

DECISION

File No. 20-0083

NOVA SCOTIA POLICE REVIEW BOARD

IN THE MATTER OF: The *Police Act*, Chapter 31 of the *Acts* of 2004 and the Regulations made pursuant thereto

- and -

IN THE MATTER OF: An appeal filed by **Morgan Fisher**, Complainant, against **Sgt. Trevor MacNeil**, of the Kentville Police Service, requesting a review of a decision made by Chief Julia Cecchetto, on December 16, 2020.

BEFORE: Jean McKenna, Chair
Hon. Simon J. MacDonald, Vice-Chair
Stephen Johnson, Board Member

COUNSEL: Morgan Fisher, Self-represented
James Giacomantonio, Counsel for Officers

HEARING DATE: November 1-3, 2021

DECISION DATE: April 29, 2022

SUMMARY

- [1] On June 3, 2020, the Complainant, Morgan Fisher, asked Kentville Police service (KPS) to perform a Vehicle Information Number verification on a 2008 ATV “side by side” that he had apparently purchased in Saskatchewan, but brought with him, when he moved to Nova Scotia. He had a Bill of Sale showing that he had purchased the vehicle for \$3300, from a Heidi Bundschuh in Saskatchewan, in 2018. The vehicle was located on the premises of a private mechanical service shop in the Kentville Industrial Park.
- [2] The VIN was ultimately checked by KPS, and the result showed that it was owned (not possessed) by AMA insurance. The vehicle (an Alberta vehicle) had been reported as stolen by their insured in 2013 and was never recovered. The claim had been paid by the insurer, (\$6000) and the registration was transferred to AMA. The registration document was recorded on CPIC.
- [3] After some investigation, KPS reasonably and correctly concluded that the machine was in fact the property of AMA, and that Mr. Fisher had been the innocent purchaser of a stolen vehicle. KPS arranged to have it towed to a secure compound. Mr. Fisher later provided a list of personal property items that he recalled were on the vehicle; some items were located. The machine was eventually collected by the local AMA representative and auctioned off.
- [4] Mr. Fisher is a former RCMP officer, and he argued / pursued his issues from the criminal rather than civil law perspective. He alleged that KPS had “stolen” the vehicle. He filed a *Police Act* complaint against Sergeant Trevor MacNeil, of the KPS. The particulars of the complaint were:
- failure to write a search warrant
 - failure to follow judicial process
 - failure to complete tow inventory form
 - KPS decided ownership
 - failure to maintain proper communication
 - failure to complete an investigation
 - failure to follow judicial process and complete a Report to Justice for things seized
 - failure to ensure the definition of ownership in the Criminal Code of Canada was met
 - gave my property away to someone else with the required documentation (*sic*)
 - stole, and gave away, my personal possessions
- [5] In summary, Mr. Fisher alleged “theft, abuse of power, and giving away of my things”
- [6] The complaint was investigated by Deputy Chief Rob Hearn, Truro Police Service, who reported the results of his investigation to Chief J. Cecchetto, KPS. On September 30, 2020, the complaint was dismissed by Chief Cecchetto. Mr. Fisher filed a Notice of Review of the decision on October 8, 2020.

THE EVIDENCE:

[7] As Mr. Fisher chose not to testify at the Board hearing, statements attributed to Mr. Fisher are gleaned from the evidence of the officers who testified and from police records entered as an exhibit by Mr. Fisher.

[8] On June 1, 2013, the 2008 Polaris ATV was reported as stolen, by then owner Bruce Nicole, in Alberta. The theft was reported to RCMP, Fort McMurray, and to AMA Insurance, who insured the vehicle. The ATV was not recovered. AMA paid the claim (\$6000), and on July 11, 2013, Mr. Nicole legally transferred ownership to AMA, by endorsing the Alberta registration document.

[9] The Alberta MVA registration was recorded on July 25, 2013, in Alberta. It is noted as “continuous” (no expiry date). It was recorded on CPIC.

[10] On March 16, 2018, Mr. Fisher purchased the ATV from a “Heidi Bundschuh,” of Goodsoil, Saskatchewan. She apparently had no proof of ownership papers. The Bill of Sale (an Alberta document) transferred the ATV from “Heidi Bundschuh” to Mr. Fisher, who according to the Bill of Sale, was living in Pierceland, Saskatchewan at the time. The sale price shown was \$3300. The document is an Alberta Bill of Sale, and recommends that to ensure title, the buyer check “CPIC” and /or various websites to confirm ownership. At the time of purchase, a CPIC query would have shown the reported theft, and the AMA subsequent ownership. Mr. Fisher did not testify. However, a later CPIC audit done in Kentville confirms that Mr. Fisher did not make an inquiry in 2018, although he was apparently a member of the RCMP at the time.

[11] ATV registration is not mandatory in Saskatchewan. Mr. Fisher would not have been able to register the ATV in Saskatchewan. However, nothing prevented him from having a CPIC search done; it seems he chose to accept what he claims in pleadings, (he did not testify at the Review Board hearing), and reported to KPS, that Ms. Bundschuh told him that she bought it new, having won a lottery. That was later contradicted by Ms. Bundschuh, according to the evidence of Sgt. Goss and Cst. White of KPS.

