COURT OF APPEAL FOR ONTARIO

CITATION: Shanthakumar Estate v. Canada Border Services Agency, 2025 ONCA 422
DATE: 20250606
DOCKET: COA-24-CV-1131 & COA-24-CV-1197

Miller, Trotter and Copeland JJ.A.

BETWEEN

The Estate of Sulochana Shanthakumar by her estate trustee, Santha Kumar Mylabathula

Plaintiff (Respondent)

and

Canada Border Services Agency, The Regional Municipality of Niagara Police Services Board* and The Attorney General of Canada

Defendants (Appellant*)

AND BETWEEN

Santha Kumar Mylabathula

Plaintiff (Respondent)

and

Canada Border Services Agency, The Regional Municipality of Niagara Police Services Board* and The Attorney General of Canada

Defendants (Appellant*)

Rafal Szymanski, for the appellant

Peter M. Callahan, for the respondents

Jessica Barrow, for the intervener Canadian Association of Chiefs of Police

Sujit Choudhry and Mani Kakkar, for the intervener South Asian Legal Clinic of Ontario

Heard: March 4, 2025

On appeal from the judgment of Justice Ranjan K. Agarwal of the Superior Court of Justice dated September 5, 2023, with reasons reported at 2023 ONSC 3180.

Trotter J.A.:

A. INTRODUCTION & OVERVIEW

[1] These appeals arise from an unfortunate incident at the Canada/U.S. border. The sole issue on both appeals is whether the appellant law enforcement agency should be held civilly liable for arresting the respondents based on inaccurate information obtained from the Canadian Police Information Centre ("CPIC").

[2] In July of 2012, the respondents, Mr. Mylabathula and Ms. Shanthakumar, both senior citizens, returned to Canada via the Queenston-Lewiston Bridge in Niagara-on-the-Lake. They were detained by officers of the Canada Border Service Agency ("CBSA") because the officers believed that they attempted to "run the port" (i.e., entering Canada without stopping for inspection).

[3] A CBSA officer conducted a CPIC search of both respondents. The CPIC system returned "hits". It indicated that the respondents had previously been

charged by the RCMP with fraud, contrary to s. 380(1) of the *Criminal Code*, R.S.C. 1985, c. C-46. The CPIC system also showed that they were released from custody on undertakings that required them to remain in Ontario.

[4] The CPIC system did not reflect the fact that the Crown had stayed the proceedings against the respondents in May of 2012. The undertakings were similarly vacated at that time. However, the RCMP did not remove the undertakings from the CPIC system.

[5] The CBSA officer did not verify the CPIC information and arrested the respondents for failing to comply with their undertakings: *Criminal Code*, s. 145(4). Custody of the respondents was transferred to the Niagara Police Service ("NPS"). The NPS then transported the respondents to a detachment in Niagara Falls.

[6] The respondents told the CBSA and the NPS officers that the charges against them had been "dropped". However, the officers proceeded with the arrest and detention.

[7] A few hours later, upon request from the NPS officer, the RCMP verified the respondents' claims that the charges against them had been stayed seven weeks earlier. They were returned to the Queenston-Lewiston Bridge to retrieve their car.

[8] The respondents sued the CBSA, the Regional Municipality of Niagara Police Services Board, and the Attorney General of Canada (on behalf of the

RCMP). By the time of trial, Ms. Shanthakumar had passed away; litigation was continued by her estate.

[9] The trial judge found the NPS and the Attorney General of Canada liable in negligence. He also found that they violated Mr. Mylabathula's rights under s. 9 of the *Canadian Charter of Rights and Freedoms*. The trial judge held that the claim against the CBSA was statute-barred because the respondents missed the three-month limitation period in s. 106(1) of the *Customs Act*, R.S.C. 1985, c. 1 (2nd Supp). However, the trial judge held that, had the claim not been statute-barred, he would have found the CBSA liable.

[10] The trial judge awarded damages in the following amounts to each respondent: (a) $25,000 in general damages and $5,000 in punitive damages to be paid by the RCMP; and (b) $15,000 in general damages and $5,000 in punitive damages to be paid by the NPS. Had the claim not been statute-barred against the CBSA, he would have ordered $15,000 in general damages and $5,000 in punitive damages.

[11] The NPS appeals.[1] It submits that the trial judge articulated and applied a more exacting standard of care for police officers than the law permits. The

[1] The Attorney General of Canada satisfied the judgment against it and has not appealed.

respondents submit that the trial judge made no error and merely applied existing legal principles to the facts as he found them.

