

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 **Carrie Low**, Complainant, against **Cst. Bojan Novakovic & Halifax Regional Police**, requesting a review of a decision made by Inspector Derrick Boyd dated December 17, 2020.

BEFORE: Jean McKenna, Vice-Chair
John Withrow, Member
Nadine Bernard, Member

COUNSEL: Jason Cooke KC & Cydney Kane, Counsel for Carrie Low
Brian Bailey, Counsel for Cst. Bojan Novakovic
Edward (Ted) Murphy, Counsel for HRP

HEARING DATE: July 10, 11, 13, 17 – 20, 2023

LAST BRIEF RECEIVED: November 9, 2023

DECISION DATE: February 28, 2024

THE INCIDENT

[1] On Friday May 18, the complainant Carrie Low went to Doolittle's bar in Dartmouth. It was the beginning of the Victoria Day long weekend. She danced and had some alcohol-based drinks. Late in the evening, and into the early morning hours of Saturday May 19, 2018, she was abducted from Doolittle's parking area, taken to an address in East Preston, and sexually assaulted by at least two males. Her recollection of events was very spotty, which may have been the result of the use of a “date rape drug”. Some of her memory of events surfaced later, and as well she was able to piece together some information from a taxi driver who picked her up that morning at the location of the assaults.

[2] In February 2020, a suspect was arrested and charged. In November 2021, that suspect died, shortly before a pre-trial procedure that had been scheduled to take place. In February 2022, a second individual was arrested and charged. At the conclusion of the trial, on May 23, 2023, that individual was acquitted. His DNA did not match samples of DNA taken from Ms. Low, and her clothing, on the day of the assault. As well, Ms. Low's memory of events remained vague.

[3] On May 13, 2019, Carrie Low filed a complaint, pursuant to the provisions of the *Police Act*. The named officers were Cst. Novakovic and Cst Jerell Smith. At that time, the limitation period for such a complaint was six months. The complaint did not specifically make an allegation against the Halifax Regional Police department,

[4] The then Nova Scotia Police Complaints Commissioner rejected the complaint, on the basis that it was out of time. Carrie Low sought judicial review of the Commissioner's decision.

[5] On March 3, 2020, Smith, J. allowed her application, on the basis of the “discoverability rule”. Justice Smith also determined that in examining the complaint as a whole, it also constituted a complaint against Halifax Regional Police. She noted that the Form 5 only asks for “Name(s) of Officer(s)” being complained about but does not have a section referring to the department as a whole. Smith, J. noted that despite the form used, the Regulations provided for a complaint against the department itself:

Making complaint

27 A complaint may be made to any of the following, as applicable:

(a) for a complaint about a police department generally, the complaints officer of the police department or any other member of the police department;

Smith, J. concluded that it was necessary to go beyond the four corners of the form, and consider the detailed factual summary, in order to conclude that the complaint indeed included the department.

[6] As a result, the matter was again reviewed by the Commissioner, and forwarded to the Board for review. The matter that is now before the Board is a complaint regarding the two named officers, and the Halifax Regional Police (HRP) department. It relates to conduct occurring between the date of the assault and May 13, 2019, the date the complaint was filed.

[7] We note that Cst. Jerell Smith was a member of the Sexual Assault Integrated Team, (SAIT). That unit combines RCMP and HRP officers, but that we have no jurisdiction over the conduct of RCMP members. The RCMP has its own disciplinary process, and we understand Carrie Low is dealing with that process regarding Cst. Smith. This disciplinary review therefore focuses on the conduct of any HRP officers, and HRP itself.

The initial stage of the sexual assault investigation:

[8] When she returned home on Saturday, following the assault, Ms. Low replaced her underwear, which was missing, and then wearing the same clothing, went to her daughter's soccer game. When the game concluded, she and her daughter attended the Dartmouth General Hospital, where she was seen and assessed by two sexual assault nurse examiners (SANE nurses), who assembled a SANE evidence kit.

[9] As is the usual practice, the SANE nurses asked her if she wished to speak to the police; she apparently agreed, and HRP dispatched Cst. Bojan Novakovic, a TIR (Trauma Informed Response) trained patrol officer, to the hospital to pick up the SANE kit. He also briefly spoke with Ms. Low. The senior SANE nurse, Jane Collins, became involved, being of the view that his discussion with Ms. Low was improper, and that he was 're-victimizing' her.

[10] The SANE nurses may collect the clothing of the victim worn at the time of the assault; if she is wearing the clothing at the time of the examination; they can provide her with some replacement clothing. If they do collect the clothing, it would become part of the SANE kit. Otherwise, the victim would be advised to bag the clothing upon return to her residence.

[11] Either the SANE nurses, or Cst. Novakovic provided Ms. Low with a plastic evidence bag. She was advised to place her clothing in the bag when she returned home. Carrie Low chose to bag her clothing at home. Cst. Novakovic told her that an officer would come by later to pick it up, and that a member of the Sexual Assault Investigative Team (SAIT team) would be in touch with her. He thought that there were no members of the team working that weekend, but that someone would contact her on Tuesday.

[12] SAIT is an integrated team, consisting of members of the RCMP and the Halifax Regional Police, and Cst. Novakovic, although a Trauma Informed Response (TIR) officer, was not a member of SAIT. (Certain specific training is undertaken to become a TIR officer.)

[13] Cst. Novakovic left with the SANE kit, logged it into evidence, and immediately completed a General Occurrence Report. The report provides the details of the assault that he was able to obtain from Carrie Low at the time.

[14] The following day, Sunday May 20, Ms. Low phoned Cst. Novakovic; she informed him that she had learned from Bob's Taxi that she had been picked up at 409 Partridge River Road, East Preston. She also described the building as an old travel trailer, behind a residence. She provided him with an updated address to contact her. She testified that she told him that the clothing had not yet been picked up.

[15] Cst. Novakovic did not recall any comment regarding the clothing, nor is it entered in his supplemental report at the time. Ms. Low's different recollection can be understood to be as a result of her numerous contacts with a number of different officers in this initial period of the investigation, following the assaults. However, despite Cst. Novakovic's two documented contacts with Ms. Low, there was still no mention of the clothing being in her possession, in those records. He knew that she had the clothing, but it would not be possible for any other officer to realize that from a review of the Versadex records.

[16] Had this information been entered on the electronic record (Versadex) it would have been available to any other officer, including the Sergeant overseeing SAIT. The reviewing or assigned member of SAIT would have then instructed that the clothing be picked up.

[17] Cst. Novakovic had been wrong in his belief that there was no SAIT member working that weekend; in fact, CID investigators work regular weekday shifts. CID investigators also provide coverage for weekends and holidays. There are always two CID duty officers on shift for each weekend or holiday. On May 19, 2018, Cst. Jordan Gilbert of SAIT was one such officer, and could have been called out, although he had been assigned to another serious call, a fatality fire.

Structure of SAIT

[18] The brief filed on behalf of HRP sets out the structure of SAIT (Sexual Assault Integrated Team). The SAIT team is an integrated HRP and RCMP unit within the Criminal Investigation Division (“CID”). SAIT investigates sexual assaults in the Halifax Regional Municipality.

[19] In 2018, SAIT was overseen by S/Sgt. Don Stienburg, who headed the Special Investigative Section (“SIS”) of CID which was known as ‘major crimes’. Through SIS, S/Sgt. Stienburg also oversaw the Homicide unit and the Cold Case unit. Additionally, he directly supervised the HEAT unit which relates to high-risk offenders. In total, he was responsible for over 50 investigators.

[20] SAIT is divided into two teams, one of which ordinarily works Monday - Thursday and the other Tuesday - Friday. This structure is depicted in a chart at Tab 2 of the Joint Exhibit Book.