[12] Sometime after the purchase, Mr. Fisher moved to Nova Scotia, and brought the ATV with him. The Nova Scotia Registry of Motor Vehicles requires ATV registration.

[13] According to his documents, Mr. Fisher first insured the ATV in Nova Scotia on October 2, 2019, with TD Insurance. An insurer has access to various resources to confirm ownership; whether they did so in this case is unknown.

[14] On June 3, 2020, Mr. Fisher called KPS and spoke to Sgt. Trevor MacNeil, requesting a VIN check as he wished to register the ATV in Nova Scotia, as required. He told Sgt. MacNeil that the ATV was located at Glooscap Tire. Sgt. MacNeil traveled to Glooscap (where the ATV was located in the building) to confirm the VIN number, and he directed dispatch to search the VIN on CPIC. There was no result at all, so Sgt. MacNeil directed dispatch to add "Alberta" to the search. When Alberta was included in the search, the Alberta Registry of Motor Vehicles showed AMA insurance as the registered owner, as well as contact information for AMA. Sgt. MacNeil then contacted AMA Insurance (Ian Ross), who provided him with background information on the AMA title. According to Mr. Ross, the ATV had been reported as stolen on June 1, 2013. When the insured owner was paid (\$6000), he transferred ownership to AMA. The ATV had not been recovered, and AMA had never transferred their ownership. AMA held the original registry document transferring ownership to it.

[15] Based on the information from Mr. Ross, Sgt. MacNeil then contacted RCMP Fort McMurray (Staff Sergeant Horwood). A Fort McMurray officer (since transferred elsewhere) had investigated the theft.

[16] S/Sgt. Horwood advised that the investigating officer on the theft was a Cst. Fisher (later determined to be a different Fisher than Morgan Fisher). However, this was a "red flag" at the time for Sgt. MacNeil. He also had suspicions because, as an RCMP officer at the time, Mr. Fisher would have had access to CPIC when he purchased the ATV, and had he done a CPIC search at the time, he would have learned that the ATV was a stolen vehicle.

[17] S/Sgt. Horwood also advised that the theft had been purged from CPIC, but that he would locate the "hard jacket" file and get back to Sgt. MacNeil. He later advised that the hard jacket had been destroyed as retention time had elapsed. As Sgt. MacNeil would be away from the office the following day, to travel to Cape Breton for a funeral service, he advised S/Sgt. Horwood to contact KPS Sgt. Goss for follow up, and he emailed Sgt. Goss with instructions. He detailed the information in his email. In that email, he also mentioned that Mr. Fisher was "...the intense guy that applied for a position with us...", and said that "It was fishy, (pun intended...)" that Mr. Fisher didn't have the ownership papers.

[18] On June 4, 2020 Sgt. Goss reviewed the file information, spoke to Ian Ross at AMA, and attended Glooscap to ensure the VIN # was correct. The ATV was inside the building at the time. He spoke to Mr. Halliday, owner operator of Glooscap. He spoke to Mr. Fisher, while there, and told him that the vehicle was shown as having been stolen in 2013. Mr. Fisher told him that he had a Bill of Sale for the ATV, and that he had purchased it in Saskatchewan. According to Mr. Fisher, the seller was a woman who told him that she had purchased the vehicle new, when she won a lottery.

[19] Mr. Fisher advised that he would bring the Bill of Sale to KPS.

[19] Sgt. Goss then tasked Cst. White to follow up with Mr. Fisher for more paper trail.

[20] Mr. Fisher told Cst. White that he had done a Citizen's CPIC check after speaking to Sgt. Goss, which did not show theft. He also had a former RCMP colleague run a CPIC, with the same result.

[20] Mr. Fisher advised Cst. White that he had purchased the ATV in 2018, from a woman who needed the money, and who claimed to have purchased it new when she won the lottery (Heidi Bundschuh). Cst. White then contacted the woman, who said she did not win a lottery, and that she had bought the ATV between 2015 – 2017. She confirmed that she had sold it to a police officer. Mr. Fisher provided his Bill of Sale showing that transaction. Cst White then located the identity of the prior vendor (Crystal Neufeld) and contacted her. She claimed that she bought it used around 2010, from a person who had no papers (an odd, but unresolved issue, since it was not until 2013 that it was reported as stolen by Mr. Nicole). The Bill of Sale, which was provided to KPS by Mr. Fisher, confirmed his purchase, in March 2018. As noted, it was an Alberta generated document, and recommended CPIC or other checks to ensure vendor ownership.

[21] Sgt. Goss was also concerned, as the ownership investigation process was ongoing, Mr. Fisher had used the assistance of a former RCMP colleague in Saskatchewan to access not only CPIC, but also the KPS current PROS file. This would be serious misconduct by a police officer.

[22] The following day, June 5, 2020, Cst. Burke and Cst Matheson, on instruction from Sgt. Goss, seized the ATV from Glooscap; it was towed to a secure compound (Shaffer's). The ATV was at that time located outside of the Glooscap building, visible from the road. Sgt. Goss spoke to Mr. Fisher and was advised of the reason for the seizure, that is, that KPS was satisfied that the vehicle had been stolen, the ownership had been transferred to AMA, and had never been transferred to anyone else. AMA was

therefore the legal owner. Cst. Burke testified that he told Mr. Halliday, the owner of Glooscap, to let Mr. Fisher know that he could contact Shaffer's to retrieve any personal items. Cst. Burke didn't see anything of value in the vehicle, other than a gas can and some towing straps. However, in questioning before the Review Board by Mr. Fisher, he agreed that a number of items that he later claimed to have been in the vehicle, could have been concealed within some closed panels

[23] Cst. Burke did not at the time conduct a search of the vehicle, as he was concerned that such a search might be in violation of the Charter of Rights and Freedoms. He was not aware of any policy requirement that he search a vehicle for personal property.