[12] The following reasons explain why I do not accept the appellant's submission and would dismiss the appeals.

B. BACKGROUND

(1) The Events Giving Rise to the Proceedings

[13] The respondents crossed the Queenston-Lewiston Bridge and entered the Canadian customs area at approximately 9:30 p.m. on July 4, 2012. They thought that an inspection booth was not open for business, so they attempted to present themselves at another one. But they were soon apprehended by CBSA officers who accused them of trying to "run the port." The trial judge found that they did not attempt to do so and that they were genuinely confused about what to do. Nonetheless, Officer Andrea Seabrook of the CBSA ran the respondents' passports through the Integrated Border Inquiry, an application that searches multiple databases, including CPIC.

[14] As noted above, CPIC returned a "hit". Officer Seabrook believed that both respondents were in breach of their undertakings. The trial judge accepted Mr. Mylabathula's evidence that he and his wife immediately told Officer Seabrook that the underlying charges had been stayed weeks earlier. They asked her to contact their own lawyers or family to confirm their claims, but she refused.

[15] For her part, Officer Seabrook did not recall being told that the charges against the respondents had been stayed, but she acknowledged that it was possible, and it would make sense for the respondents to have volunteered this information if it were true. Similarly, Officer Seabrook did not remember the respondents asking to speak to specific lawyers. However, she did arrange for both of them to speak to duty counsel. She would have permitted the respondents to speak to their own lawyers if they asked to do so.

[16] Officer Seabrook was relatively new to her job with the CBSA at the time of this incident. She had never received formal training about the use of CPIC. She testified that “we take CPIC printouts to be true and accurate.” She did not take any steps to verify the accuracy of the information she received. She claims she was never told that it was part of her professional responsibilities.

[17] Officer Mohsan Bokhari was Officer Seabrook’s supervising officer at the time. He testified that officers are required to verify CPIC information before acting on it. He went on to say that Officer Seabrook made a “mistake” in not verifying the accuracy of the CPIC hits in this case.

[18] At the time of this incident, there was a formal arrangement between the CBSA and the NPS that individuals taken into custody at the Queenston-Lewiston Bridge are to be transferred to the NPS for processing. Officer Seabrook contacted

the NPS at 11:15 p.m. The NPS dispatched D.C. David Gittings at about 12:52 a.m.

[19] D.C. Gittings was in his second year of policing. He said he did his own CPIC search, which revealed the undertakings. His notes state: “The CPIC entry was valid.” However, he had not taken any steps to verify the hit. D.C. Gittings arrested the respondents at 1:10 a.m. He drove them to the detachment in Niagara Falls.

[20] D.C. Gittings testified roughly 10 years after the incident. He could not recall certain details of his dealings with the respondents. D.C. Gittings agreed that the respondents told him that the charges against them had been dropped or “stayed”. The use of the legal terminology – “stayed” – gave him reason to believe that they were telling the truth. However, he could not recall whether they told him this when he first met them at the bridge, or whether during the drive to the Niagara police detachment. In any event, he testified that “it was definitely worth investigating further.” D.C. Gittings testified that he knew that CPIC is not always accurate, sometimes being out of date.

[21] There was conflicting evidence about the timing of D.C. Gittings’ efforts to confirm the accuracy of the CPIC entry. The trial judge found that it was made no sooner than 1:34 a.m., shortly after they arrived at the detachment. The precise time could not be determined. The RCMP responded to D.C. Gittings at about 4:00 a.m. to advise that the charges against the respondents had indeed been

stayed roughly seven weeks earlier. D.C. Gittings released the respondents unconditionally and returned them to the bridge at about 4:20 a.m. to retrieve their car. After they paid a $1,000 fine for its return, they were on their way.

[22] D.C. Gittings was cross-examined extensively on his understanding of his obligations to verify information derived from CPIC. He agreed that "it always has to be verified" before any charges are laid based on this information. However, in the following exchange with the respondents' counsel, D.C. Gittings disagreed that CPIC had to be verified in every case before making an arrest:

> Q. You don't believe that you have to verify the information before making an arrest?
>
> A. There's many different scenarios that could come into play. So, no, the information is used, it may be used as part of me forming grounds to make the arrest. And then as soon as possible after we're going to verify it.

