind what she said she did.

[88] With respect, Sgt. Burton clearly set out his reasonable and probable grounds for giving the order to arrest. I interpret this testimony to the effect that whether or not she denied setting the fires did not affect his determination of reasonable and probable grounds to arrest. I accept his testimony.

[89] I am satisfied that there were reasonable and probable grounds for Sgt. Burton to order the arrest of Ms. Jarrett. The evidence does not support a finding of illegal arrest against him or against Cst. Smith and Cst. Guzzwell and Sgt. Burton.

[90] First, Sgt. Burton was faced with an extremely dangerous and fast-moving string of fires. His motivation throughout was to stop the fires and protect the public. The standard of care as set out in *Hill, supra*, is that of a reasonable police officer in the circumstances prevailing at the time. These circumstances may

include urgency and deficient information. I am satisfied that there was no evidence that would show a breach of the necessary standard of care on the part of any of the officers, nor is there any evidence to support any errors in judgment. I am satisfied that the decision to arrest Ms. Jarrett was lawful under the circumstances.

[91] Accordingly, I dismiss Ms. Jarrett's claim of illegal arrest against Sgt. Burton and Cst. Smith and Cst. Guzzwell.

Tort #5 - Malicious prosecution by Cst. Tom Shannon and Cst. Charles Naugle for giving misleading evidence at the show cause hearing on May 26, 2002

[92] The basis of this claim is set out in paras. 14 - 16 of the amended statement of claim:

14. On or about the 10th day of April, 2002 the Plaintiff was again arrested at her residence by Halifax Regional Police Services, by Naugle and Shannon ("the second arrest"). The Plaintiff was then interviewed by Naugle and Shannon and other Halifax Regional Police officers concerning fires that had occurred during the months of March and April 2002. The interview occurred over the course of approximately 14 hours. During the interview, the Plaintiff unequivocally and repeatedly denied setting fires which the police were investigating.

15. On or about the 26th day of May, 2002, a "show cause", or bail hearing was held at the Halifax Provincial Court House for the purposes of determining whether, according to Part XVI of the **Criminal Code of Canada**, the Plaintiff should be incarcerated pending the trial of the charges referred to in the previous paragraph. Both Shannon and Naugle gave sworn evidence at the hearing which misrepresented the videotaped interview of the Plaintiff which occurred on or about April 10th.

16. The Plaintiff states that Shannon and Naugle are responsible for the malicious prosecution of the Plaintiff as a result of the facts set out above in paragraphs 14 and 15.

[93] Ms. Jarrett was arrested by Cst. Naugle and Cst. Shannon on April 10, 2002. A show cause hearing was held on May 26, 2002 to determine whether Ms. Jarrett should be incarcerated pending a trial of the charges in respect of the April 10, 2002 arrest.

Evidence

[94] Constable Naugle headed up “Operation Meltdown”, which was set up to investigate the fires being set in south end Halifax between January and April 2002. Constable Shannon was assigned to assist Cst. Naugle. Constable Naugle testified that they essentially shared the duties of lead investigator. There were two surveillance teams. Constable Brian Johnston was on one of those teams, with Cst. Paul Trider. Sergeant John Morley was in charge of another.

[95] All of the fires reported were exterior fires, typically started in a garbage bin, and in a few cases spreading to structures. The surveillance teams set-up on Ms. Jarrett. Constable Naugle testified that he gained a large amount of knowledge about Carole Jarrett during his time as lead investigator for “Operation Meltdown”. He was aware of her history of setting fires and of her previous convictions. He learned of her mental health history, as he had obtained a search warrant for her medical records from Capital Health and the Correctional Centre, and as well some out-of-Province records. He did not personally do surveillance but received reports from surveillance teams.

[96] Ms. Jarrett was arrested and charged with arson for a fire that occurred in the early morning of April 10, 2002 at 5489 Spring Garden Road. Ms. Jarrett contests the truth and accuracy of statements from witnesses Lisa Armstrong and Natasha Walsh. However, this is the information on which the police relied when they arrested her on April 10, 2002. Ms. Armstrong and Ms. Walsh alleged that Ms. Jarrett told them that she was going to set a fire that night. They saw her walk down Spring Garden Road to Birmingham Street, cross Birmingham, go into an alleyway behind the Sock-it-to-me store, make a motion as if throwing something in the debris and walk back past them. They mentioned that she later acknowledged to them that she had set the fire.

[97] Ms. Jarrett was then observed by “Operation Heat” officers returning to her apartment on Church Street. At some point later that night, Cst. Brian Johnston said that she entered his unmarked police vehicle and offered sexual services while dressed in a manner consistent with prostitution. He said she quickly exited the vehicle when she noticed the concealed emergency lights on the visor. Later she was located on the waterfront, apparently providing sexual services to an individual in his car. Later she was seen exiting that vehicle on Novalea Drive,

going behind an apartment building, coming out and taking a taxi back to the south end where she got out of the taxi and ran up a driveway.