[24] On June 8, 2020, Cst. (now Sgt.) Ken Reade became involved in the file. Sgt. MacNeil was still out of the office, and asked Sgt. Reade to contact AMA, and that they had told him that they were waiting for RCMP in Alberta to conclude their investigation, to determine if charges would be laid. Sgt. Reade spoke to Mr. Fisher, and left a message for S/Sgt. Horwood, to determine what they were going to do, so that KPS could then release the ATV to AMA or to Mr. Fisher. He contacted Mr. Fisher, to update him, and at that time, Mr. Fisher told him that he was at the courthouse, filing an application for KPS to return the ATV, noting KPS as "thieves".

[25] On June 9, 2020, S/Sgt. Horwood contacted Sgt. Reade; he advised that the "hard jacket" had been destroyed, and as the ATV has been found, their file is closed. There would therefore be no theft charges in the jurisdiction where the theft had taken place. Cst. Reade reported this to Sgt. MacNeil, who confirmed the ATV could now be released to AMA. Cst. Reade spoke to Mr. Ross, who advised that their local representative would arrange to have the ATV removed from Shaffers and taken to an auction site (Impact Auto). He spoke to Mr. Fisher to update him.

[26] AMA later had the ATV removed and transported to Impact Auto for auction.

[27] At this point, no charges were being laid in Alberta, where the theft occurred, and AMA had undisputed proof of ownership. Mr. Fisher however seems to have believed that his Bill of Sale and insurance coverage established him as the lawful owner. Unfortunately for Mr. Fisher, they did not.

[28] Cst. Reade became aware of Mr. Fisher's court application, and advised Mr. Ross to delay any auction, as Mr. Fisher was applying to the court for some sort of remedy. The application was scheduled to be dealt with on June 19th.

[29] On June 10, Sgt. MacNeil returned to the office.

[30] On June 18th, 2020 Sgt. McNeil prepared a draft "Report to Justice" but did not sign or file it. Had charges been laid in either Alberta (against the original thief), or in Nova Scotia (in the event that an investigation showed Mr. Fisher as knowingly possessing stolen property), the Report to Justice would be filed with the court having jurisdiction.

[31] On June 19, 2020, Crown Dan Rideout emailed Sgt. MacNeil to advise that the application had been dismissed, as there was no Information before the Court. He suggested that if no charges were laid, he should return to the ATV to AMA, ASAP; if that was the case, he should advise Mr. Fisher, who could then bring an action "in replevin" (a civil action for recovery of property).

[32] Sgt. MacNeil still had concerns regarding Mr. Fisher; Mr. Fisher was a member of the RCMP when he purchased the ATV, and he would have had access to CPIC (the theft was not purged until several months after the purchase). He also believed that the purchase price of \$3300 was below even the 2020 "blue book" value of the machine. He was also concerned that when Cst White spoke to Ms. Bundshuch, she contradicted Mr. Fisher's statement that she had purchased the machine new, when she won the lottery, and she told Cst. White that she had never won the lottery. Because of these "red flags", he arranged a document audit to be done to see whether Mr. Fisher had accessed CPIC records when he purchased the ATV.

[33] On June 30, 2020, Sgt. McNeil started vacation; however, on that date he received the audit information which showed that Mr. Fisher did not access CPIC in 2018, therefore would not have knowledge from that source that the ATV was stolen. The audit did confirm that an RCMP officer in Saskatchewan did access the KPS file on June 4, 2020 and had checked the VIN.

[34] The vehicle was scheduled to be auctioned later in July, and so on July 10, Sgt. McNeil asked Cst. Reade to follow up with Mr. Fisher on possible contents; Mr. Fisher referenced additional items (booster cables, ratchet straps, first aid kit, tool kit, GPS, gloves, full gas can, folding saw, tire repair, 2 knives). Cst. Reade called Impact and was informed that the ATV was going to auction the coming week. Impact confirmed that they would look for items

[35] On July 14, 2020, Cst. Fairburn was asked by Sgt. McNeil to put Mr. Fisher in touch with Impact. Mr. Fisher was provided with the Impact phone number.

[36] According to the documents, on July 16, Mr. Fisher advised a Cst. Andrews that he could not get information from Impact; and that he is still looking for his belongings to be returned. Cst. Andrews contacted Impact, who confirmed that they have 2 bags of items, which they would courier to KPS. The items were sent, and Mr. Fisher picked them up the next day. Although Mr. Fisher did not testify as to what items were recovered, the documents indicate that he was still maintaining that his GPS was missing.