(2) The CPIC System

[23] The evidence at trial established that CPIC is a system for sharing crime-related information. It is managed by the RCMP. Law enforcement agencies from across the country may access CPIC upon accepting a Memorandum of Understanding ("MOU"). The CBSA and the NPS were each subject to MOU's, which, among other things, required adherence to CPIC policies, documented in the CPIC Policy Manual. The standard MOU provides: "Information emanating from the CPIC system must not be acted upon without it first being verified with the originating agency." The CPIC policy manual provides: "Output from CPIC must

therefore not be acted upon without verification of the originator of any related record." Moreover, the agency that posts the information on the system is responsible for correcting inaccurate information "as soon as possible", and "at the earliest opportunity."

C. THE TRIAL JUDGE'S REASONS

[24] The trial judge found that the RCMP, the CBSA, and the NPS were negligent in their treatment of the respondents.

[25] The central issue at trial was whether the parties breached the standard of care. Relying on the leading case of *Hill v. Hamilton-Wentworth Regional Police Services Board*, 2007 SCC 41, [2007] 3 S.C.R. 129, at paras. 68, 73, the trial judge identified the applicable standard as the "overarching standard of a reasonable police officer in similar circumstances". The trial judge said, at para. 82:

> The reasonable police officer in similar circumstances would:
>
> - if the originating agency, correct inaccurate information as soon as possible;
>
> - if the agency using the information, not act on the information or take any action based on the information in the CPIC system without verification from the originating agency.

[26] The trial judge found that all three agencies breached this standard of care. The RCMP's negligence was rooted in its administration of CPIC. It was the RCMP who investigated the fraud charges against the respondents. As such, the RCMP

was the originating agency who posted the respondent's undertakings on CPIC but then failed to update the system when the charges against them were stayed. Although the Attorney General of Canada is no longer a party to these proceedings, this entire scenario lay principally at the feet of the RCMP in failing to update the CPIC entries that pertained to the respondents.

[27] In terms of the CBSA, the trial judge found that Officer Seabrook breached the standard of care in failing to verify the information on CPIC. In making this finding, he accepted Mr. Mylabathula's evidence that he told the officer that the fraud charges had been dropped and the conditions had been removed. The trial judge did not accept the officer's denial that she was told this information. The trial judge found, at para. 98: "A reasonable police officer in similar circumstances would have called the RCMP to verify this information".

[28] In terms of the NPS, the trial judge also found D.C. Gittings breached the applicable standard. As he explained, at paras. 103-105 of his reasons:

> I don't accept Mylabathula and the Estate's argument that Constable Gittings should have verified the CPIC system information immediately on being dispatched to the port. It was reasonable for him to go to the port and assess the situation. But, at the port, knowing that CPIC system information can be inaccurate or invalid, it was unreasonable for him to arrest them, there and then, without verifying the information. Constable Gittings formed grounds for the arrest solely based on the CPIC system information and the CBSA's arrest. His notes states: "The CPIC entry was valid." But, as he testified, he took no steps to verify that the information was

actually valid. It's unclear how he formed the conclusion that the CPIC system information was valid. And, of course, it wasn't.

Though Constable Gittings had a right to exercise his discretion as he saw fit, he really only had two choices: verify then arrest, or arrest then verify. He chose the latter even though there was no urgency and knowing that CPIC system information can be unreliable. His actions weren't a mere "error in judgment" or minor. As his notes disclose, he determined that the CPIC system information was valid without verifying it first, in contradiction of his training, CPIC policy, the MOU between Niagara Police and CPIC, his own understanding as disclosed by his later comments to Shanthakumar, and his actions after jailing them. He knew he had to verify the CPIC system information before acting on it.[2] Given that this was the sole basis for his decision to arrest Shanthakumar and Mylabathula, it was unreasonable.

The CBSA and Niagara Police's arguments essentially come down to timing—they say that their officers' conduct was reasonable because the information was eventually verified by Constable Gittings. They argue that "acting upon" the information means that they can arrest suspects so long as they verify the CPIC system information before indicting them. I disagree – the CBSA and the Niagara Police acted on the CPIC system information when they arrested Shanthakumar and Mylabathula but, in the circumstances, there was no reasonable reason for them to do so without first verifying the information. As cases cited in paragraph 99 above disclose, sometimes it's reasonable to arrest someone based only on information from the CPIC system before verifying it. Not here.

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[2] This was not the officer's evidence, more broadly considered. While he believed that CPIC information had to be verified before laying a charge, he did not accept the proposition that it necessarily had to be verified before making an arrest.

[29] For similar reasons, he found that the CBSA and the NPF violated Mr. Mylabathula's right to be free from arbitrary detention under s. 9 of the *Charter*.