[98] Constable Naugle testified that he believed the two eyewitnesses, Ms. Armstrong and Ms. Walsh. Constable Naugle described how the arrest of Ms. Jarrett took place. She did not offer any resistance to arrest. She was taken to the police station on Gottigen Street. (While Constable Naugle testified at this trial, Cst. Shannon was out of the county and was unavailable to testify.)

[99] A bail hearing was held before Judge Digby on May 26, 2002. Ms. Jarrett's allegation is that Cst. Shannon and Cst. Naugle gave misleading evidence at the show cause hearing. Constable Naugle testified as follows at p. 32 of the transcript:

...I specifically interviewed her in the morning prior to court. She did not deny lighting the fire on Spring Garden Road, 5489. She did not deny going behind Novalea Drive, nor did she deny dressing up as a streetwalker and hopping into Constable Johnston's car. She did tell me that she had no recollection whatsoever, and she must have blacked out during those time periods. We spent about two or three hours going over this, and her – as I said, no denials, but she just absolutely said she must have blacked out. She couldn't remember.

[100] In Cst. Shannon's direct examination the following exchange occurred at p. 104 of the transcript:

Q. Now, turn your attention to page 3 - - or page 13, Constable Shannon, and you make reference to a taped interview with Ms. Jarrett.

A. That's correct.

Q. And at the top of page 13, it appears that there may be a discussion - - with you and Ms. Jarrett about Novalea Drive, is that correct?

A. That's correct.

Q. And what, if anything, does she say with respect to that civic address?

A. She denies being there.

Q. And what date is that referring to?

A. April 10th, 2002.

[101] Further at p. 105:

Q. And was there any conversation with Ms. Jarrett during her interview with respect to Constable Johnston?

A. There was. The incident with Constable Johnston was brought up, and she totally denies any - - that she stated she didn't feel that was her.

[102] At pp. 114 - 115, during cross-examination, the following exchange took place in relation to an affidavit filed in an application to obtain a warrant:

Q. I'm on page 13, and I'm at the second full paragraph. Here's what you said:

"And further, that Jarrett, in this taped interview, denies getting into the unmarked police care with Officer Brian Johnson."

That should be be Johnston, shouldn't it, or is it Johnson?

A. No, I guess that's a spelling error, yes.

Q. "And claims she blacked out, and could not remember any of this incident in the vehicle with Office Brian..."

It should be Johnston. Now, isn't it actually the case that she said, "That wasn't me, and if it was me, then I must have blacked out"?

A. I'd have to review the transcript, but I'm not sure what distinction you're making here, sir.

Q. I'm sorry?

A. I'm not sure what question you're asking me.

Q. Well, I'm just asking you to clarify what you've sworn to under oath in this affidavit. My understanding is that she said, "That wasn't me, but if you're telling me for certain it was me, Officer Shannon, then I must have blacked out."

That's not what you've written here. I'm just wondering if that's what she told you.

A. I'm sorry, counsellor, could you...

Q. You don't understand?

A. No, I don't.

Q. You said unequivocally here...

A. Yes.

Q. ... that she claimed she blacked out.

A. Yes.

Q. That what you've said here.

A. Yes.

Q. My question is, didn't she instead tell you, "it wasn't me, and if you're telling me, Officer Shannon, that is definitely was, then it must have been during some type of blackout that I had."

A. I don't recall that. What I recall is what's right there.

[103] Ms. Jarrett testified while being interviewed:

A. I spilled my guts. I mean anything that I knew, I told them. I didn't try to hide anything. I didn't try to make myself look any better in any different light. I just, you know, I laid it all out as best as I could with what I knew. And I knew I didn't set the fire and I knew I wasn't a prostitute, and they didn't care no matter what I said.

[104] Ms. Jarrett testified that she denied lighting the fire to the officers, she denied going behind an apartment building on Novalea Drive and she denied dressing up as a prostitute and offering to perform a sexual act to a police officer. Ms. Jarrett stated that she denied the allegations "a hundred times" during the police interview.

[105] Was the testimony of Cst. Naugle and Cst. Shannon at the hearing on May 26, 2002 misleading such that it amounted to malicious prosecution?

[106] The elements of malicious prosecution are set out in *Nelles v. Ontario*, [1989] 2 S.C.R. 170. There are four necessary elements which must be proven for a plaintiff to succeed in a claim for malicious prosecution: a) the proceedings must have been initiated by the defendants; b) the proceedings must have terminated in favour of the plaintiff; c) the absence of reasonable and probable cause; and, d) malice, or a primary purpose other than that of carrying the law into effect.