ANALYSIS:

[37] Counsel for Sgt. MacNeil, in his written submissions, categorized the Form 5 complaint against Sgt. MacNeil under s. 24(3)(a) and (b) of the *Police Act* Regulations:

s. 24(3)(a) and (b) (Police Regulations, NS Reg 230/2005):

24(3) A member who neglects their duties in any of the following ways commits a disciplinary default:

- (a) neglecting to or, without adequate reason, failing to promptly, properly or diligently perform a duty as a member;
- (b) failing to work in accordance with orders;

[38] The Board, for clarity and completion, will deal with the particular issues set out in the original Form 5 (above):

Failure to write a search warrant:

[39] As referenced in the facts above, the only time that Sgt. MacNeil entered the Glooscap property was on June 3rd to confirm the VIN provided by Mr. Fisher was accurate, a good decision on his part. He entered the premises. There is no evidence that it was done without the consent of the employee on site and later, the owner, Mr. Halliday. Contrary to the allegation of Mr. Fisher in his complaint documents, Mr. Fisher did not have an ownership interest in Glooscap. He was a business partner of Mr. Halliday in another business. Nor was a warrant required. s. 489(2) of the Criminal Code provides as follows:

489(2) Every peace officer, and every public officer who has been appointed or designated to administer or enforce any federal or provincial law and whose duties include the enforcement of this or any other Act of Parliament, who is lawfully present in a place pursuant to a warrant or otherwise in the execution of duties may, without a warrant, seize anything that the officer believes on reasonable grounds (a) has been obtained by the commission of an offence against this or any other Act of Parliament; (b) has been used in the commission of an offence against this or any other Act of Parliament; or (c) will afford evidence in respect of an offence against this or any other Act of Parliament.

[40] As well, the entry to the property by Sgt. MacNeil, and the following day by Sgt. Goss, was done with the consent and acquiescence of Mr. Halliday.

Failure to follow judicial process:

[41] This appears to refer to Mr. Fisher's argument that Sgt. MacNeil should have filed the "Report to Justice" with the Provincial Court. In his evidence, Sgt. MacNeil explained that he prepared the document pending Mr. Fisher's application to Provincial Court, but held it, unsigned. Mr. Fisher's application to the Court (in which he described KPS as thieves) was dismissed, as an Information had not been filed with the Court. There was therefore no need at that point to file the document. There was no jurisdiction in that Court at that time to deal with the ownership of the ATV. As it was, in any event, the theft by an unknown party had occurred in Alberta. Of course, the possibility remained open, in the mind of Sgt. MacNeil at the time, that a charge could lie against Mr. Fisher, if the evidence showed that he knew the ATV was stolen when he purchased it (it appears from the later CPIC audit that he was not aware and unfortunately, was an innocent purchaser). However, the fact that he was not aware that the machine was stolen does not help him; the *Nova Scotia Sale of Goods Act*, (1989, c. 408, as amended), provides as follows:

Title to goods sold without consent of owner

24 Subject to this Act, where goods are sold by a person who is not the owner thereof and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell. R.S., c. 408, s. 24.

[42] The Saskatchewan legislation has a similar provision.

[43] The common law contract rule, "*nemo dat quod non habet*" (you cannot give what you don't own) also applies.

[44] There is no dispute that AMA was the lawful owner, and that fact was agreed to by Mr. Fisher in advance of the Review Board hearing.

Failure to complete tow inventory form:

[45] Sgt. MacNeil had no role in the towing and was on compassionate leave at the time of the towing. He was not at Glooscap when the vehicle was towed to Shaffer's compound. Sgt. Goss, having reviewed all of the entries on the system, and after having confirmed the accuracy of the VIN, ordered Csts. Matheson and Burke to arrange to have the vehicle towed and they attended Glooscap for that purpose.

The only items that were observed in the open ATV were a gas container and some tow straps. Cst. Burke was not aware of the KPS inventory policy, and he did not believe that it was the practice at KPS to search a seized vehicle. He felt that s. 8 of the Charter of Rights and Freedoms (the right to be secure against unreasonable search and seizure) would apply.

KPS decided ownership:

[46] Once Sgt. MacNeil had confirmation from S/Sgt. Horwood in Alberta that they would not be continuing the theft investigation, and that no charges would be laid, Sgt. MacNeil advised Cst. Read that the ATV could be released to AMA. Their title was unassailable (see above) and there was no doubt that neither Ms. Bundschuh nor Ms. Neufeld had ever been the lawful owner of the vehicle. There was nothing to be debated, AMA's ownership was clearly established by the registration document. KPS empathized with Mr. Fisher but there was absolutely no question of title. Mr. Fisher was made aware of this and had apparently been in discussions with his insurers who, according to his pleadings, were themselves in discussion with AMA.

Failure to maintain proper communication:

[47] While this file was handled by a number of officers, there had been continuous communication with Mr. Fisher. Sgt. MacNeil was the investigating officer on the file but, as noted, he was on compassionate leave just after he did the initial work on the file, and he was out of the office until June 10th. He properly delegated the follow up to Sgt. Goss and communication continued (and was documented) through various tasked officers to Mr. Fisher, on a timely basis.