D. THE POSITIONS OF THE PARTIES

[30] The appellant submits that the trial judge made three errors in formulating the standard of care. First, it argues that the trial judge applied a standard of care that demands more from police officers than what is required for them to lawfully make an arrest under the criminal jurisprudence. The appellant submits that the trial judge's reasons effectively require the police to have *prima facie* evidence of guilt before making an arrest; however, the criminal jurisprudence only requires the police to have reasonable grounds before making an arrest: *R. v. Storrey*, [1990] 1 S.C.R. 241, at p. 250. Second, the appellant submits that the trial judge's conclusions are out of step with the civil negligence jurisprudence applicable to the conduct of police officers. It says that the civil jurisprudence only requires the police to have reasonable and probable grounds to make an arrest, and that unverified CPIC information can provide those grounds. Third, the appellant argues that the trial judge's findings were inconsistent with the totality of the evidence.

[31] The respondents submit that the trial judge did not err in his understanding and application of the standard of care. This was a straightforward, fact-specific application of the principles discussed in *Hill*. Moreover, the respondents submit

that the trial judge made no palpable and overriding error dealing with the evidence.

[32] The Canadian Association of Chiefs of Police (“CACP”) and the South Asian Legal Clinic of Ontario (“SALCO”) were granted intervener status on these appeals.

[33] CACP underscored the critical importance of CPIC for law enforcement agencies across Canada. As set out in its factum: “It contains information from Canadian and American law enforcement agencies, as well as from Interpol … It is no exaggeration to say that CPIC is a cornerstone of policing in Canada.” CACP submits that the MOU’s between the RCMP, the CBSA, and the NPS, which require verification of information posted on CPIC, are merely contractual terms that should not inform the standard of care. CACP further claims that requiring police officers to verify CPIC entries before taking action would have a serious impact on effective policing in Canada.

[34] SALCO submits that the *Charter* value of equality should inform the standard of care in negligence cases involving police agencies accessing databases like CPIC because such databases are tainted by racially discriminatory policing practices. Thus, when formulating the standard of care in these circumstances, courts should be vigilant to protect against the discriminatory effect of seemingly neutral police policies and procedures.

E. ANALYSIS

(1) The Standard of Care Developed by the Trial Judge is Consistent with the Criminal Jurisprudence

[35] I do not accept the appellant's submission that the trial judge imposed a standard of care on police officers that is inconsistent with the requirements of the criminal law. The trial judge did not insist that police officers must have a *prima facie* case as a precondition to making a lawful arrest.

(a) The Relationship Between the Standard of Care and the Criminal Law

[36] The appellant is correct to point out that the standard of care in cases of alleged police negligence should not set a higher bar for police conduct than the relevant criminal law standard. The police are duty bound to enforce the criminal law and abide by its standards. If the police are acting according to the requirements of the *Criminal Code*, then they are acting lawfully; the law of negligence commands no higher standard.

[37] This proposition has its roots in *Hill*, where the Supreme Court was required to decide whether to recognize a tort of negligent investigation. Chief Justice McLachlin, writing for the majority, rejected the submission that imposing a reasonable officer standard on police officers would conflict with criminal law standards. As she said, at para. 68: "The reasonable officer standard entails no conflict between criminal standards … Rather, it incorporates them, in

the same way it incorporates an appropriate degree of judicial discretion, denies liability for minor errors or mistakes and rejects liability by hindsight. In all these ways, it reflects the realities of police work" (emphasis added).

[38] This consideration, among others, led Chief Justice McLachlin to articulate the standard of care as follows, at para. 68: "that of a reasonable police officer in all of the circumstances." A reasonable police officer in a particular set of circumstances would be expected to act according to the criminal standard that is relevant to the situation.

(b) The Requirements to Make an Arrest Under Criminal Law

[39] In this case, the criminal standard to be incorporated into the framework is the power to make an arrest. This power is found in s. 495(1) of the *Criminal Code*, which provides:

> **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;
> >
> > **(b)** a person whom he finds committing a criminal offence; or
> >
> > **(c)** a person in respect of whom he has reasonable grounds to believe that a warrant of arrest or committal, in any form set out in Part XXVIII in relation thereto, is in force within the territorial jurisdiction in which the person is found. [Emphasis added.]

It is common ground that, when Officer Seabrook and D.C. Gittings arrested the respondents, they were exercising their authority under s. 495(1)(a).

[40] Section 495(1)(a) requires a subjective belief (i.e., “he believes”) that the person to be arrested has or is about to commit an indictable offence. This belief must be based on “reasonable grounds”. See the discussion in *R. v. Asante*, 2025 ONCA 387, at para. 30.

