

Ontario  
Provincial  
Police

Police  
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de l'Ontario



**Professional Standards Bureau**  
Bureau des normes professionnelles

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File ref: 2531005-0453

July 28, 2006

Mr. Shawn A. Cassista  
2360 Truscott  
Mississauga, ON L5J 2B2

Dear Mr. Cassista:

On December 1, 2005 Professional Standards Bureau received a complaint from you concerning the conduct of a member of the Ontario Provincial Police, namely Provincial Constable I.C. (Ian) MICHEL, Port Credit Detachment. It was dealt with as such pursuant to section 59(4) of the Police Services Act (PSA), and the Ontario Civilian Commission on Police Services (OCCPS) upheld the decision.

Subsequent to the PSA investigation, the Ontario Provincial Police commenced a criminal investigative review into your allegation that Constable Michel had committed the offence of perjury. Our investigation into the matter is complete and it has been determined that there is insufficient evidence to support a charge of perjury and our file is now closed.

A copy of the investigative report is attached.

Yours truly,

K.R. MacDonald  
Superintendent  
Commander, Professional Standards Bureau  
/cn

c: Provincial Constable I.C. (Ian) MICHEL #10707, 5100 - PORT CREDIT (c. complaint)  
Detachment Commander, 5100 - PORT CREDIT



## *Professional Standards Bureau - Investigation Report*

**+Date of Incident:** June 14, 2004

**Date of Complaint:** December 1, 2005

**Investigation Type:** Criminal Investigative Review

**File No.** 2531005-0453

**Complainant:** Mr. Shawn Cassista  
Mississauga, Ontario

**Respondent:** Constable Ian Michel, #10707  
Port Credit OPP detachment

**Investigator:** Detective Sergeant Joe Mauti, #5740  
Highway Safety Division  
Professional Standards Bureau

**Finding:** Not Substantiated

### **Summary of Complaint:**

Mr. Cassista alleges that Constable Michel lied under oath while testifying in court and thereby committed the offence of Perjury, contrary to the Criminal Code.

### **Allegation of Misconduct Under Investigation:**

Perjury – Making false statements while testifying under oath



**Historical Background:**

Mr. Shawn CASSISTA originally lodged a public complaint where he made allegations of "misconduct" and "improper investigation" against Constable Ian MICHEL. The date of the incident was June 14<sup>th</sup> 2004, however CASSISTA'S public complaint was not received until December 1<sup>st</sup> 2005, which was well past the six-month limit as per Section 59(4) of the Police Services Act. CASSISTA subsequently appealed this decision to O.C.C.P.S. and requested a review. Upon review of the information, O.C.C.P.S. was satisfied with the OPP'S decision and upheld their verdict, as there were insufficient grounds to change their decision under Section 59(4) of the PSA.

CASSISTA subsequently complained to his Member of Parliament who contacted the OPP and it was decided that the Professional Standards Bureau would conduct an investigative review into the matter as it related to CASSISTA'S criminal complaint allegations. CASSISTA alleges that MICHEL committed perjury when he gave evidence under oath during his trial of January 20<sup>th</sup> 2005 in a Mississauga court.

**Statements:**

**Mr. Shawn CASSISTA** states that on June 14<sup>th</sup> 2004 he was stopped by Constable Ian MICHEL and was informed that he was not wearing his seatbelt. CASSISTA and MICHEL engaged in conversation regarding whether he was wearing his seatbelt and if he had been drinking any alcoholic beverages. MICHEL also asked him for his vehicle permit and insurance documents. CASSISTA admitted to consuming one beer approximately thirty minutes earlier and was subsequently asked to accompany him to his cruiser to provide a breath sample into the Alcotest. While CASSISTA was attempting to locate his vehicle documents in his glove box, MICHEL told him, "Don't worry about it, (documents) we'll take care of it later." CASSISTA subsequently passed the Alcotest, however he was charged with the following offences:

1. Driver - Fail to Wear Complete Seatbelt Assembly, Section 106(3) H.T.A.
2. Driver - Fail to Surrender Permit for Motor Vehicle, Section 7(5)(a) H.T.A.
3. Fail to Surrender Insurance Card, Section 3(1) C.A.I.A.

On January 20<sup>th</sup> 2005, CASSISTA attended Mississauga Provincial Offences court to answer to the above charges and he pled not guilty to all of the offences. He was found guilty on the Fail to Surrender Permit and Fail to Surrender Insurance Card. The seatbelt charge was dismissed. CASSISTA initially appealed the two convictions but when he attended the appeal hearing, he states that the prosecutor discouraged him from continuing through the process, so he never pursued the appeal.

CASSISTA alleges that when MICHEL testified under oath, he lied and gave inconsistent evidence regarding the following issues:

- MICHEL made errors regarding the time of the offence. On all three of the offence notices, he recorded that the offence occurred at 8:25 PM, however his notes indicated that the occurrence time was 2225 hours, which was a two-hour difference.



- Due to the darkness and tinted windows, MICHEL could not have known the color of the seatbelt assembly straps as he indicated in his testimony.