[21] The Monday - Thursday team is supervised by an RCMP sergeant and is ordinarily comprised of four HRP Detective Constables and two RCMP Constables. In May of 2018, RCMP Sgt. Linda Gray was the supervisor. Cst. Jerell Smith (RCMP) was a member of this team. One HRP position was vacant.

[22] The Tuesday - Friday team is supervised by an HRP Sergeant and is ordinarily comprised of four HRP Detective Constables and an RCMP Corporal. In May of 2018, this team was supervised by HRP Sgt. Steve McCormack. The roster (Exhibit 5) shows that there was an extra RCMP Constable assigned to the team in May 2018.

[23] A SAIT call out is not required when a trauma-informed response (TIR) trained patrol officer can take a preliminary statement, in accordance with HRP policy and practice. Cst. Novakovic is, and was, a TIR officer.

[24] During the week of May 22 to 25, 2018, SAIT was short-staffed. Both supervisors were away, with Sgt. Gray on special duty and Sgt. McCormack (HRP) on vacation. Cpl. Kelly Plamondon of SAIT(RCMP) was covering for both supervisors. There were three additional SAIT officers away from regular duty: two on vacation and one on special duty. Thus, the SAIT team, which was intended to consist of 14 members, had only eight members on duty that week: one supervisor and seven investigators. Out of those seven investigators, one only worked the first half of the week. On Friday, May 25, only three, out of the seven typically working on a Friday, were on duty (Exhibit 5).

[25] We accept HRP's evidence that from May 22 - 25, 2018, Sgt. Steve McCormack was on vacation and was not in the office. Sgt. Linda Gray was posted elsewhere on Special Duty and also was not in the office for regular duty. As the previous weekend had been a long weekend, SAIT's involvement began on Tuesday, May 22.

[26] It was Cpl. Plamondon's role on that date to ensure that SAIT files were being assigned and properly investigated on both SAIT shifts.

[27] S/Sgt. MacDonald explained that SAIT files were assigned at the supervisor's discretion upon considering the experience of the investigators, the workload of all members, staffing considerations, availability of investigators, and whether the file seemed it might require a lengthy investigation. The team receives approximately 60 sexual assault complaints in a month. An investigator typically has a case load of some 12 complaints.

[28] S/Sgt. Stienburg gave evidence that on the morning of Tuesday, May 22, 2018, he spoke with Cpl. Plamondon about Ms. Low's file since "it was a serious file and I wanted to make sure that nothing slipped through the cracks in relation to assignment and that we could get a hold of the victim and get a statement from the victim".

[29] In particular, S/Sgt. Stienburg stressed to Cpl. Plamondon the importance of obtaining "video canvas of the area since video is very unstable in relation to the amount of time it can last... so if you don't get on it right away, you may lose that video evidence which is very important evidence". Thus, obtaining the video surveillance footage from Dave Doolittle's, as well as interviewing Ms. Low were identified as early investigative priorities.

[30] On May 22, 2018 at 7:39 a.m., following the direction from S/Sgt. Stienburg, Cpl. Plamondon assigned Ms. Low's file through Versadex to Cst. Jerell Smith (RCMP). Cst. Smith was scheduled to begin vacation on May 25, 2018. Upon his return, he would be participating in RCMP training. Cst. Smith did not anticipate returning to regular duties until mid-June. In the circumstances, that did not leave Cst. Smith with a lot of time to deal with Ms. Low's assault, although he did cover some initial ground, including a review of the video coverage at Doolittle's, speaking to Ms. Low on the telephone to arrange an in-person meeting, and meeting with Ms. Low in person later the same day, when he took a statement.

[31] Cst. Smith was assisted by D/Cst Jordan Gilbert.

[32] At 7:40 a.m., Cpl. Plamondon left a comment on Ms. Low's file in Versadex, stating she had reviewed this file, and video needed to be obtained. There is no mention of un-retrieved clothing, nor the secondary location of the assault in Cpl. Plamondon's entry, although location information was in the Versadex file, which would have been reviewed by Cst. Smith.

[33] Cst. Smith reluctantly testified at the hearing. He was obviously experiencing severe stress / anxiety related health issues.

[34] Cst. Smith testified that he did review the Versadex when he was assigned to the file. However, as noted, there was no mention of the clothing in the file at that point. He would have seen the address of the location that the assaults occurred.

[35] Cst. Smith testified that S. Sgt. Stienburg actually went so far as to instruct him to close the file. S/Sgt. Stienburg however, testified that he had no conversation with Cst. Smith, and in any event, Cst. Smith would have no authority to 'close the file'. Clearly Cst. Smith is mistaken on that point, although he may have confused that with information regarding another file (which involved a related but false complaint by a friend of Ms. Low), that second file involved a very similar circumstance, which quickly was determined to be a false complaint, and which was not pursued.

[36] Throughout his testimony, Cst Smith insisted that he was repeatedly told to close the file. This evidence is frankly, bizarre. When S/Sgt. Stienburg testified, he said that he was surprised to hear that Cst. Smith had testified that he thought he was bullied. S/Sgt. Stienburg testified that Cst. Smith had a

good attitude, that he wanted to be part of SAIT, which was “a tough place to work”. He said that Cst. Smith and Cst. Rideout were friends, he said that everyone liked him, and he “fit in”.

[37] In addition to this complaint by Carrie Low, Cst. Smith also faced a complaint by Carrie Low to the RCMP. Cst. Smith is apparently on some form of disability / stress leave from the RCMP. Something obviously seems to have impacted Cst. Smith

[38] Cst. Smith called Ms. Low on the morning of May 22, to arrange to interview her. She was working, and so they arranged for her to come to police headquarters later that day to provide a statement. According to her evidence, in the course of the initial phone conversation she informed him that no-one had picked up her clothing, which she had bagged as per instructions, from either Cst. Novakovic, or the SANE nurses. Cst. Smith in his evidence denies that the clothing was mentioned. According to Ms. Low, she mentioned the clothing to Cst. Smith in the course of that phone conversation and that Cst. Smith advised her that the clothing would be of no use, as too much time had passed. However, he neither collected the clothing, or instructed another officer to do so.

[39] We accept Ms. Low's evidence on this; the clothing was a very important issue for her. She had reasonable expectations that the assault investigation would be promptly investigated. Not surprisingly, from her perspective, the collection, and analysis, of the clothing would be a key part of the investigation. Like most citizens, she would not realize that the analysis would not take place immediately. This is information that should have been provided to her by Cst. Smith when he met with her. Unfortunately, Cst. Smith for whatever reason did not perceive the collection and analysis of clothing as having any value. In the result, no officer, including Cst. Novakovic, collected the clothing until May 29th, when he was directed by Sgt. McCormack.

[40] Carrie Low of course could have brought the clothing with her on May 22, when she attended HRP headquarters for an interview by Cst. Smith. There is no evidence as to why she did not do so, although if Cst. Smith had already told her that the clothing could not be of use, she would have no reason to bring it.

[41] Sgt. McCormack had been on vacation at the time of the assault; his first day back at work was May 29th. He recalled speaking to one of the SANE nurses regarding Cst. Novakovic's interview of

Ms. Low; that nurse was upset about the manner of questioning by Cst. Novakovic. He recalled calling Ms. Low to get her version of that first encounter. He says that was when she told him that the clothing had not yet been collected.

[42] Ms. Low recalled the discussion with Sgt. McCormack, but says that she had called to speak to Cst. Smith's supervisor, after several days of unsuccessful efforts to contact Cst. Smith. As noted, Cst. Smith was on vacation at that time, although he could (and probably should) have assigned another officer to cover the file in his absence, and certainly could have assigned some tasks to other officers in the interim. His failure to do so was the first element of the underlying issue in this complaint, that is, allegedly poor communication with the victim of a very serious, traumatic, incident.