[41] In the leading case of *Storrey*, the Supreme Court of Canada considered whether the arrest and detention of the accused was arbitrary, within the meaning of s. 9 of the *Charter*. Writing for the Court, Cory J. explained how the two components of s. 495(1)(a) work together, at pp. 250-251:

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

[42] These principles were more recently reaffirmed and discussed in *R. v. Tim*, 2022 SCC 12, [2022] 1 S.C.R. 234, and *R. v. Beaver*, 2022 SCC 54, 475 D.L.R. (4th) 575. Both cases make clear that the objective component of the analysis “is based on the totality of the circumstances known to the officer at the time of the arrest, including the dynamics of the situation, as seen from the perspective of a

reasonable person with comparable knowledge, training, and experience as the arresting officer": *Tim*, at para. 24; see also *Beaver*, at para. 3.

[43] Moreover, the Court reiterated that "the police are not required to have a *prima facie* case for conviction before making the arrest": *Tim*, at para. 24; *Beaver*, at paras 6, 79. Rather, Jamal J. confirmed the related and obverse proposition in *Beaver*, at para. 6, that the police are not required to undertake further investigation to seek out exculpatory facts or rule out innocent explanations.

[44] Taken together, these cases from the Supreme Court of Canada have underscored the principle that the police need not have a *prima facie* case for conviction before making an arrest. This principle has been incorporated into the jurisprudence of this court in cases involving negligence claims against the police: see e.g. *495793 Ontario Ltd. (Central Auto Parts) v. Barclay*, 2016 ONCA 656, 132 O.R. (3d) 241, at para. 50; *Payne v. Mak*, 2018 ONCA 622, at para. 24; and *Kolosov v. Lowe's Companies Inc.*, 2016 ONCA 973, at para. 10.

[45] However, it does not follow from this line of authority that the police are necessarily excused from making further inquiries before proceeding with an arrest based on CPIC information. As noted above, the objective component of the reasonable and probable grounds analysis is a contextual endeavour, "as seen from the perspective of a reasonable person with comparable knowledge, training, and experience as the arresting officer": *Tim*, at para. 24. Sometimes, an arrest

based on CPIC information will only be objectively reasonable if the police first verify that information. Taking this extra step does not impose a duty on the officer to believe they had a *prima facie* case; it merely conforms to the demands of s. 495(1).

[46] The following cases from this court confirm that the lawfulness of an arrest may be undermined by the failure of the police to verify CPIC information before making the arrest. To reiterate, it will all depend on the circumstances faced by the officer at the time. It will be untenable to require this of police officers in many situations, especially where officer and public safety concerns are in play. But, as discussed below, this is not one of those cases.

[47] In *R. v. Gerson-Foster*, 2019 ONCA 405, 437 C.R.R. (2d) 193, the appellant was arrested on a surety warrant (*Criminal Code*, s. 766) that was no longer valid, even though it remained on the CPIC system. The appellant told a number of officers that he was properly on release with a new surety. They failed to look into the matter in a timely fashion. In the meantime, the appellant was strip-searched, which led to the discovery of cocaine. The trial judge rejected the appellant's arguments that his rights under ss. 8 and 9 of the *Charter* had been infringed. She found that, because of an error on the part of another judge, the surety warrant was in fact still valid when he was arrested. Consequently, the arresting officers had reasonable and probable grounds to make the arrest and maintain custody of the appellant.

[48] This court allowed the appeal and held that the trial judge erred in finding that the surety warrant remained in force. Addressing the issue of inaccurate CPIC information, Paciocco J.A. wrote, at para. 79:

> To be clear, the "facts" relied upon by the officer need not be true. "Reasonable grounds can be based on [an officer's] reasonable belief that certain facts exist even if it turns out that the belief is mistaken": *R. v. Robinson*, 2016 ONCA 402, 336 C.C.C. (3d) 22, at para. 40. This includes an honest but reasonably mistaken subjective belief that an arrest warrant relied upon to make an arrest is valid: *R. v. Kossick*, 2018 SKCA 55, 365 C.C.C. (3d) 186, at para. 26.