[48] Mr. Fisher specifically complains that Sgt. MacNeil did not advise him of the communication that he had from Crown Dan Rideout at the time that the Fisher application to Provincial Court had been dismissed. Mr. Rideout's email reads:

If no charges, and you seek to return to AMA Insurance, as lawful owner, then please advise Mr. Fisher of this decision and transfer asap. It appears it will then be a civil issue, where he can apply to the Supreme Court if he seeks return of the item under a civil action of replevin" (relying on a summary of the Supreme Court of Canada decision in R v. Raponi, [2004] 3 SCR 3)

[49] Mr. Rideout's advice to Sgt. MacNeil was to transfer the ATV to AMA Insurance "ASAP" and to let Mr. Fisher know when that was done. The ATV had already been released to AMA's representative, that had occurred on June 9. Mr. Rideout rightly did not suggest that there was any criminal law prohibition against transferring to AMA, the registered owner.

[50] It was not until June 30th that Sgt. MacNeil contacted Mr. Fisher with the information provided by Mr. Rideout. It was not until that date that he received the requested CPIC audit information which confirmed that Mr. Fisher had not done his own CPIC search when he purchased the ATV. That information would eliminate proof of actual knowledge that Mr. Fisher knew he was purchasing a stolen vehicle and brought to an end consideration of charges against Mr. Fisher.

[51] As Mr. Fisher did not testify, there is no evidence before the Board as to whether Mr. Fisher, on his own, sought advice as to a possible civil action but it is not for the Crown, or police officers, to provide legal advice on particular civil matters. Mr. Fisher had been advised on June 5th that KPS confirmed that AMA was the registered owner. He also knew at that date that the ATV had been removed to Shaffer's compound. Mr. Fisher's application document to the Provincial Court dated June 8th confirmed his knowledge. He also knew as of that date that AMA was the registered owner, although he neglected to include that information in his application and, in fact, he stated that the CPIC checks showed nothing on June 4th, without mentioning the later record that showed AMA as the registered owner.

[52] Mr. Fisher also had been informed by Cst. Reade on June 9th that the criminal investigation into the Alberta theft was over and that AMA had been advised. He was told that this was now a civil matter, and that AMA could make arrangements to take possession of the ATV. Mr. Fisher knew as of June 19th that his criminal court application had been dismissed. The ATV had been transferred to Impact on instruction from AMA on June 24th, according to the PROS entry by Sgt. MacNeil on June 26th.

[53] We are satisfied that Sgt. MacNeil had no duty to pass on Mr. Rideout's suggestion to Mr. Fisher, at least until he was able to conclude his own issues regarding Mr. Fisher's possible criminal conduct.

Failure to complete an investigation:

[54] In his post – hearing submissions, Mr. Fisher argues:

No statements obtained, he did not direct anyone to take statements and concluded his investigation on June 30th, 2020, with me carded as a suspect, while knowing I was an innocent possessor. I only learned of the carding by the actions of D/C Hearn’s report that changed me to “Victim- Property Crime” (Exhibit #1, Pages #44). As part of his duties, he failed to follow up with the report of Cst. White (Exhibit 1, Page # 6) who tracked the historical ownership back to 2010. All the while knowing that the claimant for the insurance company was deceased. The insurance company had a reported theft claim from 2013. Which at face value, appears to be a justified fraud investigation.

[55] Apparently, at the suggestion of D/Chief Hearn, the Fisher entry on the file was since changed to “victim.” The death of the original owner, well after he had transferred title to AMA, would have no effect on that ownership; although if the Alberta RCMP located the thief, it would make prosecution in that province more difficult.

[56] Sgt. MacNeil, having taken the call at the outset, became the ‘investigating officer’ although the initial request was only for a VIN confirmation required for the purpose of registering the ATV in Nova Scotia. He found that the absence of information on CPIC was odd, given the age of the machine, so rather than simply verifying on that basis, he took the extra step of doing a further search, specifying “Alberta” in the parameters. This is commendable.

[57] It was the information that was produced after that, that generated what was, in fact, a thorough investigation by KPS, on top of the initial investigation which had been opened in Alberta. Sgt. MacNeil made the initial contact with AMA, who held the legitimate registration pursuant to the Alberta legislation. But he did not simply accept that AMA was therefore the rightful owner; the information from AMA directed him to the RCMP in Fort MacMurray. He spoke to S/Sgt. Horwood. He delegated the follow up tasks appropriately and both Sgt. Goss and Cst. White followed up by speaking to Mr. Fisher, who told them that the vendor in his case told him that she had purchased the ATV new when she won the lottery. They obtained Mr. Fisher’s (unregistered) Bill of Sale, Cst. White managed to locate and speak to the two prior vendors. The legwork that they did regarding the ownership of the ATV was really legwork for the theft file in Alberta. But it was clear from the information received, including the registration from Alberta, that AMA was the owner. Not the outcome Mr. Fisher would have wanted, but there was nothing further to investigate. KPS could have simply refused to certify the ownership at that point. However, having located stolen property, they had a duty to assist the RCMP and the rightful owner, AMA, in securing that property, which they did.

[58] Any further investigation into the theft from Mr. Nicole would be for Alberta RCMP. The investigation by Sgt. MacNeil, and KPS, was thorough, complete, and perhaps more than what many might have done. While Sgt. MacNeil did not take written statements from any witnesses, the information was well documented in the PROS file.

[59] Mr. Fisher argues that there should have been follow up on the information obtained by Cst. White. But what that information determined was that neither of the two prior purchasers (Ms. Neufeld and Ms. Brunschuh) had been provided with any proof of ownership, nor had Mr. Fisher. The only proof of ownership was the registration held by AMA. There was no reason to follow up on the report of Cst. White, other than to share the information with the RCMP in Alberta, which was done.