[107] The basis of the allegation of malicious prosecution against Cst. Shannon and Cst. Naugle is contained in para. 15 of the amended statement of claim set out above, in which Ms. Jarrett states that the two officers misrepresented the content of the videotaped interview of her which occurred on April 10, 2002. The misrepresentation is alleged to have occurred on May 26, 2002 at the show cause hearing before Judge Digby. The essence of Ms. Jarrett's allegation is that Cst. Naugle testified that she did not deny the allegations put to her during the interview. As I have set out above, Ms. Jarrett testified that she denied the allegations "a hundred times".

[108] Ms. Jarrett asserts that the evidence given by Cst. Naugle and Cst. Shannon amounted to misleading the court about her statements to the police. She submits that, although Judge Digby did not specifically refer to the testimony of either officer in his decision, the alleged misrepresentations could have had a bearing on his decision. She submits that a judge presiding at a show cause hearing, who heard evidence of this nature from two police officers ("she didn't deny it; she didn't remember it") would not agree to release the defendant in these circumstances.

[109] Ms. Jarrett asserts that the show cause hearing was "an affront to the integrity of the justice system", and that there is sufficient evidence to prove malicious prosecution by these individuals.

[110] The defendants submit that the claims of malicious prosecution against Cst. Shannon and Cst. Naugle cannot succeed because:

- i. a thorough review of the interview transcripts, combined with the testimony of Cst. Naugle, leaves no doubt that the testimony of both Cst. Shannon and Cst. Naugle at the show cause hearing was in no way misleading;
- ii. there was no evidence of any malicious intent on the part of either officer; and
- iii. there is a total lack of evidence which would causally link the alleged tortious conduct to Judge Digby's decision to remand Ms. Jarrett.

[111] The testimony at the show cause hearing referred to an April 10, 2002 interview of Ms. Jarrett, of which a transcript was made an exhibit at the hearing. At the hearing of this matter, counsel for the defendant reviewed the transcript in considerable detail with Cst. Naugle. Constable Naugle was not there for the entire interview of Ms. Jarrett. Constable Shannon started the interview at 7:17 a.m.; Cst. Naugle testified that he was initially back and forth between offices coordinating other aspects of the investigation. Constable Rob Lowther also interviewed Ms. Jarrett on the evening of April 10, but at that time Cst. Naugle was at home. The interview by Cst. Lowther continued just after midnight. Constable Naugle's involvement in the interview resumed at 6:30 a.m. on April 11 after Ms. Jarrett had been interviewed by Cst. Jeff Carlisle between 5:00 and 6:30 a.m. There was no interview between 12:00 a.m. and 5:00 a.m.

[112] At this trial Cst. Naugle testified that his overall view of the interview was that Ms. Jarrett did not deny being present at Novalea Drive, propositioning Brian Johnston or lighting the Spring Garden Road fire, only that she did not remember these things. In direct examination Cst. Naugle was asked, after having the benefit of reviewing a transcribed interview with Ms. Jarrett, (which was not available at the show cause hearing) whether he believed that he misrepresented the interview. Constable Naugle replied that he did not, and that his testimony at the show cause hearing accurately described the outcome of his interview with Ms. Jarrett.

[113] I am satisfied from a review of the transcript of the interview, and particularly the portions involving Cst. Naugle and Cst. Shannon, combined with the testimony of Cst. Naugle before this court, that the testimony at the show cause

hearing was not misleading and that it accurately reflected the interview on April 10, 2002.

[114] Furthermore, the defendant submits that Ms. Jarrett has led no evidence which would meet the high threshold of the element of malice required by *Nelles, supra*. In *Proulx v. Quebec (Attorney General)*, 2001 SCC 66, this element of the tort was explained by Iacobucci and Binnie JJ., for the majority, at para. 35:

[A]...suit for malicious prosecution must be based on more than recklessness or gross negligence. Rather, it requires evidence that reveals a willful and intentional effort on the Crown's part to abuse or distort its proper role within the criminal justice system... The key to a malicious prosecution is malice, but the concept of malice in this context includes prosecutorial conduct that is fueled by an "improper purpose" or, in the words of Lamer J. in *Nelles, supra*, a purpose "inconsistent with the status of 'minister of justice'..."

[115] I am not satisfied that Ms. Jarrett has met her onus of proving malicious prosecution and, in particular, of establishing malicious intent on the part of either Cst. Shannon or Cst. Naugle. Based on the evidence before me, I see no basis to find malice.