[49] The court accepted the Crown's submission that reliance on mistaken CPIC information may still provide reasonable and probable grounds for an arrest. However, that will not always be the case. While the initial arrest was not based on the erroneous CPIC information, Justice Paciocco held that the appellant's continued detention, after the appellant told the officers that he had a new surety, was unlawful. He found that the failure of the police to follow up on the appellant's complaints that the surety warrant was no longer in force made his continued detention illegal. Relying heavily on the decision of the Saskatchewan Court of Appeal in *R. v. Kossick*, 2018 SKCA 55, 365 C.C.C. (3d) 186, Paciocco J.A. explained, at paras. 88-89:

> In *Kossick*, at para. 26, Caldwell J.A. held that reliance by an arresting officer on erroneous information will not be objectively reasonable if, in the circumstances, "the police could reasonably have made inquiries which would have led to the discovery of the deficiencies or defects".

> I agree, and in my view, this principle applies not simply to the initial arrest, but to the continued detention where reasonably, the officers ought to make further inquiry into the basis for the arrest that supports the continued detention.
>
> In *Kossick*, the arresting officer relied on information from another officer indicating there was an arrest warrant in place. The arresting officer proceeded with the arrest in non-urgent circumstances and without personally checking the electronic databases, including CPIC, which he had open in front of him and that would have revealed the arrest warrant had already been executed. In *Kossick*, the finding that the police could reasonably have made inquiries was not triggered by any reason to doubt that an arrest warrant was in place, but by the ease with which the status of the warrant could have been checked before depriving Mr. Kossick of his liberty. [Emphasis added.]

[50] Justice Paciocco held that the need for a reasonable inquiry was triggered by the information provided to the police by the appellant. However, he recognized the reality that the police are not required to believe any claim that is made by an accused person in similar circumstances. The police may disregard information believed to be unreliable: see also *Asante*, at para. 30. Nonetheless, in *Gerson-Foster*, there was no reason to disbelieve the appellant and, in fact, the arresting officer did not disbelieve him. The parallels with this case are clear, especially with respect to the views expressed by D.C. Gittings about the sincerity of the respondents' claims that the charges against them had been stayed.

[51] Reliance on inaccurate CPIC information was discussed again in *R. v. Williams*, 2024 ONCA 69, 169 O.R. (3d) 481. The appellant was released on

a bail order that included a condition that he was not permitted to be in contact with his girlfriend unless she gave her written, revocable consent. She did. She emailed it to the officer-in-charge of the case. He, in-turn, uploaded the information onto Versadex, the electronic records management system used by the Toronto Police Service. However, the consent was not uploaded to CPIC.

[52] The appellant and his girlfriend were subsequently investigated under the *Cannabis Control Act*, *2017*, S.O. 2017, c. 26, Sched. 1 ("*CCA*"). Officers on the scene communicated with officers at a nearby police station. An officer at the station, and at least one of the officers at the scene, were aware of the consent exception to the no-contact condition. Nonetheless, the appellant was arrested for breaching his bail condition. In the process of making the arrest, officers observed the appellant in possession of marijuana while in the driver's seat of the vehicle with the engine turned on. A search of the vehicle pursuant to the *CCA* led to the discovery of a firearm.

[53] The trial judge dismissed the appellant's application to exclude evidence under s. 9 of the *Charter*. He found that, even though the police were operating with incomplete information, in light of the exigent circumstances, the police had reasonable grounds to arrest the appellant for breach of the undertaking and the subsequent search incident to arrest was therefore lawful.

[54] This court dismissed the appeal from conviction. Writing for the court, Zarnett J.A. concluded that the police did not have reasonable grounds to arrest the appellant for breaching his undertaking. He found that this was not a case in which the police were required to investigate further before arresting; in fact, the police were in possession of the information on Versadex, which one of the officers at the police station had consulted to verify the complainant's identity before the police moved-in to arrest the appellant. However, notwithstanding these failings, the police had reasonable grounds to arrest and search the appellant as part of their *CCA* investigation. Consequently, there was no breach and the evidence was not excluded.

[55] In his reasons, Zarnett J.A. helpfully set out the principles that bear on the issue raised on this appeal. As he said, at para. 43:

> Before reasonable grounds exist, "the officer must conduct the inquiry which the circumstances reasonably permit. The officer must take into account all information available to him and is entitled to disregard only information which he has good reason to believe is unreliable": *R. v. Golub* (1997), 34 O.R. (3d) 743 (C.A.), at para. 21, leave to appeal refused [1997] S.C.C.A. No. 571. There is, however, a limit to the extent of pre-arrest inquiry that police must conduct. "... [T]he obligation of the police to take all factors into account does not impose a duty to undertake further investigation to seek out exculpatory factors or rule out possible innocent explanations": *R. v. Chehil*, 2013 SCC 49, [2013] 3 S.C.R. 220, at para. 34.