**Statements:**

- CASSISTA denies that prior to being stopped, MICHEL observed him pull the seatbelt assembly across his chest downward in a diagonal manner, and then pulled the buckle across his chest.
- He claims that MICHEL lied when he testified that "prior to his departure, he had the accused fasten his seatbelt in a secure manner until he was satisfied that it was in proper working order". CASSISTA states that this event never occurred. He claims that he rolled up his window and drove away after receiving the ticket, without ever putting on his seatbelt.
- MICHEL did not activate his cruiser siren as he indicated in his court testimony.
- CASSISTA claims that MICHEL and the prosecutor Ms. MARIUZ conspired together in order to obtain a conviction. He believes that they rehearsed and orchestrated their prosecution prior to the trial in order to convict him.

**Constable Ian MICHEL** was provided with a copy of CASSISTA'S letter of complaint. He provided the following response with respect to these allegations:

MICHEL denies all the allegations including the accusation that he committed perjury while testifying in court on January 20<sup>th</sup> 2005. He states that he completed his notes regarding the incident, immediately following his encounter with CASSISTA. MICHEL agrees that he made an error on all three of the offence notices regarding the time of the offence, which he corrected when he prepared his notes. This error on was immediately identified at the onset of the court proceedings and an amendment was made *after* the Court gave CASSISTA the opportunity to respond to the Crown's request for an amendment. At that time, CASSISTA voiced no concerns regarding the amendment request pertaining to the time of the offence, which he recorded in his notebook. MICHEL wished to make it clear that he stands by his court testimony given on January 20<sup>th</sup> 2005 and maintains that he spoke only the truth. Throughout the entirety of the court proceeding, MICHEL maintains that he always had an independent recollection of the events, or the information was recorded in his field notes.

With over five years of being assigned to traffic patrol duties, MICHEL has investigated numerous seatbelt related matters and has testified during several court proceedings regarding this offence. He claims that he is vigilant in observing for relevant evidence pertaining to seatbelt infractions including the color of seatbelt straps, movement of the occupants, lighting issues and ensuring that the seatbelt is in proper working order.

*MICHEL'S notebook entries were reviewed and he recorded sufficient information in relation to this incident. There was nothing recorded in his notebook to conflict with his testimony that he gave in court. His notebook provided the following information:*

- *Time of the vehicle stop was 2225 hours.*
- *He recorded detailed information regarding his belief that CASSISTA was not wearing his seatbelt assembly and that he placed it on himself while he was being stopped.*
- *MICHEL describes CASSISTA'S attitude as being confrontational.*



- *He could smell the odor of an alcoholic beverage from CASSISTA'S breath and he admitted to consuming a drink thirty minutes prior to being stopped.*
- *CASSISTA provided a roadside breath sample and registered a PASS.*

**Statements:**

- *Upon request, CASSISTA failed to surrender his vehicle permit and produced an expired insurance card.*

**Mr. Steven FORTEN** describes himself as a friend of CASSISTA and was a passenger in his vehicle at the time that MICHEL stopped them. FORTEN states that MICHEL stopped CASSISTA well after 2200 hours and not at 2025 hours which was the time recorded in the offence notice. He confirms that MICHEL told CASSISTA "Don't worry about it, we'll take care of it later" while searching for his vehicle registration and insurance card. CASSISTA'S attempt to locate the documents took approximately one minute. FORTEN states that both he and CASSISTA were wearing their seatbelt assembly when MICHEL stopped them. He believes that MICHEL was unable to observe whether they had their seatbelt assembly fastened because of the darkness and the tinted windows of CASSISTA'S van.

FORTEN was not present during the court proceedings and was never asked by CASSISTA to attend as a witness because of the far distance that he would have had to travel in order to attend court.

**Ms Carla MARIUZ** was the provincial prosecutor for the city of Mississauga who prosecuted the charges that were laid against CASSISTA. She claims that she does not specifically recall this particular event because of her heavy workload and due to the fact that it occurred approximately one and a half years prior to the interview. MARIUZ had the opportunity to read the transcript and made the following observations:

- The testimony given by MICHEL was typical or standard evidence that would be expected in most seatbelt offence matters.
- The officer's visual evidence was quite common and consistent with the seatbelt charge that he laid against the accused.
- MARIUZ had absolutely no concerns or issues regarding MICHEL'S testimony and never has in the past. In this particular case, she has no reason to doubt the truthfulness of his evidence. If in fact she had any concerns, she would have immediately reported them to the Senior Prosecutor who in turn would have notified the officer's detachment commander.

MARIUZ emphatically denies CASSISTA'S allegations that she had a prior meeting with MICHEL in order to orchestrate, rehearse or conspire together in order to ensure that they convicted CASSISTA. She never has, nor would she ever behave in this manner. In the past, MARIUZ has had frequent opportunities to hear MICHEL present evidence in cases that she prosecuted. In her opinion, he has always behaved in a professional and fair manner while testifying under oath.