[116] Moreover, the defendant submits there is a total lack of evidence which would causally link the alleged tortious conduct to Judge Digby's decision to remand Ms. Jarrett. Judge Digby made no reference in his decision to Ms. Jarrett's statement to police, nor to Cst. Naugle and Cst. Shannon's testimony. On cross-examination in this proceeding Ms. Jarrett was unable to point to any evidence of a causal relationship between Cst. Naugle's alleged misrepresentation and Judge Digby's decision to not release her from custody.

[117] I am satisfied that Ms. Jarrett has not met her onus of proving the claim against Cst. Shannon and Cst. Naugle based on malicious prosecution. I am satisfied a thorough review of the transcripts, combined with the testimony of Cst. Naugle, persuades me that the testimony of both Cst. Shannon and Cst. Naugle at the show cause hearing was not misleading. I find no evidence of malice.

[118] I would dismiss the claim of Ms. Jarrett of malicious prosecution for the foregoing reasons.

Tort #6 - Unlawful arrest/false imprisonment by Cst. Bruce for the December 20, 2002 arrest of Ms. Jarrett

[119] This claim is set out at para. 18 of the amended statement of claim:

18. The Plaintiff states that Bruce did not have reasonable and probable grounds to arrest her on December 20, 2002, and therefore made an unlawful arrest of the Plaintiff. The Plaintiff states that her subsequent detention constitutes false imprisonment to and including the date of her acquittal (September 24, 2003). The Plaintiff states that the investigation by Bruce leading to the arrest of the Plaintiff and her continued detention was negligent.

[120] The elements of the tort of unlawful arrest were set out earlier.

[121] In *Legal Aspects of Policing* (Earlscourt Press Inc: Saltspring Island, B.C. 2011), at pp. 3/118 - 119, the author states that in a civil prosecution, the burden of proof ultimately shifts to the defendant to establish the reasonableness of the arrest:

The following principles apply to proving the torts of false arrest and false imprisonment against the police:

A plaintiff must prove deprivation of liberty: false imprisonment ('intentional and total confinement of a person against his or her will') or false arrest; proof of unlawfulness or malice is not required.

A plaintiff must establish that the police officer was the direct cause of the imprisonment or arrest.

If the plaintiff establishes §§ 1 - 2, the onus shifts to the other defendant police officer to prove legal authority or some other justification.

Mens Rea is not an element of false imprisonment: "[f]alse imprisonment is an intentional tort which requires only that the police intended the actions which gave rise to the tort."

[122] Ms. Jarrett's evidence established a deprivation of her liberty as a result of the actions of Cst. Bruce. Therefore the onus shifts to the defendant, Cst. Bruce, to prove the reasonableness of the arrest.

[123] Ms. Jarrett implicated Mr. Bamford who was arrested and interviewed by the police for the December 18, 2001 fires. Constable Bruce testified that even with the confession of Mr. Bamford, he remained convinced that Ms. Jarrett was in some way involved, and proceeded to further question Mr. Bamford about Ms. Jarrett's involvement. Constable Bruce testified that Mr. Bamford's story changed over time. He acknowledged in cross-examination that he knew Mr. Bamford was a drug user at the time. He made the following comments on cross-examination:

Q. Did that cause you any concern about Bamford's change of story?

A. My dealings with Bamford in its entirety, regardless as to what aspect in the investigation, it was always scary, it was always shaky and because of his demeanour, because of who he is as an individual, because of his lifestyle, decisions he makes with drug usage and things of that nature. He's quoted many times himself, as you know, blacking out references and things of that nature, and so it was always difficult. He was never, in my humble opinion, he was never a... I don't know, deemed the greatest witness, if you will. And I held that throughout its entirety, and that was problematic at times.

[124] Constable Bruce agreed that Mr. Bamford's reliability as a witness was questionable, but he ultimately arrested Ms. Jarrett and charged her with lighting the fires in question. Ms. Jarrett states that the rationale for the arrest was Cst. Bruce's personal belief in her guilt, rather than any reliable evidence connecting her with the crimes. She argues that a reasonable person, or in this case a reasonable police officer in the position of Cst. Bruce, would not have believed that there were reasonable grounds to make the arrest. She says there was no evidence linking her to the fires, apart from the statement from Mr. Bamford, and argues that Cst. Bruce gave too much weight to this statement, considering his level of intoxication due to drugs. She submits that a reasonable police officer would not have taken Mr. Bamford at his word, but would have sought additional information implicating her before making the arrest.

[125] With respect, Cst. Bruce interviewed a number of persons who chronicled the slowly changing position of Mr. Bamford as to Ms. Jarrett's involvement in

the fires. I am satisfied there is ample evidence to support a finding that Cst. Bruce had reasonable and probable grounds to arrest Ms. Jarrett on December 20, 2001.