[56] In the course of his analysis, Zarnett J.A. referenced the reasons of Paciocco J.A. in *Gerson-Foster*, and his reliance on the *Kossick* decision from the Saskatchewan Court of Appeal. Consistent with this approach, Zarnett J.A. said the following, at para. 44:

> Whether a particular inquiry is one that an arresting officer must make is a context specific question. Relevant factors include the ease by which information could be obtained, whether something said by the suspect or on the suspect's behalf gives rise to the need for further enquiry, and the urgency of the situation.

[57] Accordingly, cases from this court support the proposition that, in certain circumstances, the police are required to verify CPIC information. A fact-specific inquiry is required.

[58] The appellant submits that this was not the state of the law when the respondents were arrested on the bridge in 2012. It contends that it would be unfair to hold the police to a higher standard that was developed after-the-fact. In support of this submission, the appellant relies on earlier cases from this court that suggest that no such duty exists. For instance, in *R. v. Harris*, 2007 ONCA 574, 87 O.R. (3d) 214, Doherty J.A. found that a six-day delay in removing a bail condition from CPIC did not make an arrest unreasonable. See also *R. v. Wilson*, [2006] O.J. No. 4461 (C.A.).

[59] I do not accept the appellant's contention that law was different in 2012 or that the police were subject to a lower standard at that time. As noted above, the

question of whether an officer has reasonable grounds under s. 495(1)(a) has long been a fact-specific inquiry, since at least 1990 when *Storrey* was decided. At no point prior to *Gerson-Foster* and *Williams* had this court expressed a categorical view that a police officer is never required to verify a CPIC entry before acting on it, in terms of making an arrest or maintaining custody of a detainee.

[60] This is clear from *Harris* and *Wilson* themselves. In both *Harris*, at para. 13, and *Wilson*, at para. 2, this court addressed the reasonableness of relying on unverified CPIC information in a single sentence and simply agreed with the trial judges. When one looks to the trial decisions, it quickly becomes evident that the trial judges engaged in fact-specific inquiries and that they were not acting on the understanding that a police officer is never required to verify information from CPIC before making an arrest: *R. v. Harris*, 2006 ONCJ 106 ("*Harris (ONCJ)*"); *R. v. Wilson*, [2003] O.J. No. 4465 ("*Wilson (SCJ)*").

[61] In both trial decisions, the trial judges referred to *R. v. J.F.R.*, [1991] Y.J. No. 235 (Terr. Ct.), which held that an arrest based on unverified CPIC information could be unlawful: *Harris (ONCJ)*, at para. 76; *Wilson (SCJ)*, at para. 36. However, instead of establishing a new hard-and-fast rule that the police are not required to verify CPIC information, they distinguished *J.F.R.* on the facts. In *Wilson (SCJ)*, at para. 39, the trial judge explained that, unlike *J.F.R.*, the accused never told the officers that the CPIC information might have been incorrect. The opposite occurred in this case. Similarly, in *Harris (ONCJ)*, the trial judge said, at para. 78:

“I find that this case is distinguishable from the one before me. The CPIC information in that case was out-of-date by a substantially longer period, seven weeks.” This is roughly the same length of time that elapsed in this case.

[62] The above review of the jurisprudence indicates that, at all material times, the appellant was subject to the following three criminal law standards. First, in order to make an arrest under s. 495(1)(a), the police must have reasonable and probable grounds to believe a person has or is about to commit an indictable offence. Second, the requirement of reasonable and probable grounds does not oblige the police to have a *prima facie* case for conviction before making an arrest. And, third, whether the police must verify CPIC information that they use to form the reasonable and probable grounds for an arrest will depend on the circumstances.

(c) The NPS Could Not Have Had Reasonable and Probable Grounds to Arrest and Maintain Custody Without First Verifying the CPIC Information

[63] On the facts as found by the trial judge, the CBSA officers and D.C. Gittings were required to verify the accuracy of the CPIC hits. The respondents were arrested at the border at 10:15 p.m. Officer Seabrook did not contact the NPS until 11:15 p.m. The trial judge accepted the evidence that Mr. Mylabathula told the CBSA officer about the stay of proceedings. The NPS officer did not arrive until

1:10 a.m., almost two hours later. There was plenty of time for Officer Seabrook to verify the CPIC information, especially in light of what the respondents had told her. The vehicle in which the respondents had entered Canada had been seized. There was no urgency. There was no concern for officer safety. Both respondents were compliant and harmless individuals in their advanced years.