[43] Whatever may have initiated the call, with Sgt. McCormack he passed the clothing collection information on to Sgt. Shawn Townsend, Cst. Novakovic's immediate superior, who directed Cst. Novakovic to immediately pick up the clothing. Cst. Novakovic recalled that upon his coming on shift at that time, he was asked to meet with Sgt. Townsend, and was instructed to pick up the clothing in what he testified was an "unforgettable one-way conversation". We interpret that to mean that Sgt. McCormack was less than pleased with the neglect of this task.

[44] The clothing analysis ultimately proved to be a valuable source of evidence that eventually led to the arrest and charge of one of the assailants. It is fortunate that, if indeed Ms. Low had been told that there would be no useful evidence on the clothing, she had not simply washed the items or discarded them.

[45] There is a system in place to ensure continuity of a file. This includes Versadex, where the General Occurrence Report is entered. This is followed by all entries concerning activity on the file. It enables any officer working on the file to see what has and hasn't occurred. It allows supervisory officers to review and ensure that all tasks are being dealt with appropriately.

[46] The first HRP contact was made by Cst. Novakovic, and he entered a GO report following his meeting with Carrie Low at the Dartmouth General Hospital. Unfortunately, his report made no reference to the clothing. According to his report, he did advise Ms. Low that a member of SAIT would be in touch with her. According to his evidence, and that of Ms. Low, he initially did advise her that someone would

come by to pick up her clothing.

[47] The initial responding officer (in this case, Cst. Novakovic) has the discretion to contact the “road sergeant” if he / she feels a further follow up was needed immediately. If an officer felt for example, that a scene needed to be secured, the road sergeant should be contacted. In this case, that was Sgt. Scott MacDonald. He was not contacted that evening, and initially, the scene was not known to Ms. Low. It is also open to the road sergeant to reach out to the responding officer to determine if assistance was needed.

[48] The next level of oversight of the file falls to the Quality Assurance officer, in this case, Sgt. Charles Naugle. Although Sgt. Naugle did not testify, Sgt. MacDonald testified that it was Sgt. Naugle who routed the case to SAIT. However, at this point, neither Sgt. MacDonald or Sgt. Naugle would know from the GO Report that Ms. Low had the clothing.

[49] Ms. Low testified that when she spoke to Cst. Novakovic the day after the hospital visit; she had pieced together additional information as to the location of the sexual assaults. She says that she also mentioned that no one had picked up the clothing. He did note the location information on Versadex, in his supplemental report of May 20; however, there is still no entry referring to the clothing. In his evidence, he testified that he did not recall any mention of the clothing in that call; he said if she had mentioned it, he would have gone himself to pick up the clothing.

[50] Cst. Plamondon was Acting Sergeant on May 22. As noted, S. Sgt. Stienburg spoke to her on the morning of May 22. Her report indicates that she reviewed the file the morning of May 22, She notes that video needs to be obtained, but that “...all other perishable evidence at this time appears to have been seized through SANE kit”. She would be unaware that the clothing was still in the possession of Ms. Low, as it could conceivably have been part of the SANE kit, had it been seized by the nurses.

[51] On May 22, Cst. Plamondon (RCMP rank Corporal) assigned the file to Cst. Smith, which resulted in him being the “lead investigator” on the file.

[52] HRP’s responsibility at all stages of an investigation is clearly delineated in policy. As set out in the Case Management Policy (Exhibit 1, Tab 3) the lead investigator is charged with the day-to-day responsibility for a file:

B. Definitions

[...]

9. Lead Investigator: refers to the officer designated with the overall responsibility to conduct The investigation of a case leading to the successful approval of the case status as closed.

Only one Lead Investigator will be assigned to a case at any time.

The lead investigator is expected to keep the file up to date and their supervisor informed.

Later in the policy, under section 1.1 Preliminary Investigation:

B. Lead Investigator

[...]

2. The Lead Investigator is responsible to conduct the preliminary investigation on a file and/or any subsequent investigation. **The Lead Investigator shall determine if case closure is recommended or further investigative efforts are required.** [...]

3. It is the responsibility of the Lead Investigator to **keep the victim/complainant and important witnesses informed** of the case status as it changes.[...]

[Emphasis added]

[Last, under 1.5 Follow-Ups:

G. Lead Investigator

[...]

2. In conducting a further investigation on a file, the Lead Investigator should also:

a. Check to see that the preliminary investigation was thoroughly completed and ensure there is not duplication of investigative effort.

b. Continue investigation of those leads which have surfaced.

c. Work to link the crime with others of a similar type.

[53] The Sergeants are responsible for the direct supervision of their investigators. In this case, that was the “acting” position of Cst. Plamondon. In doing so, they conduct typical supervisory tasks. They triage and assign files to the investigators, monitor their workloads, provide guidance on specific files as required, and set follow-up tasks and deadlines. The foregoing is reflected, and reviewable, through Versadex and through one-on-one discussions with the investigators. Per the Case Management Policy under 1.5 Follow Ups:

D. CID Supervisor

1. CIDSupervisors shall:

a. Manage and assign cases as per established policy. These duties include the approval/rejection of all follow-ups submitted by members under his/her command.

b. Be responsible to manage the workload of each member under his/her command.

c. Review, audit, close and approve GOs [General Occurrence Reports] assigned to members under their command.

[54] The supervising Sergeant would also be expected to step in if the lead investigator does not conduct their job appropriately.

[55] The Staff Sergeant's role is administrative and necessarily more removed from day-to-day investigation as would be expected. The Staff Sergeant addresses bigger picture issues such as whether their units are appropriately staffed and resourced. This includes monitoring and approving vacations and other special duties. The Staff Sergeant will also advocate for their units within HRP. Their role specifically in relation to case management is quite limited, as set out in the policy:

F. Staff Sergeant I/C Specialized Investigative Units

1. The Staff Sergeant i/c [in charge of] a specialized investigative unit (i.e., GIS, SES, SIS, etc) shall meet on a monthly basis with CID Supervisors under his/her command who have case management responsibilities. At this meeting, the Staff Sergeant shall be updated on the status of all files assigned to units under his/her command.

[56] After Cst. Smith's initial contacts with Ms. Low, as noted above, he did obtain and review the video evidence from Doolittle's.

[57] A chronology of events from the HRP files (Exhibit 4) details activity on the file, until the complaint was made, on May 13, 2019; Ms. Low has also provided a detailed chronology from her point of view. Ms. Low maintained detailed notes (including precise dates and times) of her contacts with HRP. Superimposing her chronology (***bold italics***) on the HRP chronology is useful; It must be kept in mind that the HRP documents reflect the activity of any given officer on this particular file. There may be activity on other files that an officer is working, as the average caseload of the SAIT officers is 12 new files each month.)

May 18, 2018 – Carrie Low (CL) goes to Doolittles Bar

May 19, 2018 – CL is abducted, sexually assaulted, attends Dartmouth ER /SANE nurses, Cst. Novakovic attends for SANE kit

May 19, 2018 – Carrie Low has the same entry, but notes that the officer provided her with an evidence bag for her clothing, and said that someone would come by and pick it up, that evening

May 20, 2018, 17:53 pm – Carrie Low has a conversation with Cst. Novakovic, who says officers too busy, SAIT doesn't work on weekend, someone will contact her on Tuesday. She can confirm location on google maps

May 20, 2018 11:42 a.m – the file is referred to victim services. Dolly Mosher, victim services co-ordinator assigns it to Angela Jeffrey.