Failure to follow judicial process and complete a Report to Justice for things seized:

[60] As noted above, Sgt. MacNeil completed a Report to Justice but did not sign or file it. Mr. Fisher's "application" to the Court did not create jurisdiction in the Court to deal with the matter; any court with jurisdiction would be in Alberta, where the theft had occurred. The ATV was seized pending decision of the Alberta RCMP to continue their investigation, and charge. That did not happen and so there was no *lis* before any court, although had Mr. Fisher been charged with possession of stolen property, that would have created jurisdiction in Nova Scotia. In the circumstances, there was no requirement to file any other documentation with the Nova Scotia Provincial Court.

[61] Sgt. MacNeil, after receiving the final piece of the investigation: the audit report, ruled out charges against Mr. Fisher. Mr. Fisher's remedy (if any) would be civil litigation. Sgt. MacNeil had no duty to advise Mr. Fisher of any action in *replevin* and wouldn't have the legal background to provide such legal advice.

Failure to ensure the definition of ownership in the Criminal Code of Canada was met:

[62] Mr. Fisher refers to s. 657.1 of the *Criminal Code* as the definition of “ownership.” That section provides as follows:

657.1(1) In any proceedings, an affidavit or a solemn declaration of a person who claims to be the lawful owner of, or the person lawfully entitled to possession of, property that was the subject-matter of the offence, or any other person who has specialized knowledge of the property or of that type of property, containing the statements referred to in subsection (2), shall be admissible in evidence and, in the absence of evidence to the contrary, is evidence of the statements contained in the affidavit or solemn declaration without proof of the signature of the person appearing to have signed the affidavit or solemn declaration.

[63] That section is not a definition of ownership; it is an evidentiary provision as to proof of ownership. As noted, the investigation in Mr. Fisher's case made it clear that the legal title to this property was AMA, by way of the registration document. Even if a proceeding took place in a criminal court, and if, for example, Mr. Fisher or a predecessor vendor filed an affidavit, the above section would still not defeat that title.

Gave my property away to someone else with the required documentation (sic):

[64] It appears that there was a typographical error in this allegation by Mr. Fisher. As noted, the property was “released” to AMA who, in fact, had the required documentation and were, as explained above, the lawful owner.

Stole, and gave away, my personal possessions:

[65] Sgt. MacNeil certainly did not “steal” Mr. Fisher's personal possessions; it is a very serious allegation to make, as it was to name KPS as “thieves” in a document filed in Provincial Court. Beyond that, there was certainly an issue regarding whether or not the ATV should have been searched for other personal property prior to having it towed to the storage compound. However, Sgt. MacNeil played no role in that search, and the officers that arranged for the tow from Glooscap did not see any valuable possessions on the open ATV. Furthermore, Mr. Fisher did not testify that he himself took any steps to recover any personal possessions from the ATV.

[66] While it is not specified in the Form 5, in the course of this proceeding Mr. Fisher expressed concerns regarding the use of the descriptive "...the intense guy...", in an internal communication from Sgt. MacNeil to Sgt. Goss on June 3rd. He also commented that the involvement of an RCMP member named Fisher in the initial theft claim was "Fishy..."

[67] The descriptive "intense" is not necessarily pejorative, although it can be perceived as such, and in this case could imply a negative bias against Mr. Fisher. Certainly, although he did not testify, that seems to be Mr. Fisher's perception. We do not believe that Sgt. MacNeil intended such a bias, rather, "fishy" reflects some skepticism arising from the information that surfaced from his Alberta contacts, i.e. that a Cst. Fisher had investigated the theft in Alberta. "That intense guy" reflects that he was simply referencing some prior knowledge of Mr. Fisher.

[68] While the words used are not such as to amount to disciplinary misconduct, the Board recommends that officers use caution in language used in internal communication.

[69] The allegations against Sgt. MacNeil have been characterized as potentially falling within s. 24(1)(a) and 24(3)(b) of the Code of Conduct, which provide as follows:

24(1)(a) acting in a disorderly manner or in a manner that is reasonably likely to bring discredit on the reputation of the police department;

24(3)(b) failing to work in accordance with orders;

[70] None of the conduct of Sgt. MacNeil on this file falls within those sections. The entirety of the complaint as against Sgt. MacNeil is dismissed.

Subsequent allegation against Sgt. Goss and Cst Burke.

[71] Deputy Chief Hearn of the Truro Police Service had been assigned to investigate the public complaint by Morgan Fisher, against Sgt. MacNeil of the Kentville Police Service (KPS). D/Chief Hearn had completed his investigation, and on September 11, 2022, D/Chief Hearn provided his investigation report with KPS. His investigation detailed the conduct of all officers involved, including Sgt. Goss and Cst. Burke. On September 30, 2020, the complaint was found unsustainable by Chief J. Cecchetto of the KPS. In her decision, Chief Cecchetto commented:

“statements were taken from complainant and officers. All reports were reviewed, CPIC records, bills of sale, and insurance information...”

[72] On October 8, 2020, Mr. Fisher filed a Notice of Review of that complaint.

