

DECISION

File No. PC-22-0220

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 **Derrick Shibinette**, Complainant against **Cst. Dwight Miller of Cape Breton Regional Police**. Requesting a review of a decision made by Deputy Chief Stephen MacKinnon dated July 26th, 2023.

BEFORE:

Jean McKenna, Chair
Hon. Simon J. MacDonald, Vice-Chair
Siobhan Doyle, Board Member

COUNSEL:

Derrick Shibinette, Self-Represented
George Franklin, Counsel for Cst. Dwight Miller
Demetri Kachafanas, Counsel for Cape Breton Regional Police

PENALTY DECISION

DECISION DATE:

August 13th, 2025

[1] This is the decision on the penalty to be imposed in the matter of the Derrick Shibinette complaint against Cst. Dwight Miller, of the Cape Breton Regional Police (CBRP).

[2] In its decision on the merits, the Board concluded that the investigation was not conducted “diligently or properly”, and the reasons cannot be described as “adequate”.

[3] We found no malice on the part of Cst. Miller, nor did we find any lassitude. As noted in the merits decision, Cst. Miller's actions may have been driven in part when attempting to follow “the sometimes difficult and delicate path” between conducting an investigation and avoiding further trauma to the alleged “victim”.

[4] His failure to conduct further witness interviews, and review text messages, was based on an early belief by the constable, that he had sufficient evidence to convict, and a firmly held belief that Derrick Shibinette had committed the actions resulting in the charges brought against him.

[5] Police officers lay charges, and the Crown makes the decision to prosecute. Within CBRP, there are checks and balances which could have prevented this result.

[6] Before the file is sent to the Crown, it is to be reviewed by a senior officer. That may have taken place in this file, but there is no clear evidence that it did.

[7] Also, particular training is used in order for officers to deal with sexual abuse files and the victims. Cst. Miller had some such training, although we have no evidence as to the extent or level of training. Interviewing of child witnesses is also highly specialized, but we have no evidence as to the levels of training available, or what training Cst. Miller may have had.

[8] Based on the information that Cst. Miller provided, the Crown took the matter to a preliminary inquiry. Following the preliminary, counsel for Mr. Shibinette concluded that it would be wise to disclose to the Crown further information, including text messages, involving further witnesses who had not been interviewed as part of the original investigation. This, and Mr. Shibinette's *Police Act* Complaint resulted in further investigation by CBRP, and resulted in the decision of the Crown to withdraw the charges.

[9] Cst. Miller's errors have had a devastating impact on Derrick Shibinette. As a member of a relatively small community, with a unique surname, he would be quickly and easily identified in the community as a perpetrator of heinous incidents, of child sexual abuse. The public never became aware of anything other than the withdrawal of charges. The cloud remains; the stain on Mr. Shibinette's name may not be erased, although the release of this decision may have some impact.

[10] The inadequate investigation would also have had an impact on the alleged victim. Had Mr. Shibinette's legal counsel simply saved the further information for cross-examination, (as he could have), she would have been put through a devastating cross-examination by defense counsel.

[11] It is important to emphasize that the exercise of right to silence by Mr. Shibinette was entirely proper and cannot be considered to have contributed in any way to the consequences that followed.

[12] Mr. Shibinette, in his submissions on the merits, summarized the impact:

“His decisions have stripped away my reputation, my character, my confidence. I have been publicly shamed, and my name was printed in the Cape Breton Post numerous times portraying me as a monster. I was unable to work for 2.5 years, unable to see my family for 2.5 years, I have missed holidays, birthdays, graduations, family get-togethers, and

have been unable to even visit friends because they have kids. Could you imagine the embarrassing feeling when someone would invite you somewhere and you'd have to ask if there would be any kids present because I'm not allowed near children? I wasn't even allowed to go for a walk because every walking trail was classified as a park."

[13] In his submissions, Mr. Shibinette also makes allegations of additional and subsequent misconduct by Cst. Miller, and suspension. Mr. Shibinette cites as a source **Frank Magazine**, which can hardly be relied on as a reliable source of information.

[14] These unproven allegations, if true, would have taken place subsequent to this proceeding, and would have no relevance to this decision. Counsel for Cst. Miller denies the existence of any further complaints, sanctions, or criminal investigations.

[15] The Board cannot, and will not, give any consideration to the allegations.

[16] The guiding principles governing disposition are reviewed in Ceysens, (Ceysens, Legal Aspects of Policing Paul Ceysens, Earls court Press), and have been followed by the Board, most recently in Novakovic: (PC-19-0082, and 2025 NSSC 188).

[17] In **Gilbert (Re) 2012 CanLii 100594 (NSPRB)** the Board adopted the principles from Ceysens. (Ceysens, Legal Aspects of Policing Paul Ceysens, Earls court Press)

(a) **Principles Governing the Determination of a Disposition**

The term "disposition" is preferred over "penalty," given the move in police discipline away from the traditional punitive approach towards a more remedial philosophy.

The jurisprudence has generated five foundation principles that govern the process of crafting an appropriate disposition when an allegation of police misconduct is proved.