[126] Ms. Jarrett testified that she implicated Mr. Bamford on December 18, 2001 when she voluntarily attended at the police station. Mr. Bamford was later arrested and charged with the fires and confessed to his involvement. After his arrest, Mr. Bamford's story began to change. He originally indicated that he was the sole perpetrator of the fires.

[127] Constable Bruce testified that he interviewed a number of persons before he arrested Ms. Jarrett. On December 27, 2001 he interviewed a friend of Mr. Bamford by the name of Dana Buster. Mr. Buster related a discussion that he had with Mr. Bamford on the morning of the fires, in which Mr. Bamford told him that he was responsible for setting one garbage can on fire.

[128] On January 2, 2002 Cst. Bruce had a further interview with Mr. Bamford at which time Mr. Bamford stated that he was "50% sure" that Ms. Jarrett had been with him.

[129] Constable Bruce also interviewed Monica MacKinnon, an outreach worker, on January 4, 2002. Her statement is in evidence. She said she had several discussions with Mr. Bamford regarding the fires, and it appears that he initially claimed to have been fully responsible for the fires and denied any involvement by Carole Jarrett. According to Ms. MacKinnon he was confused, but ultimately said he did not know if she was there.

[130] Constable Bruce spoke with another outreach worker, Dorothy Patterson and took a statement from her on January 4, 2002. According to Ms. Patterson's statement, Mr. Bamford initially told her the following:

Jan. 4 - In my conversation today, he said Dorothy what I know is I was responsible for one fire; something to do with garbage and I don't remember where. Then he said, if you were in my position what would you do if you knew that Carol [sic] would or could commit suicide if she was charged, and it was because your statement. Morally, Chris stated I couldn't live with myself. He then said to me, she might have been there. So, I said what you're saying to me today, you know 1 fire was done by you for sure, and maybe Carol [sic] was there.

[131] Constable Bruce also took a statement from Michael Shannon, the taxi driver who called in the first Dresden Row fire and who reported seeing two people quickly walking away from the fire. He said one of the individuals was about 5' 8" and 140 pounds. The defendant says that this is consistent with Ms. Jarrett's height and weight.

[132] Mr. Bamford was reinterviewed by Cst. Naugle on April 9, 2002 and stated that at the time he and Ms. Jarrett had a "pact" that they would not be good witnesses against each other. On December 6, 2002 Mr. Bamford gave a "KGB Statement" to Cst. Bruce, Sgt. Michael Sullivan and Cst. Stephanie Venoit, in which he confirmed Ms. Jarrett's involvement. Although Mr. Bamford had "changed his story", Cst. Bruce had interviewed a number of Mr. Bamford's contacts, who confirmed the progression of his changing story, as well as the possible reason for his initial confession, apparently to protect Ms. Jarrett. It would appear that Mr. Bamford did not want to implicate Ms. Jarrett for various reasons, including her mental state and the fact that she may lose her children.

[133] I am satisfied that based on his investigation, Cst. Bruce had reasonable and probable grounds to arrest Ms. Jarrett. I am satisfied that Cst. Bruce would have been negligent if he failed to follow-up on the possible involvement of Ms. Jarrett in these fires. Mr. Bamford's belief in her involvement is chronicled above, and, in particular, shows the transition from denying her involvement to implicating her. While Cst. Bruce testified that he had concerns regarding the evidence of Mr. Bamford, it should be noted that the Crown decided to pursue the charges after having reviewed all of the evidence, and after having met on two occasions with Mr. Bamford. This belies the plaintiff's allegation that the decision to charge Ms. Jarrett rested on Cst. Bruce's belief in her guilt.

[134] Accordingly, I would dismiss the claim of unlawful arrest/false imprisonment by Cst. Bruce for the December 20, 2002 arrest of Ms. Jarrett in relation to the December 18, 2001 fires.

Tort #7 - Negligent investigation by Charles Bruce leading to the plaintiff's arrest on December 20, 2002

[135] This allegation is also set out in para. 18 of the amended statement of claim. Ms. Jarrett's claim is that the investigation by Cst. Bruce leading to her arrest on December 20, 2002 was negligent. Ms. Jarrett says a reasonable person would not conclude that there were reasonable and probable grounds for arrest. Ms. Jarrett argues that Cst. Bruce should have realized there were overwhelming flaws in the evidence of Mr. Bamford, and that he should have investigated further prior to her arrest. Moreover, she claims that neither Mr. Bamford's changing story nor her own previous history provided sufficient grounds for an arrest.