[73] In his initial investigation of the Sgt. MacNeil complaint, D/Chief Hearn had asked KPS to provide all applicable policies, which they did. However, on October 13, 2020, D/Chief Smith, KPS, subsequently located and provided another KPS policy (seized vehicle policy/itemizing property) to D/Chief Hearn that he had not seen (inventory policy / seized vehicle policy). On October 15, 2020, D/Chief Hearn requested an extension to “investigate this matter further”. The Nova Scotia Police Complaints Commissioner allowed the request. However, he was advised by Jeff Garber, NSPC staff, that he would have to file new Notice of Allegation regarding any other possible misconduct.

[74] Following his further investigation, on November 9, 2020, D/Chief Hearn prepared Form 8 (Notice of Allegation (Complaint or Internal Discipline) naming Sgt. Goss and Cst. Burke, but still showing Morgan Fisher as the complainant. The Notices were not provided to these officers at that time, and it was not until November 20, 2020, that D/Chief Hearn met with Sgt. Goss and Cst. Burke. It was not until the meeting that Sgt. Goss was informed by D/Chief Hearn that he was now the subject of a new complaint. Cst. Burke was then informed by Sgt. Goss that he was also the subject of a fresh complaint. It was on November 20 when he met with Sgt. Goss and Cst. Burke that D/Chief Hearn served the Form 8's on them.

[75] D/Chief Hearn alleged the following:

s. 24 (1)(a) (Police Regulations, NS Reg 230/2005):

- 24 (1) A member who engages in discreditable conduct in any of the following ways commits a disciplinary default:
- (a) acting in a disorderly manner or in a manner that is reasonably likely to bring discredit on the reputation of the police department;

s. 24(3) (a) and (b) (Police Regulations, NS Reg 230/2005):

- 24 (3) A member who neglects their duties in any of the following ways commits a disciplinary default:
- (a) neglecting to or, without adequate reason, failing to promptly, properly and diligently perform a duty as a member;
 - (b) failing to work in accordance with orders;

[76] Following a “further” investigation and report from D/Chief Hearn, Chief Cecchetto found that there was no disciplinary default by either officer and, on December 16, 2020, Chief Cecchetto issued her Form 11 decision, showing Morgan Fisher as the “complainant”, and Sgt Goss and Cst. Burke as the “members complained of.” That decision was provided to Mr. Fisher, and on January 7, 2021, Mr. Fisher filed a new Notice of Review.

[77] On January 8, 2021, Chief Cecchetto released a third (amended) Form 11, apparently at the suggestion of the NSPC, which showed Sgt MacNeil, Sgt. Goss, and Cst Burke as “members complained of.”

[78] When D/Chief Hearn generated his own Notice of Allegation, in response to the additional policy document provided, the issue of how KPS, Sgt. Goss and Cst. Burke dealt with Mr. Fisher's personal possessions allegedly on the ATV, was part of Mr. Fisher's initial complaint against Sgt. MacNeil (“failed to complete tow inventory form”, stole, and gave away my personal possessions”). That complaint had been investigated, including a full review of the records, and “statements taken from complainants and officers”, which would have had to include statements from Sgt. Goss and Cst. Burke. The complaint was not sustained although policy revisions were suggested by D/Chief Hearn and were immediately being pursued. Part of the first investigation, and report to Chief Cecchetto, would surely have included information that Cst. Burke had not observed any personal property on the ATV when it was towed to a secure compound, and that he would not have wanted to search any closed compartments in any event, as he perceived that to do so, would be a Charter violation.

[79] In the result, the issue, if any, arising out of D/Chief Hearn's new allegation against Sgt. Goss and Cst. Burke was *res judicata*. Certainly it would have been open to D/Chief Hearn to file an addendum to his report to Chief Cecchetto, as part of the initial complaint investigation of Sgt. MacNeil and Chief Cecchetto could have simply filed an addendum to her decision, referencing the newly discovered policy, and possibly tying the newly discovered policy to Sgt. MacNeil's conduct. But as the issue was *res judicata*, it was not open to D/Chief Hearn to reopen his investigation to name two new officers. At best, he was still within the time limits to treat his new allegations as a new complaint, although he would still be facing *res judicata*. But after a full investigation, which would have included statements from these two officers, not at the time subject to a complaint, even that would appear to be an abuse of process.

[80] Even if the new “Notice of Allegations” against Sgt. Goss and Cst. Burke were not *res judicata*, procedure was not properly followed. The “new” policy information was discovered by October 13, 2020 and D/Chief Hearn requested an extension to investigate the matter further. It is not known what happened between that date and November 9 (when D/Chief Hearn generated the new Notices) although presumably the extension was granted. However, neither Sgt. Goss nor Cst. Burke were served with the Notice of Allegation until November 20th. While there is no specific time requirement for service of a Notice of Allegation, clearly, in fairness to the officers, they should be made aware promptly. For example, in the Fisher Complaint against Sgt. MacNeil, the Notice of Allegation was provided to him within two days.