May 20, 10:30 pm – Cst. Novakovic has call from Carrie Low, she advises of 409 Partridge River Road scene of assault

May 22, 2018 – victim services contacts Carrie Low

May 22, 2018 – Cst. Smith is assigned as lead investigator on the file. He interviews Carrie Low. She mentions address 409 Partridge River Road, also that she was contacted by a male named “Brent” who called her the following day, she will find out who the call came from. (she did). The HRP documents do not reflect when she provided this information to Cst. Smith, but he was tasked by Sgt. Gray to locate and interview Brent Julien

May 22, 2018 – Carrie Low is called by Cst. Jerrell Smith; to come to police HQ to give video statement, and she mentions that clothing not picked up; he tells her clothing of no use as may have been tampered with. He says police have not been to the scene, nor spoken to taxi company or driver

May 23, 2018 – Cst. Smith interviews Trevor Carter, Carrie Low's roommate at the time

May 23, 2018, 11:17 a.m. – Carrie Low leaves voicemail for Cst. Smith

May 23, 2018 – Carrie Low receives a call from a “Brent Julien” re: assault incident. Cst. Smith reviews video, notes “Brent Julien” and “AJ Thomas”. He is apparently aware of these individuals through earlier contact while working as an RCMP member in their community of East Preston. He contacts Brent Julien and schedules an interview for May 24.

May 24, 2018 – Julien does not attend

May 28, 2018, 1:31 – Carrie Low leaves VM for Cst. Smith

May 29, 2018 11:47 a.m – Carrie Low calls to speak to Cst. Smith's supervisor, she is transferred to Sgt. Steve McCormack who apologizes that clothing not picked up. Picked up shortly after

May 25 – June 3, 2018 – Cst. Smith AOL.

May 30, 2018 – Cst. Novakovic collect Carrie Low's clothing on direction from Sgt. McCormick

June 4, 2018 – Cst. Smith contacts Brent Julien; a meeting is arranged for June 6, 2018. Julien calls later and cancels.

June 5, 2018 – Cst. Smith calls, looking for description of what she was wearing that night, as he is reviewing video, he arranges a 2nd statement for June 7. She advises that she has texts from one suspect, and she sends these to Cst. Smith at his request

June 7, 2018 – Cst. Smith calls and cancels 2nd interview

June 6 - 9, 2018 – Cst Smith makes attempts to locate Brent Julien; finally located at his mother's home; meeting arranged for July 9.

June 20, 2018, 3:03 pm – Carrie Low leaves VM for Cst. Smith

June 21, 2018 – Carrie Low calls Cst. Smith, he says having a difficult time reaching a person of interest, but meeting him June 25

June 25, 2018, 11:30 a.m.- Carrie Low speaks to Cst. Smith who advises the meeting with person of interest is cancelled, and scheduled for June 28

July 4, 2018, 10:11 a.m – Carrie Low leaves VM for Cst. Smith

July 5, 2018, 11:30 a.m – Carrie Low leaves VM for Cst. Smith

July 9, 2018,11:45 a.m – Carrie Low leaves VM for Cst. Smith

July 9, 2018 – Cst. Smith cancels the scheduled meeting with Brent Julien; there is no member available to assist; the meeting is rescheduled for July 12, it is then cancelled by Julien, and rescheduled for July 25th

July 10, 2018 – with assistance of victim services, a meeting is booked with Sgt. Gray for July 12, 2018

July 12, 2018 – Carrie Low and Victim Services meet with Sgt. Gray, Gray apologizes, and says SAIT should have been called in on the weekend by duty supervisor; she would question Cst Smith as to his comment that the clothes would no longer of use due to passage of time. She would have Sgt. McCormick to arrange more officers for her case so she would no longer have to deal with Cst. Smith; also advises she (Gray) will be on vacation for the next month, but that someone will contact her next week to confirm changes

July 12, 2018 – At the request of Carrie Low and the victim services co-ordinator, Sgt. Grey met with Ms. Low and explained that Cst. Smith would be back at work on Tuesday and will locate Brent Julien for an interview, as first priority. (nb., Cst. Smith has already arranged a meeting with Julien for July 25) Sgt. Gray will be AOL for 2 weeks, and she discussed this with Sgt. McCormack for direction next week

July 17, 2018 – Carrie Low has heard nothing, she emails victim services rep. and calls Cst. S Smith at 2:39 pm, he advises that he was on vacation for a week, then was too busy to return her calls; he has no updates, the discussion becomes “heated” as he became agitated, with her and all her questions, he says that he can’t be updating her every day. She leaves VM for Sgt. MacCormick

July 19, 2018 – Carrie Low speaks to Sgt. MacCormick re: ‘heated’ conversation, Sgt. MacCormick says contact him directly for updates

July 25, 2018 – Cst. Smith reviews the SANE kit. Cst. Smith interviews Brent Julien who says that he saw Ms. Low at Doolittles, then he walked /bussed / cabled home around 2:00 a.m.. NB there is some conflicting information regarding this date. On January 27, 2020, D/Cst. Jonathan Flynn was tasked with reviewing the Julien interview, apparently in preparation for the arrest of

Thomas, and he dates it as taking place on May 23, 2018. However, the interview notes, including times, attached to that report show the interview taking place on July 25, 2018. This date is consistent with Sgt. Gray's entry of July 13, 2018

July 25, 2018 – Cst. Smith returns to the office. He reviews an audio voicemail to Carrie Low included in her statement and he notes the voice is clearly Brent Julien. Cst. Smith speaks to Cpl. Geema, (RCMP) who advises Andre Thomas lives alone on Partridge River Road at the assault scene. Alex Thomas may live in Dartmouth

July 26, 2018 – Carrie Low leaves a VM for Cst. Smith

July 27, 2018, 11:09 a.m.- Carrie Low speaks to Cst. Smith; he advises they have more suspects to interview, he is not sure if she will be re-interviewed before or after the suspects; she then calls Sgt. MacCormick, who confirms Cst. Smith's comments; he (Sgt. MacCormick) is going on vacation, Cst. Smith will be in touch by the first of the following week conforming date of her next interview

August 8, 2018, 11:54 a.m.- Carrie Low leaves a VM for Sgt. MacCormick, says no one has been in touch, she also leaves a VM for Cst. Smith

August 9, 2018 – Carrie Low receives VM from Cst. Smith

August 9, 2018 – Cst. Smith leaves a VM for Carrie Low

August 13, 2018, 12:50 pm – Carrie Low leaves a VM for Cst. Smith

August 13, 2018 – Cst. Smith meets with Cpl Geema, Preston detachment RCMP, he attends Partridge River address with RCMP members. No answer. He leaves his card and gets a VM from Alex Thomas, he calls back, and schedules an interview with Thomas August 14, 2018

August 14, 2018, 9:50 a.m – Carrie Low speaks to Sgt. MacCormick; he will have Cst. Smith call her before 1:00 p.m. Sgt. Gray calls and says do not contact Sgt. MacCormack with her case as she is the supervising Sgt. Also, she must no longer contact Cst. Smith, rather contact Sgt. Gray directly. Someone will be in touch by the end of the week or early next week to setup a second interview

August 14, 2018 – Cst. Smith obtains info re taxi; address, and driver. He makes a phone call to 1 taxi co, who advises that the phone call to pick up Carrie Low on the morning after the assault was from a “Shawn Hirtle”. Cst. Smith has left multiple messages at that number, with no answer; Cst. Smith attends Hirtle's last known address, and also notes Hirtle has 3 outstanding warrants

August 14, 2018 – Cst. Smith interviews Alexander Thomas, who mentions Brent Julian and Shawn Hirtle

August 19, 2018 – Cst. Smith reviews Versadex , PROS (RCMP) and JEIN for Hirtle, he notes a possible alias “Shawn Rafuse”, in the Chester area; he speaks to Chester Detachment. He completes a request for lab analysis

August 30, 2018 – Cst. Smith requests Shawn Hirtle be placed on HEAT wanted list. HEAT contacts DCS (Community Services), Hirtle is not receiving public assistance.