[136] Ms. Jarrett says Cst. Bruce produced no independent evidence of her involvement in the December 18 fires. With respect, Cst. Bruce did interview a number witnesses as part of the investigation. As noted earlier, Cst. Bruce interviewed Mr. Bamford's friend, Dana Buster, as well as Mr. Bamford, Ms. MacKinnon, and Ms. Patterson, the outreach workers. He also took a statement from Mr. Shannon, the taxi driver who called in the first Dresden Row fire. Constable Bruce also canvassed witnesses in the early aftermath of the fires, such as Martin MacCallum who lived on Tobin Street. Constable Bruce obtained a KGB Statement from Mr. Bamford on December 6, 2002 implicating Ms. Jarrett. With this background information Cst. Bruce decided to charge Ms. Jarrett.

[137] I am satisfied that Cst. Bruce's decision to charge Ms. Jarrett was reasonable based on the statements of Mr. Bamford and others, as well as the circumstances that he found during his investigation. Constable Bruce was exercising his discretion based on the evidence that he had gathered. I again refer the comments of McLachlin C.J.C. at para. 73 of *Hill, supra*:

73 I conclude that the appropriate standard of care is the overarching standard of a reasonable police officer in similar circumstances. This standard should be applied in a manner that gives due recognition to the discretion inherent in police investigation. **Like other professionals, police officers are entitled to exercise their discretion as they see fit,** provided that they stay within the bounds of reasonableness. **The standard of care is not breached because a police officer exercises his or her discretion in a manner other than that deemed optimal by the reviewing court. A number of choices may be open to a police officer investigating a crime, all of which may fall within the range of reasonableness. So long as discretion is exercised within this range, the standard of care is not breached. The standard is not perfection,** or even the optimum, judged from the vantage of hindsight. It is that of a reasonable officer,

judged in the circumstances prevailing at the time the decision was made -
circumstances that may include urgency and deficiencies of information...

[emphasis added]

[138] I am satisfied that a false arrest is a necessary element of a claim of negligent investigation. If the negligent investigation does not lead to an unlawful arrest there can be no successful claim, as there would be no damage arising from the departure from the standard of care. Once the arrest is deemed lawful, as I have found to be the case here, the negligent investigation claim fails.

[139] In any event, I am not satisfied that Ms. Jarrett has made out her claim of negligent investigation. The December 20, 2002 arrest was lawful as it was based on reasonable and probable grounds. For all of these reasons, I would dismiss Ms. Jarrett's claim of negligent investigation by Charles Bruce leading to her arrest on December 20, 2002.

Tort #8 - Malicious prosecution by Charles Bruce in respect of the December 18, 2001 fires

[140] This claim is set out at para. 19 of the amended statement of claim as follows:

19. The Plaintiff states that in charging the Plaintiff, the Defendant Bruce is responsible, in whole or in part, for the malicious prosecution of the Plaintiff and/or negligent investigation, particulars of which include but are not limited to the following:
- a) The Defendant Bruce ignored evidence concerning the whereabouts of the Plaintiff during the early morning hours of December 18, 2001;
 - b) The Defendant Bruce encouraged the chief crown witness at the trial of the Plaintiff concerning the November and December 2001 charges to state that the Plaintiff was involved in the fires when previously that witness indicated otherwise;
 - c) The Defendant Bruce misinterpreted and ignored evidence, notes and statements of other witnesses and police officers concerning the identity(ies) of those responsible for starting the set fires; and

- d) Such further and other examples as may appear.

[141] Ms. Jarrett in her direct evidence commented as follows as to the alleged malicious intent of Cst. Bruce:

- Q. How did... how did that occur? How were you charged in December of '02 with fires that had occurred 12 and 13 months earlier? What... what physically happened?
- A. I was being held at the jail in Burnside for another charge, and they brought me into the courthouse on Spring Garden Road to cells where Officer Bruce and one of the sheriffs came in to just outside of where my... where my cell was, and Officer Bruce read the charges off one by one, and in between each charge he would say, what's the matter, Carole, aren't you going to wish me a Merry Christmas?

[142] Ms. Jarrett says that Cst. Bruce's evidence that he never doubted her guilt should lead to an inference of malice on the part of Cst. Bruce. She also suggests that Cst. Bruce's malice is illustrated by the fact that his previous testimony made no reference to a person coming out of the building and trying to extinguish the fire.

[143] I agree with Ms. Jarrett that the evidence indicates that Cst. Bruce had made no mention in the criminal proceeding of a person with a container who was trying to put out the fire. Ms. Jarrett would submit that malice can be reasonably inferred from this failure. The defendant submits that no *prima facie* claim of malicious prosecution has been made, and argues that the plaintiff's opinion about the strength of the case, and her speculation about improper motives, do not provide the elements required to prove malicious prosecution.