(ii) FIRST PRINCIPLE – COMPLIANCE WITH PURPOSES OF THE POLICE DISCIPLINE PROCESS

The first principle is that the disposition should fully accord with the purposes of the police discipline process. Those purposes are as follows:

- The *employer's* interest in maintaining discipline in the police workplace;
- The rights of a *respondent police officer* suspected of misconduct being treated fairly;
- The *public interest*: ensuring a high standard of conduct in the constabulary, and public confidence in the constabulary; and
- Where *members of the public* are involved (whether or not they register a formal complaint), the process should ensure that the interests of those individuals are protected.

(iii) SECOND PRINCIPLE – CORRECTIVE DISPOSITIONS SHOULD PREVAIL, WHERE POSSIBLE

The second principle – which flows from the move towards a more remedial philosophy, as noted above – dictates that a corrective disposition should take precedence over a punitive disposition, where possible. British Columbia has addressed this issue using the following language in s. 19(2) of the Code of Professional Conduct Regulation:

- (2) If the discipline authority considers that one or more disciplinary or corrective measure are necessary, an approach that seeks to correct and educate the police officer concerned takes precedence over one that seeks to blame and punish, unless the approach that should take precedence is unworkable or would bring the administration of police discipline into disrepute.

...

(iv) THIRD PRINCIPLE – PRESUMPTION OF THE LOWEST DISPOSITION

The third principle is that a respondent police officer is entitled to the most favourable disposition in the circumstances of the case, where possible...

(v) FOURTH PRINCIPLE - PROPORTIONALITY

Proportionality is the fourth principal that governs the process of crafting an appropriate disposition when an allegation of police misconduct is proved. A succinct statement of the law appears in an Australian case:

It is a fundamental proposition that any punishment imposed must have been proportionate to the offence, given due regard to those special considerations applicable to service in the police force.

The principle of proportionality requires at least that the tribunal consider all applicable mitigating and aggravating considerations, and then weigh applicable considerations appropriately. Proportionality would seem to preclude automatic dispositions, whether dismissal or otherwise.

(vi) FIFTH PRINCIPLE – HIGHER STANDARD APPLICABLE TO THE CONSTABULARY

The fifth principle is that the law holds police conduct to a higher standard. Court and tribunal decisions have consistently embraced the concept that police officers should be held to a higher standard of behaviour compared to other employees or members of the public.

[18] Mr. Shibinette represented himself very effectively and articulately throughout the course of the hearing, and through his representation, and written submissions, he has demonstrated clearly the impact of this matter. The sanctions he seeks are:

1. Permanent removal from any current or future investigations
2. A written, public admission of any wrongdoing, with a Board-reviewed statement
3. A forfeiture of pay, of no more than 30 days

[19] CBRP submits the appropriate penalty would be 15-24 hours forfeiture of pay, and further training for Cst. Miller.

[20] On behalf of Cst. Miller, the recommendation is for remedial training, and no more than 15 hours forfeiture of pay.

[21] In this case, we emphasize the need for corrective, not punitive disposition, and the presumption of the lowest disposition in the circumstances, while considering the interests of the public, the complainant, and the employer. The penalty must reflect proportionality, which requires us to balance the penalty against the harm done to Mr. Shibinette.

[22] In this complaint, there is no sanction that can reverse the damage done to Mr. Shibinette, flowing from the flawed investigation. But at the same time, in fairness to Cst. Miller, we cannot penalize only on the basis of the outcome, we must focus on the extent of the errors, and the extent to which he should have seen the outcome.

[23] His error was his tunnel vision. Any penalty should recognize both, and the public interest is best satisfied by ensuring that training standards are sufficient.

[24] Proportionality does not mean “an eye for an eye”. In other words, although Mr. Shibinette may have suffered long lasting damage to his reputation, that does not mean we must

impose long lasting damage to Cst. Miller's career. We recognize that he has served CBRP in excess of 20 years, without a complaint. He has done commendable work on several occasions.

[25] In his submissions, Mr. Shibinette argues that Cst. Miller's approach lacked impartiality and judgement. We do not agree. As noted, his conduct was not malicious, nor was it simply laziness. It was his failure to further investigate, based on the assumption that any further information garnered would be of no value, or at best, would be supportive of what he had. That was a dangerous assumption, and we hope that is an assumption he will never repeat, nor should other officers.

[26] Whatever the content of investigative training, it should (and perhaps does) emphasize great attention to detail. To use a cliché, “no stone unturned”.

[27] Mr. Shibinette asks that Cst. Miller be forever excluded from further investigations. In the view of the Board, that would be highly impractical. At some stage, most police officers of necessity are involved with at least a preliminary investigation. We also accept that Cst. Miller can and will learn from this complaint.

[28] While Mr. Shibinette has asked for a public apology, in this particular case, an ‘ordered’ apology might seem insincere. However, that certainly does not restrict any voluntary apology that Cst. Miller might consider, and we recommend, but do not order, such a course of action by Cst. Miller.

[29] Retraining in investigative technique and statement taking, particularly of young people is called for, with the Board to be advised of the nature and duration of any such training.

[30] We understand that there is a well-trained resource within CBRP available to officers in domestic violence cases, and we recommend to CBRP that officers be directed to this resource.

[31] We impose a penalty of 24 hours suspension without pay, to be completed by December 31st, 2025.

Dated in Halifax, Nova Scotia, this 13th day of August, 2025.

ORIGINAL SIGNED

Jean McKenna, Chair

ORIGINAL SIGNED

Hon. Simon MacDonald, Vice-Chair

ORIGINAL SIGNED

Siobhan Doyle, Member