September 5, 2018 – Csts. Smith and Rideout interview Jessica Purdy, a friend of Carrie Low

September 11, 2018 – Cst. Smith receives e-mail from the lab for a meeting. He Emails lab.

September 11, 2018 – Carrie Low is contacted by ???, meeting for 2nd interview is arranged for Sept.18, 1:00 pm

September 17, 2018 – Cst. Smith calls the lab and leaves a message. He arranges meeting with Carrie Low for September18

September 18, 2018 – Cst. Smith meets with driver from Bobs taxi, he is told that the drive was short, and there was no discussions with his passenger

September 18, 2018 – Cst. Smith does a second interview of Carrie Low. She again mentions call from Brent Julian, and she also provides a description of a male at the sexual assault scene. She says that she can identify him as Brent Julien from facebook

September 18, 2018 – Cst. Smith does 2nd a interview with Carrie Low, with E Fry support person in attendance; Cst. Smith advises that the rape kit lab has further questions and he had emailed response asking for more information from lab; Cst. Smith says he will contact her when he has a reply from the lab, and to discuss on the phone or face to face

September 19, 2018 - Cst. Smith speaks with the lab, they want the toxicology report from SANE kit. All forms requested have been sent.

September 25, 2018 – Cst. Rideout interviews Jeffrey Deyoung, who had driven Carrie Low to soccer, then the DGH on May19.

October 2, 2018 – Cst. Smith attempts to locate Shawn Hirtle at several addresses. He checks “10-10”, Versadex and police checks, these are all negative. Motor vehicle records checks are also negative

October 31, 2018 – Cst. Smith submits lab submission authorization reports to property. The documents are missing a “C414” requisition form, which he sends via email Nov. 1, 2018

November 2, 2018 – Carrie Low’s lawyer sends letter to Sgt. Gray, cc Supt. Jim Perin, and Cst. Smith, with a chronology, and questions whether the rape kit and tox requisition was ever sent to the lab, she also requests an update on file (the Board does not have copy of the letter)

November 9, 2018 – Sgt. Stewart phones Carrie Low's lawyer, she will send a letter in reply once she has spoken to Cst. Smith. She has not been on file previously.

November 14, 2018 –Sgt. Stewart emails Carrie Low's lawyer, answering questions which Carrie Low says contradict prior communications between Low and SAIT (we do not have copy of Sgt. Stewart's letter)

November 27, 2018 – another letter from lawyer to Sgt. Stewart, advising of contradictions, wanting clarification, and whether there is a SAIT policy for best practices re communication with SA victims, etc. (we do not have a copy of the lawyer's letter)

*December 1, 2018 – email response is received from Sgt. Stewart; she will forward their letter to SAIT supervisors, and will hear back later in the week (****we do not have a copy of the email)*

December 5, 2018 – Email from Cpl. Sandra McNaughton (SAIT, RCMP), and she will respond to their letter on her return Dec. 11. She advises that she taken over from Sgt. Gray who has retired (we do not have a copy of the email)

December 11, 2018 – email from Sgt. Gray and Cpl. McNaughton, but no further information provided on file (we do not have a copy of this email)

January 18, 2019 – email to Cst. Smith to setup a meeting with her and her support person for update

February 12, 2019 – Cst. Smith emails Carrie Low setting meeting date for February 21, and that lab results extended delivery date of their results to Mar.10

February 22, 2019 – Carrie Low's lawyer speaks to S/Sgt. Don Steinburg re: concerns: he apologizes, but adds that an officer can't necessarily respond within a couple of days, he advises that Cst. Smith is no longer with SAIT, and Cst. Steve Rideout will be the new lead investigator. Cst. Smith is out for the next 30 days (not disciplinary, but not returning to SAIT). Apologizes that this may mean Smith might miss a scheduled meeting

February 22, 2019, 3:37 – Carrie Low's lawyer Andrea McNevin calls S/Sgt. Steinburg; she says Carrie Low has not been contacted by Cst. Smith, Sgt. Steinburg advises her that Cst. Rideout is the new lead investigator who will contact her next week, S/Sgt. Steinburg calls Carrie Low.

February 25, 2019 – Sgt. Gray speaks to the lab on unrelated matter, she is told that the RCMP lab report was sent to Cst. Smith on Jan 31 (when Cst. Smith was out on training); she obtains copy of report, which shows male DNA material, ,but that there was insufficient material to make a meaningful comparison. This is tasked to Cst. Rideout (now lead investigator) to see if result could be suitable for a detailed analysis by Maxaam analytics (a private lab),and if so speak to Carrie Low, and that new C414 request will also be made

February 25, 2019 – Cst. Rideout calls Carrie Low, advises her that he is the new lead investigator

February 25, 2019 – Cst. Rideout speaks to Sgt. Gray and Sgt. Steinburg as he is taking over from Cst. Smith; emails lab for update on report, he will be the further contact on file, spoke to Carrie Low, he will contact her when has results, and has reviewed all statements. She is not pleased with how file is being handled, and is confrontational. Rideout advises her he will be in contact in next couple of weeks, but if any questions, contact him. He would like to speak to her in person

February 26, 2019 – Cst. Rideout follows up with lab

February 27, 2019 – Cst. Rideout hears from Sgt. Gray that the lab results had been sent to Smith

March 12, 2019 – Cst. Rideout emails lab, queries whether the samples should send to Maaxam, he also says Cst. Smith had sent blood /urine request (C414), lab (this would evaluate alcohol and drugs in Carrie Low at the time of the SANR examination.

March 12 – April 10, 2019 – Carrie Low notes numerous emails between herself and Cst. Rideout, with a noticeable difference in care and support

March 12, 2019 – Carrie Low contacts Cst. Rideout (email) requesting an update; he wants to meet with her next day, or next week. He speaks to Trevor Carter, as he is looking for Jeff Deyoung. He makes efforts to find Deyoung. He also wants to speak to Johanna Beals, who was at Doolittle's the night of the assault. and he speaks to Hirtle's ex-spouse to find Hirtle

March 18, 2019 – RCMP Lab responds, says TOX exhibits were not approved for submissions and notes that an email had been sent to Cst. Smith "if toxicology analysis is required ...forward a completed C414 request listing all blood and urine vials"

April 2, 2019 – Cst. Rideout meets with Carrie Low, he wants another statement, but she does not agree. She is critical of the investigation. He contacted Maxxam. He followed up with RCMP lab

April 4, 2019 – RCMP lab reports to Cst. Rideout; they advise that the sample (DNA) is sufficient for Maxxam

April 10, 2019 – Cst. Rideout does further interview of Carrie Low. She mentions the officer at SANE giving her a bag for clothes and telling her that they would be picked up "at her mothers" she mentions that she knew "from CSI" that she should have a rape kit done. She says that when Cst. Smith mentioned Brent Julien, she did a google search, and could identify Brent Julien as being "the guy with the broken tooth who was at the trailer in Preston the next morning

April 10, 2019 – Carrie Low meets with Cst. Rideout for 3rd statement; she was told that the wrong form had been sent to the lab for testing so the Tox not done. He is going for knee surgery the next day, but is still working on the file and she can contact him. He will send the clothing to the lab. She concludes that she has heard nothing further from SAIT since that date