[144] The background facts concerning the investigation of the December 18, 2002 fire are set out above under Tort 3. The elements that must be proved for Ms. Jarrett to succeed are set out in *Nelles, supra*: (a) the proceedings must have been initiated by the defendants; (b) the proceedings must have been terminated in favour of the plaintiff; (c) the absence of reasonable and probable cause; and (d) malice, or a primary purpose other than that of carrying the law into effect.

[145] With regards to para. 19b, I am not satisfied there is any evidence that Cst. Bruce encouraged the Crown to state that the plaintiff was involved in the fires.

[146] The evolution of Mr. Bamford's changing story was set out earlier. On cross-examination Ms. Jarrett agreed that this change in position took place after consultation with his defence counsel.

[147] In respect of the allegation at para. 19c of the amended statement of claim that Cst. Bruce misinterpreted and ignored evidence, notes, statements of other witnesses and police officers concerning the identities of those responsible for starting the fires, the evidence is that Cst. Bruce continued his investigation into the December 18, 2001 fires after Ms. Jarrett's arrest. In fact, Chris Bamford was charged and numerous witnesses interviewed, as outlined earlier. This was thoroughly set out by Cst. Bruce in his testimony.

[148] I am also satisfied from Cst. Bruce's testimony that the investigation was carried out entirely without ill-will against Ms. Jarrett. Constable Bruce in his testimony and on cross-examination, repeated that his motivation in the arrest of Ms. Jarrett was public safety and, in particular, stopping the fires and finding the person or persons responsible. Constable Bruce also testified that he offered no inducement or incentive to Mr. Bamford to implicate Ms. Jarrett. I accept his evidence.

[149] I found the evidence of Cst. Bruce to be straightforward and found nothing in his examination and cross-examination to support a claim of malicious prosecution. I am satisfied that there was no impropriety, malice or ill-will, and that there were reasonable and probable grounds to arrest Ms. Jarrett.

[150] I dismiss the claim of Ms. Jarrett for malicious prosecution against Cst. Bruce in respect of the December 18, 2001 fire.

Tort # 9 - The plaintiff claims against Naugle, Shannon, Bruce, Burton, Guzzwell and Smith (now Nordqvist) for misfeasance of public office

[151] This allegation is set out at para. 19a of the amended statement of claim as follows:

19A. The plaintiff states that the Defendants Naugle, Shannon, Bruce, Burton, Guzzwell and Smith, ("the six defendants") at all times relevant to this action, were public officers that owed a duty to the Plaintiff. In deciding to arrest the

Plaintiff (or in directing that the Plaintiff should be arrested) they exercised the powers of a public officer. The six individual Defendants knew that they did not have the power to arrest or direct the arrest of the Plaintiff, and thereby failed in their duty to the Plaintiff, a Misfeasance of Public Office. The Plaintiff has suffered damages as a result of being arrested and detained by the six Defendants.

[152] The Supreme Court of Canada considered the elements of the tort of misfeasance in public office in *Odhavji Estate v. Woodhouse*, 2003 SCC 69, setting out the requirements for this tort as follows:

- (a) Deliberate unlawful conduct in the exercise of public functions; and
- (b) Subjective awareness that the conduct is unlawful and likely to injure the Plaintiff.

[153] Iacobucci J. explained the essential elements of the tort at paras. 22 - 24:

22 What then are the essential ingredients of the tort, at least insofar as it is necessary to determine the issues that arise on the pleadings in this case? In *Three Rivers*, the House of Lords held that the tort of misfeasance in a public office can arise in one of two ways, what I shall call Category A and Category B. Category A involves conduct that is specifically intended to injure a person or class of persons. Category B involves a public officer who acts with knowledge both that she or he has no power to do the act complained of and that the act is likely to injure the plaintiff. This understanding of the tort has been endorsed by a number of Canadian courts: see for example *Powder Mountain Resorts, supra*; *Alberta (Minister of Public Works, Supply and Services) (C.A.), supra*; and *Granite Power Corp. v. Ontario*, [2002] O.J. No. 2188 (QL) (S.C.J.). It is important, however, to recall that the two categories merely represent two different ways in which a public officer can commit the tort; in each instance, the plaintiff must prove each of the tort's constituent elements. It is thus necessary to consider the elements that are common to each form of the tort.