[64] But this was never realistically in the cards as far as Officer Seabrook was concerned. She did not acknowledge any duty to verify the accuracy of CPIC hits. As far as she was concerned, it was appropriate to act upon them as correct information. As her supervisor, Officer Mohsan Bokhari, testified, this was a "mistake" on her part. His view of the situation was bolstered by the MOU between the CBSA and the RCMP and the contents of the CPIC Policy Manual.

[65] I see the delayed action of the NPS in the same light. D.C. Gittings was told by the respondents that the case against them had been discontinued. He did not make inquiries until he transported them to the police station. The timelines within which these inquiries were made were vague. All that is known is that the RCMP confirmed that the information was inaccurate at 4 a.m., many hours after their initial detention at the border. As the trial judge fairly noted, D.C. Gittings was not required to make inquiries immediately upon being dispatched. It would have been appropriate for D.C. Gittings to do so once he reached the border and had an opportunity to assess the situation. But as noted above, D.C. Gittings did not believe he had any duty to verify the CPIC hits before making the arrest; verification

was only required before laying a charge. This was an incorrect understanding of his powers. It fell below the standard of a reasonable police officer in the circumstances.

[66] Consequently, I would not disturb the trial judge's findings that D.C. Gittings lacked reasonable grounds to arrest the respondents, supporting his conclusion of tortious liability in relation to both respondents, and a s. 9 *Charter* violation as it related to Mr. Mylabathula.

(2) The Standard of Care Developed by the Trial Judge is Consistent with the Civil Negligence Jurisprudence

[67] For similar reasons, I do not accept the appellant's submission that the trial judge devised a standard of care that is inconsistent with the jurisprudence in private law. The appellant contends that the trial judge invented a standard that required the police to have *prima facie* evidence of guilt rather than just reasonable grounds. For the reasons given above, I do not accept this submission.

[68] The appellant relies on trial decisions, some for other provinces, in which the police were not found liable for acting on false information without attempting to confirm its accuracy: see e.g. *Lord v. Canada*, 2001 BCSC 212; *Khadikin v. The Corp. of the City of Nelson et al*, 2003 BCSC 1987; and *Dao v. Hamilton (City) Police Services Board*, [2009] O.J. No. 2240 (S.C.). The trial judge considered these authorities and found each of them distinguishable on

the facts. As the trial judge said, at para. 105: “sometimes it’s reasonable to arrest someone based only on information from the CPIC system before verifying it. Not here.”

[69] The appellant submits that the trial judge erred in distinguishing these cases. As noted above, the question of whether reasonable grounds exist to make an arrest requires case-specific inquiry. I see no error in the manner in which the trial judge distinguished these cases on the facts.

(3) The Standard of Care Developed by the Trial Judge is Consistent with the Totality of the Evidence

[70] The appellant contends that the trial judge devised a standard of care that was inconsistent with the totality of the evidence before him. This ground of appeal challenges the manner in which the trial judge engaged with various pieces of evidence, and the weight he assigned to them. In my view, this amounts to an invitation to revisit the trial judge’s factual findings, which are entitled to considerable deference on appeal. The appellant has been unable to identify any palpable and overriding error.

[71] The appellant submits that the trial judge unduly focused on the MOU’s and the CPIC Policy Manual in crafting the standard of care. I do not accept this submission. The documents in question provided context for the evaluation of the actions of the CBSA, NPS, and RCMP. They helped explain the nature of the

relationships between these law enforcement agencies and outlined the terms of use required when engaging with CPIC. I accept that these documents may well have a contractual function as between the agencies involved, but this did not render them irrelevant in the determination of what is expected of a “reasonable police officer in all of the circumstances.” The appellant did not contest the relevance and admissibility of this evidence at trial.

[72] The appellant further submits that the trial judge erred in his reasons by discussing the evidence of only three of the seven officers who testified at trial, while giving no weight to some of the other officers who provided evidence on the appropriate standard of care. There is no indication in the trial judge’s reasons that he did not consider the evidence as a whole. Moreover, a trial judge is not required to mention, let alone accept and rely upon, all of the evidence tendered by any of the parties. The trial judge’s reasons explain in great detail why he decided the case as he did.

[73] I would not give effect to this ground of appeal.

F. CONCLUSION

[74] I would dismiss the appeal. In accordance with the agreement of counsel, the respondents are entitled to their costs of $20,000, inclusive.

Released: June 6, 2025 “B.W.M.”

“Gary Trotter J.A.”
“I agree. B.W. Miller J.A.”
“I agree. J. Copeland J.A.”