MAY 13, 2019 – CARRIE LOW FILES HER POLICE ACT COMPLAINT

May 16, 2019 – Cst. Rideout is back in the office after knee surgery. He sends the clothing to RCMP lab. He reviews video from Doolittles, notes actions of Thomas and Julien on the video. He completes the lab request for Maxxam

May 22, 2019 – Cst. Rideout speaks to Sgt. Steinburg re Cst. Carter video at Doolittle's

June 13, 2019 – Cst. Rideout speaks to the RCMP officers re possible DNA checks', and he speaks

to Jeff Deyoung and Johanna Beals

September 17, 2019 – Cst. Rideout follows up with lab for results, lab reports that Designated date for the tox and DNA on the jeans is Oct. 30

September 25, 2019 – Cst. Rideout interviews Jeff Deyoung, Carrie Low's friend who drove her to her daughters game and to Dart. Gen

October 9, 2019 – Cst. Rideout receives the DNA report, and confirms that Alexander Thomas is identified

October 30, 2019 – Cst. Rideout works on the warrant for Thomas' arrest

October 31, 2019 – email updating Carrie Low

November 27, 2019 – Carrie Low emails request for update

December 6, 2019 – The tox results received

January 25, 2020 – Cst. Rideout emails Carrie Low with tox update

January 27, 2020 – Rideout meets with Sgt. Fitzpatrick Thurs, prepares the interview plan and arrest script, and meets with the team to discuss resources, speaks to lab reconfirmation of DNA on interior, exterior of jeans

January 29, 2020 – Rideout has a discussion re possible polygraph of Thomas

February 5, 2020 –The plan is completed for the arrest of Thomas the next day

February 6, 2020 – Relative of Alexander Thomas tells Cst. Rideout that Thomas out of country, and will contact on return

February 12, 2020 –Thomas comes to the department and is arrested and charged, Thomas is interviewed by Cst. Rideout

February 13, 2020 – Cst. Rideout speaks to Carrie Low, who is advised of the Thomas arrest

THE GAPS IN THE RECORDS THROUGH THE NEXT PERIOD OF TIME WOULD REFLECT PREPARATION AS THE FILE PROCEEDS THROUGH THE VARIOUS COURT PROCESS PRIOR TO TRIAL

March 4, 2020 –Sgt. Gray deals with lab results.

May 21, 2020 – Cst. Rideout provides information to the Crown

August 20, 2020 – Cst. Rideout/lab make arrangements for DNA sample comparison with Thomas DNA

October 1, 2020 – Cst. Rideout emails Carrie Low in response to an email from her, updating. He mentions DNA comparison under way, and says that he is keeping the file open as he is still hoping for new information on the location of the third male.

January 12, 2021 – Meeting with Cst. Rideout, Crown, Carrie Low. Cst. Rideout has been transferred, but keeps file open, she says she does not have his phone number, and he explains that he still uses the same email. Carrie Low's meeting with the Crown is scheduled for February 2021.

January 14, 2021 -No response to e-mail to Carrie Low for time when she can meet on her new information. Cst. Rideout leaves voice mail

January 15, 2021 – Cst. Rideout calls Carrie Low; she says she is busy as is now a full time student. And she will make arrangements. She wants Cst. Rideout's supervisors name. Provided

January 18, 2021 – DNA results and inquiry from lab re Y=STR analysis. (no further action needed at that time from Cst. Rideout)

January 18, 2021 – some information found on location of Shawn Hirtle; not arrestable. But he may have witness information

August 10, 2021 – Carrie Low id's Brent Julien from a photo

August 19, 2021 – D/Cst. Bennett locates address for Brent Julian, and a DNA warrant for Brent Julien is obtained

September 2, 2021 – approval for DNA warrant, Brent Julien

November 2021 – Mr. Thomas, the accused dies

November 23, 2021 – S/Sgt. Kevin Smith locates Hirtle, in remand centre, as result of reading a Watch Commander report for that date; which notes arrest of A “Shawn Hirtle”

November 23, 2021 – Cst. Rideout obtains a statement from Brent Julien

January 26, 2022 – there is no DNA match for Brent Julien

February 2, 2022 - Julien arrested and charged, and a statement taken by Cst. Rideout

[58] The above chronology runs from May 2018 to February 2022. The complaint of Carrie Low is dated May 13, 2019. She references a period of time running to Wed., April 10, 2019.

[59] The decision of Justice Smith sent the matter back to the Commissioner on April 8, 2020. The HRP, as per the statutory requirements, investigated the matter as the public complaint against Cst. Novakovic. The Notice of Completion of Investigation form is dated October 9, 2020, and the chronology

of activity ending with the arrest of Mr. Thomas on February 25, 2020, with the arrest of Mr. Thomas.

[60] In her decision, Smith, J. holds that although the Form 5 only references Cst. Novakovic as the “subject officer” of the complaint, in fact, the complaint is against HRP as a whole. Smith J. also questioned the Commissioner's conclusion that the limitation period began to run on May 18, 2018. The discoverability rule would require it to run from such a time as Carrie Low became aware of various shortcomings throughout the investigation. (cumulatively). She stated:

“[47] A complaint of police misconduct is serious both for the officer(s) involved, for the complainant and for the community. There is no reason why discoverability should not apply in the context of legislation which provides a statutory scheme to allow members of the public to hold police officers and departments responsible for their conduct.

[48] Applying the discoverability doctrine, Ms. Low’s complaint was timely because she did not discover the aspects of her Complaint reviewed previously until on or about April 23, 2019.

[49] If the “occurrence” is not cumulative, it still follows that any complaint in the body of the Complaint that occurred six (6) months before the date of the Complaint would be timely. This would include the fact that as of April 10, 2019 no toxicology report had been performed and Ms. Low’s clothing had not been sent for testing and analysis.”

[61] In the case of most complaints, (which do not involve “discoverability”) the time period to be considered is the period of events which relate to the particular circumstances, which occurred up to and including the date of the complaint. The same must apply to a complaint based on the “discoverability” of complainable conduct. What we cannot do is then look forward in time, beyond that date. Any future alleged misconduct would have to be the subject of a new complaint. The same applies to the Low complaint. We must then look back to the relevant events leading up to the May 13, 2019 complaint.

[62] The chronology above runs well beyond the complaint date. However, any conduct occurring after May 13, simply reflects the ultimate conclusion of the file. It assists in determining the impact of any alleged misconduct on the outcome. That is not to say that misconduct without impact is no longer misconduct. The tree falling in the forest does make a sound, even without a listener, so to speak.

[63] We must examine the actions of Cst. Bojan Novakovic, as well as the Halifax Regional Police Department.

[64] On May 19, 2018, Cst. Bojan Novakovic was dispatched to Dartmouth General Hospital to pick up the evidence kit. Upon arrival he was met by the SANE nurse, Jane Collins. He recalled that she was somewhat confrontational at the outset.

[65] He was taken to the treatment area where Carrie Low was. He spoke to Carrie Low, to obtain basic information about the assault. He testified that he introduced himself to her by his first name (Bojan), and asked her if she had something she wanted to talk about, and she said yes, she wanted to report the sexual assault to the police. He believes that it was his role, as first police contact, to get “tombstone” information.

[66] She began to outline the incident in some detail, and he took notes. Unfortunately, he has not been able to locate those notes, and did not have them even at the time of the criminal trial. He said that at that time, the only location she could identify was somewhere in Preston. She told him that her underwear, a shoe, and her ID was missing. She recalled that a white male called a taxi for her.

[67] He testified that she was very clear, although she was upset and timid, but “very much agreeing to the conversation”. (This is consistent with her manner throughout this file; she wants to tell her story.)