**Findings & Conclusions:**



The court transcript reveals the following information related to these allegations:

- In his evidence-in-chief MICHEL immediately clarified that he recorded the wrong time on the offence notices and that the actual time should have been 10:25 P.M.

**Findings & Conclusions:**

- MARIUZ requested an amendment to the certificate of offence in accordance to the officer's evidence and the Provincial Offences Act.
- The Court asked CASSISTA if he wished to make a comment with respect to the Crown's request to the amendment and he replied, "No, it was 10:25." The Court subsequently agreed to the amendment.
- MICHEL'S evidence was consistent with his notes and with the charges that he laid.
- When MARIUZ asked MICHEL if he afforded CASSISTA with a reasonable opportunity to obtain and provide the vehicle documents, he replied, "I believe so, I was with the accused party for over ten minutes."
- When the Courts asked CASSISTA whether he had any questions to ask the officer regarding his evidence, he replied, "No, I've heard his statement, I guess I can't, I don't." The Court again asked CASSISTA, "You have no questions, is that correct?" and CASSISTA replied, "That's right."
- CASSISTA'S testimony was consistent with his statement of complaint where he alleges that he was wearing his seatbelt upon being stopped. His windows were tinted and it was dark outside so the officer made a mistake.
- He further added that he was only given one and a half minutes to locate his vehicle registration. He believed that he should have been given twenty-four or forty-eight hours to produce the documents, which he suggested was standard police procedure.
- The Court ruled that CASSISTA was guilty of failing to surrender his vehicle permit and insurance card and reduced the fine. However, the Court ruled that even though the officer's evidence was clear and he gave very thorough, detailed evidence, there was some doubt in his mind and therefore he dismissed the seatbelt charge.
- There is no evidence in the transcript to suggest that the Court had any concerns regarding the truthfulness of MICHEL'S evidence.

**Section 131(1) of The Criminal Code** states every one commits perjury who, with intent to mislead, makes before a person who is authorized by law to permit it to be made before him a false statement under oath or solemn affirmation, by affidavit, solemn declaration or deposition or orally, knowing that the statement is false.

**Perjury – Synopsis:** This section spells out the parameters of the offence of perjury. It requires proof of several discrete elements, including that the statement made must be false and that the accused knew that it was false. There must also be an intent to mislead.

**Section 132 of C.C. - Punishment –** Every one who commits perjury is guilty of an indictable offence and liable to imprisonment for a term not exceeding fourteen years.



**Section 133 of C.C. - Corroboration – Perjury –** *No person shall be convicted of an offence under section 132 on the evidence of only one witness unless the evidence of that witness is corroborated in a material particular by evidence that implicates the accused.*

MICHEL stands behind his evidence. He maintains that he did not lie under oath and that his testimony was thorough and truthful. His evidence is consistent with his notebook entries.

**Findings & Conclusions:**

MICHEL admitted to making an error regarding the offence time that he recorded on the offence notice, however he documented the correct time in his notebook. When MICHEL gave his court testimony, he stated the correct time, apologized for the error and again confirmed the correct time of the offence. The prosecutor requested an amendment and when the Court asked CASSISTA if he had any response to the amendment request he replied, "no".

The allegation of whether CASSISTA was wearing his seatbelt assembly is a matter for the courts to decide. It is the responsibility of the courts to determine whether CASSISTA was guilty of the offences and it is not the mandate or scope of this investigation. Notwithstanding this issue, the charges laid against CASSISTA were in fact justified since the Crown prosecutor accepted and prosecuted them. MARIUZ stated that although she cannot specifically recall the trial, she reviewed the transcript and has no concerns or issues whatsoever regarding MICHEL'S testimony. If MARIUZ had any concerns, she would have reported them and would have recalled any issues that she might have had with respect to MICHEL'S evidence. MARIUZ also noted that throughout her previous contact with MICHEL, she found him to be professional and fair while giving his testimony in court. MARIUZ further denied CASSISTA'S allegation that she conspired with MICHEL to orchestrate or rehearse their evidence in order to obtain a conviction against CASSISTA.

According to the transcript, there was no mention made by the Court to indicate that MICHEL might have lied while giving evidence under oath. CASSISTA was given the opportunity to cross-examine MICHEL during the trial, however he declined. He was also afforded the opportunity to appeal the conviction but decided to not pursue the matter further.

The only other witness to the June 14<sup>th</sup> 2004 traffic stop was CASSISTA'S friend FORTEN, who was a passenger in his vehicle. FORTEN never attended the court proceeding to act as a witness and never gave evidence at the trial. CASSISTA asked FORTEN to provide him with a statement that related to issues that were relevant to his complaint against the officer.

As required by the criminal code, there is insufficient evidence to corroborate the allegations of Perjury made by Mr. CASSISTA. Furthermore, there is no evidence to indicate that Constable MICHEL intended to mislead the court or that he knowingly made a false statement. Therefore, based on the evidence available it is recommended that no criminal charges of Perjury be laid against Constable MICHEL.

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Detective Sergeant J.T. Mauti, #5740  
Highway Safety Division – Investigations Unit  
Professional Standards Bureau