23 In my view, there are two such elements. **First, the public officer must have engaged in deliberate and unlawful conduct in his or her capacity as a public officer. Second, the public officer must have been aware both that his or her conduct was unlawful and that it was likely to harm the plaintiff.** What distinguishes one form of misfeasance in a public office from the other is the manner in which the plaintiff proves each ingredient of the tort. In Category B, the plaintiff must prove the two ingredients of the tort independently of one another. In Category A, the fact that the public officer has acted for the express purpose of harming the plaintiff is sufficient to satisfy each ingredient of the tort, owing to

the fact that a public officer does not have the authority to exercise his or her powers for an improper purpose, such as deliberately harming a member of the public. **In each instance, the tort involves deliberate disregard of official duty coupled with knowledge that the misconduct is likely to injure the plaintiff.**

24 Insofar as the nature of the misconduct is concerned, the essential question to be determined is not whether the officer has unlawfully exercised a power actually possessed, but whether the alleged misconduct is deliberate and unlawful...

[Emphasis added]

[154] Ms. Jarrett provided the following argument to support her claim as set out in the brief submitted by her counsel:

Constable Naugle and Constable Shannon

Regarding Naugle and Shannon, it is respectfully submitted that a clear case has been established for their actions being a Misfeasance of Public Office (discussed above, under “Tort 5, Malice Prosecution”). From the testimony of the Plaintiff, and the Exhibits before this Honourable Court, there is a clear discrepancy between the Plaintiff stated in her police interviews and the way it was conveyed by Naugle and Shannon to the Court. As noted above, s. 5(1)(d) of the *Nova Scotia Police Regulations (supra)* prohibits a police officer from wilfully or negligently making a false, misleading or inaccurate oral statement pertaining to the police officer’s official duties. Doing so, these Defendants used subjective, reckless indifference toward the outcome of the show cause hearing. (III. (B))”

The misleading information must have played a role in the refusal of Judge Digby to deny judicial interim release. To think otherwise would be naive give the requirements concerning judicial interim release. This caused significant damage to the Plaintiff’s mental state of mind and her security: it resulted in an important program being made unavailable to her after her release from custody. (“V” and “VI”)

Constable Bruce

The involvement of Constable Charles Bruce with respect to the Plaintiff began previous to November 6, 2001 (the Morris Street fire), and continued to and including the last trial for the Plaintiff (regarding the November 6, 2001 and December 18, 2001 fires) in July 2003. Constable Bruce was involved with Plaintiff, and Christopher Bamford. He failed to follow-up on important

information, ignored other information and was persistent toward Bamford, for a period of approximately one (1) year, “assisting” to convince Bamford that the Plaintiff was present and participated in the fire setting on December 18, 2001.

The actions and omissions of Bruce demonstrate both subjective knowledge causing injury to the Plaintiff, and subjective reckless indifference to the illegality of his actions and the outcome. Bruce caused emotional harm to the Plaintiff and caused her detention for a significant period of time (between her acquittal by the Honourable Chief Judge Patrick Curran in January 2003 and her release following acquittal by the Honourable Judge Castor Williams in September 2003).

Constable Guzzwell, Constable Smith and Sergeant Burton

Solely on the basis of reputation (and an erroneous or simplistic view of the Plaintiff’s past “M.O.”), Sergeant Burton ordered the arrest of the Plaintiff by police officers who did not have reasonable grounds and, in fact, doubted the Plaintiff’s culpability. Guzzwell had arrived at the building, to watch for the Plaintiff returning to her home, before 3:00 am. He told the Plaintiff she was under arrest, and Smith handcuffed the Plaintiff based on Burton’s order. The plaintiff continued to be in custody for a period of approximately 12 hours as a result of clear knowledge that arresting the Plaintiff would “injure” her. All of the officers acted with subjective, reckless indifference to the outcome. The Plaintiff’s liberty was denied. Smith and Guzzwell knew that they did not have the grounds to arrest the Plaintiff, and they knew, in doing so, it would injure the Plaintiff by denying the Plaintiff her liberty.

[155] There is nothing in the evidence, including the evidence of the conduct of any of the police officers named in the claim, that would suggest any conduct that would begin to approach a deliberate disregard of their official duties, or that any of them had any subjective awareness of their deliberate misconduct being likely to injure Ms. Jarrett.

[156] I am not satisfied that Ms. Jarrett has met or tendered evidence to support the requirements of the test as set out in *Odhavji Estate, supra*, nor has such evidence been elicited from the defendant police officers on cross-examination. I would dismiss Ms. Jarrett’s claim under this heading.

Conclusion

[157] Ms. Jarrett's claims against the named police officers and the Halifax Regional Municipality are dismissed in their entirety. I am satisfied that all the investigations were done in a diligent and reasonable manner by all of the named officers, and that the arrests were lawful and in good faith. All of their actions were intended to protect the public by stopping a rash of fires in Halifax south end and to find those responsible. The actions of these police officers reflect a professional police response to the circumstances before them at the time.

[158] I will hear the parties as to costs should they be unable to agree.

Pickup, J.