[68] He testified that she became frustrated by her inability to remember details, and she began crying. He said shortly into the conversation, Jane Collins interrupted. He stepped out of the curtained area, and spoke to Collins, who told him that he was asking “blaming” questions. He denies that suggestion, as a Trauma Informed Investigator he understands not to ask questions of that nature, as it “puts the victim in a box”.

[69] He testified that he had great rapport with Carrie Low, that she was open and ready to talk. He explained the role that would be played by victim services, He explained how the investigation would proceed.

[70] He does not think that he provided an evidence bag for her clothing; that would have required that he return to his car, and he didn’t do that. That confirms that she had been provided with the evidence bag by the SANE nurses.

[71] Regardless of who supplied the evidence bag, it is clear that both the SANE nurses and Cst.

Novakovic knew that she chose to bag her clothing when she returned home but he did agree that he told her that someone would come by to collect the clothing.

[72] He testified that he entered the Initial Officer's Report as soon as he returned to his car. It contains what she told him, described above. It includes partial details of the assaults; it shows a location as "a trailer somewhere in East Preston". She told him that one assailant was a black male, the other a lighter skinned black male. East Preston, and that a white male at the scene called a cab ("Bob's Taxi") for her.

[73] He notes in that report that he told her that a member of SAIT would promptly be in touch.

[74] There is no mention in the report of the clothing, collected or otherwise. In the result, a review of the Versadex entry would not disclose to the reader that the clothing was not in the logged in evidence kit.

[75] In direct examination, Cst. Novakovic reviewed the HRP policy document, "Sexual Assault Investigations". He confirmed that he conducted himself in accordance with all required steps outlined for the responding officer. He was dispatched as a patrol officer who is TIR trained (Trauma Informed Response to Sexual Violence).

[76] Section 7.3(4) of the policy provides as follows:

Gather information from an adult victim / survivor that will allow the creation of an initial report of key information including:

- A. Date and time of the offence
- B. Location of the offence
- C. Need for the scene to be contained
- D. The extent, if any, of injuries to the victim / survivor
- E. The identity or description of the suspect
- F. The direction of which the suspect left, and by what means
- G. Where the suspect lives or works, if known, and
- H. Need to canvass the scene for video and witnesses

[77] He did follow the policy, to the extent the information was available. although he did not make an entry regarding the need for the scene to be contained. He did not have a "scene" at the time of the initial meeting, all he had was East Preston and Partridge River Road. It was not until later contact from Carrie Low that a precise location was identified, and he entered that information on Versadex, where it

would be seen by a supervising officer.

[78] As noted above, when it eventually became apparent to his supervisors that Ms. Low still had the clothing, he was ordered to collect the clothing and did so. However, before that happened, Cst. Smith had been assigned as the lead investigator and appears to have made the decision that the clothing was of no evidentiary value, and we accept Carrie Low's evidence on that point. Cst. Smith was wrong.

[79] Aside from being directed to pick up the clothing, Cst. Novakovic's involvement ended once the SAIT team, and Cst. Smith, took on the file.

[80] Counsel for Cst. Novakovic points out that he was sanctioned (8 hours pay) following the investigation of Carrie Low's complaint against him. He has not appealed, and in fact, in his response to the complaint, he says that he should have taken Carrie Low to her home and waited to collect the clothing. However, Carrie Low is asking for review of that decision, which puts that issue before the Board.

[81] As noted, Cst. Novakovic had a very limited involvement in the file. His misconduct, if any, consisted of using an improper technique in interviewing Carrie Low, and in failing to at least enter information regarding the clothing. We accept his evidence that as a TIR trained officer, he understood how to deal with a sexual assault victim, and that he did so properly. While his version of the interview differs from that of the SANE nurse, her recollection probably relates to a limited opportunity to hear the interview, and her interpretation and reaction to the upset nature of Carrie Low at some point (Cst. Novakovic attributes the upset to her frustration at the inability to recall portions of the incident). As well, nurse Collins was understandably very protective of Carrie Low.

[82] In her chronology, Carrie Low does not mention any issue with the interview by Cst. Novakoic.

[83] Disciplinary action of Cst. Smith, as a member of the RCMP, is outside the jurisdiction of HRP, and this Board. However, counsel for Carrie Low argues that HRP would be essentially "vicariously liable" for the conduct of Cst. Smith:

We are cognizant that this Board has no authority over Cst. Jerell Smith and RCMP, and we are not asking this Board to consider whether either of those parties committed any wrongdoing. That does not mean, however, that HRP can or should avoid responsibility for the acts or omissions of Cst. Smith. Similar to the principle of vicarious liability in tort law, HRP is

ultimately responsible for the neglectful performance of those within its authority and control. The errors of any SAIT officer is also ultimately an error by HRP, due to the integrated nature of the SAIT team and HRP's duties to citizens. To deny this is to abdicate HRP's responsibility for its own failed investigations.

[84] We disagree. Vicarious liability is in the realm of civil tort. It has no application within this forum, created and governed by statute. Responsibility for the actions of an individual officer can only be attributed to a department as a whole, if for example, it ignored the actions of an officer, or failed to develop and follow policies to govern conduct.

[85] In her complaint of May 13, 2019, which Smith, J. concludes also includes a complaint against HRP, Carrie Low lists the following:

1. Failure to collect essential evidence, specifically the clothing
2. Failure to send a Trauma Informed Response Trained officer, and failure to alert the SAIT team in a timely manner, contrary to s.7(4) of the policy
3. Failure to process a toxicology report due to improper submission of an essential document
4. Failure to attend the crime scene to seek evidence
5. Failure to follow HRP policy regarding sexual assault investigations, (6.1,6.6(2),7.6Bii)
6. Failure to clearly identify a lead investigator as a point of contact

[86] The Board notes as follows:

Failure to collect essential evidence, specifically the clothing: This is a failing of two particular officers, Cst. Novakovic and Cst. Smith (RCMP). As noted, Cst. Novakovic has been dealt with, and Cst. Smith is not within our disciplinary authority. The actions of two particular officers cannot be considered as the actions of HRP as a whole, and as soon as HRP became aware of this shortcoming, it immediately and strongly corrected the error.

Failure to send a Trauma Informed Response Trained officer, and failure to alert the SAIT team in a timely manner, contrary to s.7(4) of the policy: Cst. Novakovic was a TIR officer. SAIT was made aware of the assault, through review of Versadex, on the night of the assault, but it was not formally assigned to SAIT (Cst. Plamondon) until after the long weekend. This appears to have been the result of a member of SAIT being unavailable at the time as he was involved at the scene of a fatal fire. In any event, SAIT became involved within a reasonable time in the circumstances. Again, this assignment would be associated with the action, or inaction, of particular officers. If indeed it was a failure (and we find that it was not), failure of individual officers can't be then attributed to the department as a whole.

Failure to process a toxicology report due to improper submission of an essential document: This was a failure / error by Cst. Smith, RCMP. A review of the file would leave the impression with a supervising officer that it had been submitted, and later, that upon notification, it had been corrected. The result of the testing would be expected to be delayed, and unfortunately, the lab was not notified that Cst. Smith was no longer the lead officer. A file review would show that

Cst. Smith sent a lab request on August 19, 2018, and had further contact with the lab on September 11, 2018, September 19, 2018, October 31, 2018. Then on November 2, Cst. Smith received a letter from Carrie Low's lawyer, questioning whether a lab request had been sent. A report was eventually received on the blood/urine analysis. When DNA was initially sent the results had initially been sent to Cst. Smith, who was then no longer on the file, and those results were only able to identify male material, and so a requisition was approved for further analysis by a private lab. The results were matched with Mr. Thomas, leading to his arrest and charge.