[81] A further difficulty arises: although the complainant in the Sgt. Goss and Cst. Burke allegations is shown as Morgan Fisher; the reality is that the complainant was D/Chief Hearn. In that view, D/Chief Hearn should not have taken on the role of investigator, of his own complaint. Of course, if this is seen as simply an extension of the complaint against Sgt. MacNeil, rather than a new complaint, he could continue to investigate, but he could not add two new officers as subject of that complaint. That would require a **new** allegation, and proceedings that would follow a new allegation. At most, he could do an addendum to his previous report, and Chief Cecchetto could have done an addendum to her decision (although her comment regarding policy revisions would seem to deal with that issue, in any event.)

[82] The Nova Scotia *Police Act* provides as follows:

Proceedings required

80 (1) No member of a municipal police department is subject to reduction in rank, to dismissal or to any other penalty for breach of the code of conduct except after proceedings have been taken in accordance with this Act and the regulations

[83] This provision (in earlier legislation) was considered by the Nova Scotia Court of Appeal in **Kingsbury v. Heighton**, 2003 NSCA 80. The Court outlined the steps to be taken in the disciplinary process:

- Step 1 Written allegation against a police officer filed with the chief officer (Reg. 20(1));
- Step 2 Notice of allegation in Form 8 given to the member (Reg. 20(4));
- Step 3 The appointment of an investigating officer (Reg. 21(1)(2));
- Step 4 An investigation of the allegation (Reg. 21(3));
- Step 5 Report to the chief officer with recommendation (Reg. 21(4));
- Step 6 A decision by the chief officer whether the evidence discloses that a disciplinary default may have occurred (Reg. 21(6));
- Step 7 Notice of meeting to be given forthwith, followed by a meeting with the chief officer with right to counsel, union representative or a member of the force present, and opportunity to hear the results of the investigation and to admit or deny allegations (Reg. 21(8));
- Step 8 Decision that there was a disciplinary default and imposition of penalty (Reg. 21(9), Reg. 5(3));
- Step 9 Forwarding written copy of decision and reasons as provided in Regulation 21(10).

[84] While there is no doubt that D/Chief Hearn had the best of intentions in dealing with the new policy, what followed would operate unfairly against Sgt. Goss and Cst. Burke, who would have been part of the original investigation as witness officers. Although the outcome, dismissal of the complaints, may have rectified that unfairness, the approach taken in this case is not a practice that should continue.

[85] If we are wrong in our conclusions, we note that in any event, we would not have found disciplinary default against Sgt. Goss or Cst. Burke. The newly discovered policy was of little significance on the particular facts of this case. The policy was unknown, to any of the officers that testified, and was not consistent with the practices of KPS.

[86] In **Roy v. British Columbia (Attorney General)** 2005 BCCA 88, at paragraph 36, the Court commented on the application of formal policy to police conduct, in the context of civil liability:

“The policy of a police force is an important factor in determining the standard of care a peace officer must observe, but it is not determinative, nor is it to be treated as if it were a statute imposing civil obligations”.

[87] In **R. v. Beaudry**, 2007 SCC 5, 356 N.R. 323, Charron J., writing one of the majority judgments, had occasion to comment on an administrative directive issued to a police officer employed by a municipality. The directive specified prompt action must be taken to obtain a breath sample from a motorist suspected of impaired driving. Doyon J.A. of the Québec Court of Appeal had placed considerable weight on the administrative directive in considering whether the officer had fulfilled his legal duties, but Charron J. pointed out that administrative directions or policy statements do not have legal force. She writes (at para. 45):


Doyon J.A. seems to be attributing to the administrative directives set out in the police practices manual a normative value that they do not have. It should be pointed out that these directives do not have the force of law. They therefore cannot alter the scope of a discretion that is founded in the common law or a statute. Section 254(2) of the *Criminal Code* is the only legislative provision that applies in the instant case and it gives peace officers the power, but does not impose on them a duty, to take breath samples. Thus, the police practices manual cannot transform the discretion to decide whether or not samples should be taken into a binding legal rule: *Maple Lodge Farms Ltd. v. Government of Canada*, 1982 CanLII 24 (SCC), [1982] 2 S.C.R. 2.

[88] She does go on to add that while not having the force of law, a policy directive can “shed light on the circumstances of the alleged exercise of [the] discretion” (at para. 46). A policy directive can provide context, but that is all.

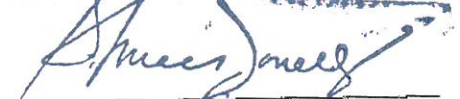
[89] Policies are simply that, “policies”. They do not have the strength of legislation or even regulation.

[90] It is the conclusion of the Board that none of the actions of Sgt. Goss or Cst. Burke could damage the reputation or image of the service, should they become public. Nor do they constitute failure to follow orders. The policies do not constitute “orders.” In any event, neither of these officers were aware of the policies, and the policies were not consistent with their usual practice.

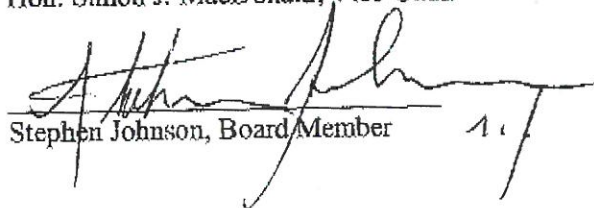
Dated at Halifax, Nova Scotia this 19 day of April, 2022.



Jean McKenna, Chair



Hon. Simon J. MacDonald, Vice-Chair



Stephen Johnson, Board Member 1.7

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