The error was made in a mistake in submission of documents by Cst. Smith, but he corrected it. Again, this is error by a particular officer, not by HRP as a whole.

Failure to attend the crime scene to seek evidence: If indeed this was an error, it was an error by Cst. Smith, and as well, it was a matter of discretion. On the face of it, securing the scene might have been helpful, although a specific scene was not known until Cst. Novakovic's entry of May 20, 2018, two days after the assault. Cst. Smith would have seen the location information if in fact he did review the Versadex report. As well, Cst. Plamondon (SAIT, RCMP) would have become aware of it, and she could have secured the scene. Whether it was neglect, discretion, or the issues with obtaining a warrant and then executing in another jurisdiction, or all of these factors, it did not happen, but both of these officers are members of the RCMP, and disciplinary oversight is not within our jurisdiction

Failure to follow HRP policy regarding sexual assault investigations, (6.1, 6.6(2), 7.6B(ii): 6.1 (1), requires that the dispatcher send a TIR officer where possible; this was done, Cst. Novakovic was TIR trained.

6.6 (2) governs the actions of a SAIT investigator, when called out, to provide updates to the WCOM and/or duty supervisor, however, that section of the policy appears to deal with circumstances when a SAIT officer is called out at the time of the incident is reported.

7.4 refers to the "responding officer", in this case, Cst. Novakovic, and his compliance with policy is discussed above, and has been dealt with.

7.6B(ii) does not appear to relate to this file, however, the allegation seems to describe "...treating sexual assault cases with sensitivity by fully informing the victim of the investigative and judicial process". The evidence of Cst. Novakovic was that he did advise Carrie Low of the process, and so did Cst. Smith. There is nothing in the evidence to suggest either of these officers were insensitive. We accept Cst. Novakovic's evidence in response to the complaint, that he dealt with Carrie Low with sensitivity, and developed something of a rapport with her in the brief time that he spent with her. The chronology reflects that Cst. Smith may have become impatient with her, but he is not within the jurisdiction of this review. If any other officer dealt with Carrie Low in an insensitive manner, it has not been identified.

Failure to clearly identify a lead investigator as a point of contact: Cst. Smith was initially identified as Lead Investigator, and identified himself as such. Carrie Low was not happy with communication, or lack thereof. A review of the chronology shows that as early as May 29th, she had asked to speak with Cst. Smith's supervisor, and throughout the period of time that Cst. Smith was Lead Investigator, she had had numerous communications with senior officers, including Sgt. Gray, Sgt. Stewart, Cpl. McNaughton, and S/Sgt. Stienburg. Efforts were made to enable

her to avoid speaking to Cst. Smith. Ultimately, Cst. Smith was replaced by Cst. Rideout as Lead Investigator, and he went on non-disciplinary leave. Cst. Rideout had considerable interaction with her.

[87] Carrie Low seemed to believe that her case was being ignored. She had an expectation that she would receive communication on a weekly basis at the worst. She had a belief that the entire matter would proceed much more quickly. Given her comment about “CSI”, she may well have had the impression that it represents something like the real world time frame of an investigation. However, the Board is satisfied that HRP, through its senior officers, made considerable efforts to alleviate her concerns. The Board finds that there was no default by HRP on this issue.

[88] Although we find that in this case, no default by HRP in general, we must address a further argument presented by counsel for Carrie Low, in dealing with complaints against a department.

[89] Counsel for HRP acknowledges the availability of a complaint against a police department in general, arising out of s.71(1) of the *Act*. However, he argues that any outcome of such a complaint would actually fall within the purview of the Municipal Board of Police Commissioners.

[90] With respect, oversight of police disciplinary matters is expressly excluded from such boards in Nova Scotia, according to the *Police Act*. The following sections deal with “the board”, as distinct the “Police Review Board”:

Function of board

55 (1) The function of a board is to provide

- (a) civilian governance on behalf of the council in relation to the enforcement of law, the maintenance of law and order and the prevention of crime in the municipality; and
- (b) the administrative direction, organization and policy required to maintain an adequate, effective and efficient police department,

but the board shall not exercise jurisdiction relating to

- (c) complaints, discipline or personnel conduct except in respect of the chief officer of the municipal police department;

[91] In short, even while exercising “civilian governance”, and “administrative direction, organization

and policy”, it must stay clear of discipline matters.

[92] The only “disciplinary” related jurisdiction of such bodies is contained in s. 73 of the *Act*:

73 (1) A complaint respecting the conduct or performance of duty of a member of a municipal police department who is the chief officer shall be referred to the board.

(2) The board shall investigate the complaint and attempt to resolve the complaint.

(3) The board may designate a person to investigate the complaint and report to the board.

(4) A person conducting an investigation pursuant to this Section is a special constable and has all the powers and immunities of a peace officer during the investigation and any hearing related to the matter under investigation.

(5) Where the complaint is not satisfactorily resolved by the board and where the person making the complaint or the chief officer has requested a review of that decision by the Review Board, the complaint shall be referred to the Complaints Commissioner in accordance with the regulation

[93] The term “board” is defined in the Act:

2 (b) “board” means a municipal board of police commissioners and includes a joint board;

[94] The Review Board is empowered to respond to a complaint in a number of ways:

79 (1) At a hearing under this Act, the ReviewBoard may

(a) determine all questions of fact and law;

(b) dismiss the matter;

(c) find that the matter under review has validity and recommend to the body responsible for the member of the municipal police department what should be done in the circumstances;

(d) vary any penalty imposed including, notwithstanding any contract or collective agreement to the contrary, the dismissal of the member of the municipal police department or the suspension of the member with or without pay;

(e) affirm the penalty imposed;

(f) substitute a finding that in its opinion should have been reached;

(g) award or fix costs where appropriate, including ordering costs against the person making the complaint, where the complaint is without merit;

(h) supersede a disciplinary procedure or provision in a contract or collective agreement

[95] The Review Board is able to determine all questions of fact and law, which enables it to determine, in response to a complaint against a department as a whole, that the department did or did not act appropriately in the circumstances, and while a department as a whole cannot be sanctioned, the Review Board can recommend to the department, any changes that it should consider.

CONCLUSION

[96] We completely accept how traumatic this event, and the consequences have been for Carrie Low. She has been determined to ensure that the accused were pursued and prosecuted. This is exemplified by her willingness to openly and courageously share her story. The primary problem that she faced was what she saw as insufficient communication, and the collection and processing of physical evidence. Most of those problems can be attributed to Cst. Jarrell Smith, however his conduct is outside of our jurisdiction, and has apparently been dealt with by her complaint through the RCMP discipline process.

[97] We understand completely her frustration with the current policy which results in different disciplinary regimes for different police agencies within the province, particularly when those agencies are working as municipal officers.

[98] We find that nothing in the conduct of Halifax Regional Police as a whole warrants intervention by the Board.

[99] Although Cst. Novkovic has not appealed the penalty imposed by HRP, Ms. Low's appeal appears to encompass that issue. We will therefore accept written submissions on penalty from the parties. Submissions should be made to the Board within 14 days of the date of this decision

Dated at Halifax, Nova Scotia this 8th day of March, 2024.

ORIGINAL SIGNED BY _____
Jean McKenna

ORIGINAL SIGNED BY _____
John Withrow

ORIGINAL SIGNED BY _____
Nadine Bernard

Distribution: Jason Cooke KC & Cydney Kane, Counsel for Carrie Low
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Edward (Ted) Murphy, Counsel for HRP
Jean McKenna, Chair, NS Police Review Board
John Withrow, Member, NS Police Review Board
Nadine Bernard, Member, NS Police Review Board